

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	<b>Case No. 05-O-00614; 05-O-01538; 05-O-</b>
	)	<b>02173; 05-N-04806 (Cons.)</b>
<b>ANN TAYLOR GARRETT,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 70923,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this consolidated default matter, respondent **Ann Taylor Garrett** is found culpable, by clear and convincing evidence of failing to obey a court order, improperly withdrawing from employment, failing to communicate with a client, failing to render accounts of client funds, failing to cooperate in State Bar investigations, and failing to comply with California Rules of Court, rule 955,<sup>1</sup> as ordered by the California Supreme Court on May 23, 2005, in S1320687 (State Bar Court case No. 02-O-16089).

After considering the evidence, respondent's misconduct, the aggravating factors, and the law, the court recommends that respondent be disbarred from the practice of law.

**II. Pertinent Procedural History**

**A. First Notice of Disciplinary Charges (Case No. 05-O-00614 [05-O-01538; 05-O-02173])**

On August 11, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a twelve-count Notice of Disciplinary Charges (NDC) in case No. 05-O-00614 [05-O-01538; 05-O-02173] (First NDC) at her official membership records address. Although the United States Postal Service (USPS) informed the State Bar that the

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<sup>1</sup>All references to rule 955 are to California Rules of Court, rule 955.

certified mailing had been claimed on August 30, 2005, as of September 8, 2005, the return receipt had not been received by the office of the State Bar.

Respondent did not file a response to the First NDC. (Rules Proc. of State Bar, rule 103.)

On August 26, 2005, the State Bar attempted to reach respondent by telephone at her official membership records phone number. The State Bar left a message with an answering machine or service that identified the number as that of the law offices of Ann Taylor Garrett. Although the State Bar's message specifically requested a return call, respondent did not return the call.

On the State Bar's motion, respondent's default was entered on September 27, 2005, and respondent was enrolled as an inactive member on September 30, 2005, under Business and Professions Code section 6007(e).<sup>2</sup> An order of entry of default was sent to respondent's official membership records address by certified mail, but was returned as unclaimed.

The State Bar filed a brief on culpability and discipline on October 5, 2005, and the matter was deemed submitted on October 17, 2006.

However, when a second NDC was filed against respondent, the submission date of October 17, 2005, for this matter was vacated and the matter was abated on January 10, 2006.

**B. Second Notice of Disciplinary Charges (Case No. 05-N-04806)**

On December 13, 2005, the State Bar filed an NDC in case No. 05-N-04806 (Second NDC) and properly served it on respondent at her official membership records address.<sup>3</sup> The mailing was returned with the stamped notation "Return to Sender, Unclaimed" and with a sticker "Return to Sender Attempted/Not Known." Respondent did not file a response to the Second NDC.

Because respondent had been on disciplinary probation, the State Bar reviewed the notes of the assigned probation deputy to ascertain whether respondent's probation file contained any other address for her. No other address was found.

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<sup>2</sup>All references to section (§) are to Business and Professions Code, unless otherwise indicated.

<sup>3</sup>On December 14, 2005, the State Bar filed an "Amended Declaration of Service Re Notice of Disciplinary Charges." The Amendment was made in order to include an exhibit which had inadvertently been omitted.

On the State Bar's motion, respondent's default was entered on March 2, 2006, and respondent was enrolled as an inactive member on March 5, 2006, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official membership records address, but was returned as unclaimed.

On March 2, 2006, the court also ordered that case No. 05-O-00614 be unabated and consolidated with case No. 05-N-04806, effective March 10, 2006.

Respondent did not participate in the disciplinary proceedings. The court ordered that the consolidated matter be taken under submission on March 22, 2006.

On April 3, 2006, the State Bar moved the court for an order permitting the late filing of its default brief. Pursuant to rule 64(b) of the Rules of Procedure of the State Bar and finding that GOOD CAUSE EXISTS, the court GRANTS, nunc pro tunc, the State Bar's motion for late filing of its default brief in this consolidated matter. The court further ORDERS that the submission date of March 22, 2006, be vacated, and that this consolidated matter be deemed submitted as of April 11, 2006.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the two NDCs are admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar of California at all times since that date.

#### **B. First Notice of Disciplinary Charges**

##### ***1. The Krikorian Matter (Case No. 05-O-00614)***

##### **Findings of Fact**

Respondent represented petitioner Katherine Krikorian in a marriage dissolution proceeding, *In re Marriage of Krikorian (Marriage of Krikorian)* before the Sacramento County Superior Court. On or about August 12, 2002, the court ordered respondent to prepare an order and judgment of dissolution for the court's review and approval. Although respondent submitted a proposed order

and judgment to the court, it was returned as defective with the further instruction that respondent cure the defects and that the documents be resubmitted to the court. The court's order instructing respondent to prepare an order of dissolution to be approved by the court was valid and otherwise enforceable.

