



PUBLIC MATTER

FILED

JAN 14 2005

STATE BAR COURT CLERK'S OFFICE
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HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

ERIN P. MORRISSEY,

Member No. 158015,

A Member of the State Bar.

Case No. 04-O-11048-PEM

DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENTINTRODUCTION

In this disciplinary matter, Wonder J. Liang appeared for the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"). Respondent Erin P. Morrissey did not appear in person or by counsel.

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

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on August 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 that same date, a courtesy copy was also sent to an alternate address by regular mail.

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

1 On August 25, 2004, respondent was properly served at her official and alternate
2 addresses with a notice advising her, among other things, that a status conference would be held
3 on September 25, 2004.

4 On August 26, 2004, respondent was properly served at her official and alternate
5 addresses with a notice advising her, among other things, that the status conference would be
6 held on September 20, 2004, rather than on September 25.

7 On September 8, 2004, a courtesy copy of the NDC was sent to respondent at a second
8 alternate address.

9 Respondent did not file a responsive pleading to the NDC. On September 10, 2004, a
10 motion for entry of default was properly served on respondent at her official address by certified
11 mail, return receipt requested. Courtesy copies were also sent to respondent's alternate
12 addresses. The motion advised her that minimum discipline of disbarment would be sought if
13 she was found culpable. She did not respond to the motion.

14 Respondent did not appear at the September 20, 2004, status conference. On September
15 21, 2004, she was properly served at her official address with a status conference order at her
16 official address by first-class mail, postage prepaid. Courtesy copies were also sent to the two
17 alternate addresses. The order also advised her that the case would proceed by default.

18 On September 28, 2004, the Court entered respondent's default and enrolled her inactive
19 effective three days after service of the order. The order was properly served on her at her
20 official address on that same date by certified mail, return receipt requested. Courtesy copies
21 were also sent by regular mail to both alternate addresses.

22 The State Bar's efforts to locate and contact respondent were fruitless. These efforts
23 included leaving respondent a detailed voicemail message on September 7, 2004, advising about
24 the filing of the NDC, that the prosecutor was prepared to file a motion for entry of default and to
25 contact the prosecutor, among other things. On September 9, 2004, the then-assigned prosecutor
26 retrieved a voicemail from respondent and called her back. There has been no response from
27 respondent to that call.

28 The matter was submitted for decision without hearing on October 18, 2004, after the

1 filing of a brief regarding the level of discipline.

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

7 It is the prosecution's burden to establish culpability of the charges by clear and
8 convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr.
9 163, 171.)

10 **Jurisdiction**

11 Respondent was admitted to the practice of law in California on June 8, 1992, and has
12 been a member of the State Bar at all times since.

13 **Facts**

14 Before July 9, 2002, Vincent Cimarusti retained respondent to represent him in a personal
15 injury case.

16 On July 7, 2003, respondent filed the complaint in *Cimarusti v. Njeri*, Santa Clara
17 Superior Court case no. 1-03-CV-000433. Respondent took no further action on her client's
18 behalf. She also did not respond to more than 50 of Cimarusti's telephone calls.

19 On November 18, 2003, respondent did not appear at a case management conference
20 ("CMC") of which she had notice. Cimarusti's case was dismissed for lack of prosecution.
21 Respondent did not inform Cimarusti that she was no longer acting as his attorney.

22 The court issued and served on respondent an order to show cause regarding contempt
23 ("OSC") due to her failure to appear at the CMC. She did not appear at the January 22, 2004,
24 OSC hearing.

25 On December 29, 2003, the State Bar opened an investigation on case no. 04-O-11048
26 pursuant to a complaint regarding allegations of misconduct by respondent in the Cimarusti
27 matter. On May 10 and June 9, 2004, a State Bar investigator sent respondent letters requesting
28 that respondent answer in writing specific allegations of misconduct regarding the Cimarusti

1 complaint. The letters were addressed to respondent's official membership records address and
2 sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable
3 or for any other reason. Respondent did not answer the letters or otherwise communicate with
4 the investigator.

5 **Conclusions of Law**

6 **Count One - RPC 3-110(A) (Failing to Perform Competently)**

7 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to
8 perform legal services competently.

9 By not appearing at the OSC hearing and by not responding to Cimarusti's telephone
10 calls, respondent intentionally, recklessly or repeatedly did not perform competently in wilful
11 violation of RPC 3-110(A).

12 **Count Two - RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

13 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or
14 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,
15 including giving due notice to the client, allowing time for employment of other counsel,
16 complying with RPC 3-700(D) and with other applicable laws and rules.

17 By not appearing at the CMC and by not advising Cimarusti that she was no longer
18 representing him, respondent effectively withdrew from employment. Respondent's withdrawal
19 prejudiced Cimarusti because his case was dismissed. By not informing the client of her intent to
20 withdraw from employment, respondent failed to take reasonable steps to avoid reasonably
21 foreseeable prejudice to the client in wilful violation of RPC 3-700(A)(2).

22 **Count Three - Section 6068(b) (Failure to Maintain Respect Due Court)**

23 Section 6068(b) requires an attorney to maintain the respect due to the courts of justice
24 and to judicial officers.

25 "There is 'little, if any, purpose served by duplicative allegations of misconduct.'" (*In the*
26 *Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Since the same facts
27 support both the violations of rule 3-110(A) and section 6068(b), the latter charge is
28 dismissed with prejudice

1 **Count Four - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

2 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary
3 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

4 By not responding to the State Bar's letters dated May 10 and June 9, 2004, regarding
5 alleged misconduct in the Cimarusti matter, respondent did not participate in the investigation of
6 the allegations of misconduct in wilful violation of 6068(i).