However, as of the filing of the First NDC, respondent had failed to resubmit the order and judgment in an acceptable format as ordered by the court, despite the fact that at all relevant times, respondent was capable of complying with the court's instructions. As a result, the parties in *Marriage of Krikorian* remained married, contrary to the wishes of at least one party to the action.

### **Conclusions of Law**

#### ***Count 1: Failure to Obey a Court Order (Bus. & Prof. Code, §6103)***

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring [an attorney] to do or forbear an act connected with or in the course of [her] profession, which [s]he ought in good faith to do or forbear” constitutes cause for disbarment or suspension. The uncontroverted evidence, as set forth in the First NDC, establishes that respondent was ordered to do an act in the course of her practice of law that she ought in good faith to have done, i.e., submit the order and judgment in the *Marriage of Krikorian* in an acceptable format to the court. By failing to resubmit the order and judgment of dissolution, as ordered by the court, when she was capable of complying with the court's instructions, respondent wilfully disobeyed a court order in wilful violation of section 6103.

#### **2. *The Rutledge Matter (Case No. 05-O-01538)***

##### **Findings of Fact**

On August 21, 2002, Cory Rutledge (Rutledge) hired respondent to represent him in a marriage dissolution proceeding and paid her \$3,000 in advanced attorney fees. On December 30, 2003, Rutledge paid respondent an additional \$2,000 in advanced attorney fees.

Initially, respondent performed some preliminary work on Rutledge's matter. However, that work was of no value to Rutledge as it did not advance the dissolution in any meaningful fashion. Although respondent had effectively ceased performing legal services on Rutledge's behalf and had terminated her professional relationship with him by at least January 2004, she did not at any time

provide Rutledge with notice that she was ceasing to perform legal services on his behalf.

On February 28, 2003, July 2, 2003, April 5, 2004, August 24, 2004, November 29, 2004, December 12, 2004, December 28, 2004 and January 5, 2005, Rutledge telephoned respondent's office, each time leaving a message requesting that respondent contact him regarding the status of his divorce matter. Respondent did not return any of Rutledge's telephone calls, nor did she otherwise provide him with reports concerning the status of his matter.

On January 5, 2005, Rutledge transmitted, via facsimile, a letter to respondent, which was successfully received by respondent's office facsimile machine. The January 5<sup>th</sup> letter asked respondent to: (1) finalize the divorce; (2) return Rutledge's telephone calls and otherwise keep him apprised of her efforts on his behalf; and (3) account for the \$5,000 in advanced attorney fees previously paid to her by Rutledge. However, as of the date of the filing of the First NDC, respondent had not provided Rutledge with an accounting of the \$5,000 advanced attorney fees. Nor did respondent contact Rutledge in response to the January 5<sup>th</sup> letter.

On February 15, 2005, Rutledge transmitted another letter which was also successfully received by respondent's office facsimile machine. The February 15, 2005 letter informed respondent that Rutledge was terminating her employment, requested a refund of the \$5,000 advanced attorney fees, and instructed respondent to forward Rutledge's file to his new lawyer, Mary Peterson (Peterson). However, as of August 11, 2005, the date of the filing of the First NDC, respondent had not refunded any portion of the \$5,000 in advanced attorney fees. Nor did respondent forward Rutledge's file to Peterson, as requested, or otherwise provide the client file to Rutledge.

#### *Conclusions of Law*

***Count 2A: Improper Withdrawal from Employment (Rules Prof. Conduct, Rule 3-700(A)(2))<sup>4</sup>***

***Count 2D: Failure to Return Client File (Rule 3-700(D)(1)); and***

***Count 2E: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule

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<sup>4</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

3-700(A)(2). Rule 3-700(A)(2) states: “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.” Rule 3-700(D) requires an attorney, upon termination of employment, to promptly return to the client at his request all client papers, and refund unearned fees.

By ceasing to perform legal services on Rutledge’s behalf and terminating her professional relationship with him by January 2004, respondent effectively withdrew from employment, without notice to Rutledge that she was withdrawing from employment. Additionally, although respondent performed some preliminary work on Rutledge’s matter, because respondent provided no services of value to Rutledge, she earned no portion of the \$5000 advanced attorney fees.<sup>5</sup> Yet, as of the filing of the First NDC, respondent had failed to return any portion of the unearned fees to Rutledge. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to her client, in wilful violation of rule 3-700(A)(2).

However, as the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of wilfully violating rules 3-700(D)(1) and 3-700(D)(2) as alleged in counts 2D and 2E, respectively. Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client’s request, all the client’s papers and property. Rule 3-700(D)(2) requires an attorney upon termination of employment to promptly refund unearned fees.