7 **LEVEL OF DISCIPLINE**

8 **Aggravating Circumstances**

9 Respondent has one prior discipline recommendation pending before the California
10 Supreme Court. Although the recommendation is not final, it is considered as a prior record of
11 discipline, an aggravating circumstance. (Rule 216, Rules Proc. of State Bar; Standard 1.2(b)(i),
12 Rules of Procedure of the State Bar of California, tit. IV, Standards for Attorney Sanctions for
13 Professional Misconduct ("standards").) In a decision filed on August 10, 2004, in State Bar
14 Court case nos. 96-O-08688 and 98-O-0321, discipline was recommended consisting of three
15 years stayed suspension and actual suspension of two years and until respondent complied with
16 standard 1.4(c)(ii) and rule 205, Rules Proc. of State Bar. She was found culpable of violating
17 sections 6103 (one count) and 6068(d) (two counts) and rule 4-100(A)(2) (one count). The Court
18 notes that respondent did not participate in the prior disciplinary proceeding either. She did not
19 appear at a status conference or at a pretrial conference nor did she file a pretrial statement as
20 ordered. The other aggravating circumstance found was client harm. There were no mitigating
21 factors.

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

23 Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Cimarusti's
24 case was dismissed as a result of respondent's failure to appear in court.

25 Respondent's failure to participate in these proceedings prior to the entry of default is also
26 an aggravating factor. (Standard 1.2(b)(vi).) She did not appear at the September 20, 2004, status
27 conference as ordered. She has demonstrated her contemptuous attitude toward disciplinary
28 proceedings as well as her failure to comprehend the duty of an officer of the court to participate

1 therein, a serious aggravating factor. ((Standard 1.2(b)(vi); Cf. *In the Matter of Stansbury*
2 (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

3 **Mitigating Circumstances**

4 Since respondent did not participate in these proceedings and she bears the burden of
5 establishing mitigation by clear and convincing evidence, the Court has been provided no basis
6 for finding mitigating factors.

7 **Discussion**

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

12 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
13 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
14 imposing discipline. If two or more acts of professional misconduct are found in a single
15 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
16 sanctions. (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).) The
17 standards, however, are guidelines from which the Court may deviate in fashioning the most
18 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*
19 *re Young* (1989) 49 Cal.3d 257, 267 (fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They
20 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*
21 (1988) 44 Cal.3d 820, 828.)

22 Standards 2.4(b) and 2.6(a) apply in this matter. The most severe sanction is found at
23 standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067 and
24 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the
25 purposes of imposing discipline.

26 Respondent has been found culpable of failing to perform and of abandoning one client as
27 well as not participating in the disciplinary investigation.

28 The State Bar recommends disbarment and the Court agrees. Respondent's misconduct;

1 her lack of cooperation in the investigation of misconduct allegations; and her lack of
2 participation in this and the prior disciplinary cases raises concerns about her ability or
3 willingness to comply with her ethical responsibilities to the public and to the State Bar. No
4 explanation has been offered that might persuade the Court otherwise and the Court can glean
5 none. She is not a good candidate for suspension or probation. "... [T]hese facts reflect
6 respondent's disdain and contempt for the orderly process and rule of law and clearly demonstrate
7 that the risk of future misconduct is great." (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal.
8 State Bar Ct. Rptr. 563, 581.) Accordingly, having considered the evidence and the law, the
9 Court believes that disbarment is the most effective means of protecting the public in this
10 instance.

11 DISCIPLINE RECOMMENDATION

12 IT IS HEREBY RECOMMENDED that respondent **ERIN P. MORRISSEY** be
13 DISBARRED from the practice of law in the State of California and that her name be stricken from
14 the rolls of attorneys in this state.

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

19 COSTS

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

23 ORDER REGARDING INACTIVE ENROLLMENT

24 It is ordered that respondent be transferred to involuntary inactive enrollment status
25 pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from

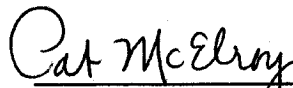
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1 the date of service of this order and shall terminate upon the effective date of the Supreme
2 Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant
3 to its plenary jurisdiction.
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7 Dated: January 14, 2005
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PAT McELROY
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. 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 January 14, 2005, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

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:

ERIN MORRISSEY
236 N SANTA CRUZ AVE #102B
LOS GATOS, CA 95030

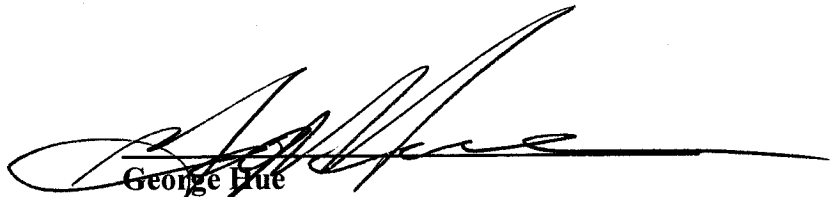
COURTSEY COPIES TO:
ERIN MORRISSEY
236 N SANTA CRUZ AVE #110
LOS GATOS, CA 95030

ERIN MORRISSEY
16040 ESCOBAR AVE
LOS GATOS, CA 95032-3647

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on January 14, 2005.


George Hue
Case Administrator
State Bar Court