The rule prohibiting withdrawal from employment, rule 3-700(A)(2), is more comprehensive than either rule 3-700(D)(1) or rule 3-700(D)(2). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of unearned fees *and* the prompt release of all the client’s papers and

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<sup>5</sup>It is common in State Bar matters involving the failure to perform services to deem as unearned the entire fee when only preliminary services were performed which did not result in benefit to the client. (*In the Matter of Harris* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 219, 231.)

property. Thus, an attorney's failure to promptly return unearned fees and/or papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because, respondent's failure to return her client's file and unearned fees is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under either rule 3-700(D)(1) or rule 3-700(D)(2). The court, therefore, dismisses counts 2D and 2E with prejudice.

***Count 2B: Failure to Respond to Status Inquiries (Bus. & Prof. Code, §6068, Subd. (m))***

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to return Rutledge's numerous phone calls made between February 2003 and January 2005, regarding the status of his divorce matter, and by failing to respond to Rutledge's January 5, 2005 facsimile, while otherwise failing to provide him with reports concerning the status of his matter, respondent failed to respond to her client's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

***Count 2C: Failure to Render Accounts (Rule 4-100(B)(3))***

Rule 4-100(B)(3) provides that an attorney shall maintain records of all client funds in her possession and render appropriate accounts to the client.

By failing to render an accounting at any time during the period of her employment regarding the \$5,000 advanced attorney fees and by failing to render an accounting in response to Rutledge's January 5, 2005 faxed letter requesting an accounting of the \$5,000 advanced attorney fees, respondent failed to render appropriate accounts to a client regarding all funds coming into her possession, in wilful violation of rule 4-100(B)(3).

**3. *The Lepper Matter (Case No. 05-O-02173)***

***Findings of Fact***

On October 30, 2003, Heather Lepper (Lepper) retained respondent to represent her in a domestic relations dispute involving Colleen King (the Lepper/King matter), and paid respondent \$3,000 in advanced attorney fees for her services in relation to that matter. Shortly thereafter, on

November 19, 2003, Lepper paid respondent an additional \$1,000 in advanced attorney fees for her services in relation to the Lepper/King matter.

On July 20, 2004, Lepper also hired respondent to represent her in a dispute over money owed to her by Cynthia Casteel (the Lepper/Casteel matter), and paid respondent \$1,000 in advanced attorney fees for her services in relation to that matter.

Initially, respondent performed work of value to Lepper in relation to the Lepper/King matter. However, respondent took no valuable action on Lepper's behalf in relation to the Lepper/Casteel matter. By at least November 20, 2004, respondent had effectively ceased performing legal services on Lepper's behalf in relation to both the Lepper/King and the Lepper/Casteel matters, and had otherwise terminated her professional relationship with Lepper. However, at no time did respondent provide Lepper with notice that she was ceasing to perform legal services on Lepper's behalf in either of the two matters for which she had been retained.

On November 20, 2004, Lepper sent a letter to respondent, which respondent received on December 3, 2004. In that November 20<sup>th</sup> letter, Lepper requested that respondent: (1) provide an "itemized bill" for the advanced attorney fees paid in relation to the Lepper/King matter; (2) refund the advanced attorney fees paid in relation to the Lepper/Casteel matter; (3) return "all paperwork, files, etc." that were in respondent's possession related to the two matters for which respondent had been retained by Lepper; and (4) contact Lepper regarding the two matters. Respondent, however, did not contact Lepper in response to the November 20<sup>th</sup> letter.

As of August 11, 2005, the date of the filing of the First NDC, respondent had not provided Lepper with the requested "itemized bill" or any other accounting of the \$1,000 in advanced attorney fees paid to her in relation to the Lepper/Casteel matter. Nor did respondent refund any portion of the advanced attorney fees paid to her in relation to the Lepper/Casteel matter. Additionally, respondent did not return any paperwork or files to Lepper as requested in the November 20<sup>th</sup> letter.

#### **Conclusions of Law**

***Count 3A: Improper Withdrawal from Employment (Rule 3-700(A)(2));***

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

***Count 3E: Failure to Return Unearned Fees (Rule 3-700(D)(2))***



By ceasing to perform legal services on Lepper's behalf in both matters for which she had been retained by Lepper by at least November 4, 2004, respondent effectively withdrew from her representation of Lepper. However, at no time did respondent provide notice to her client that she was withdrawing from employment. Respondent further failed to promptly release to Lepper, upon Lepper's request, all of the papers and files that were in respondent's possession that were related to the two matters for which she had been retained. Additionally, because respondent provided no services of value to Lepper in the Lepper/Casteel matter, she earned no portion of the \$1,000 attorney fees advanced to her in relation to that matter. Nonetheless, respondent did not refund to Lepper any portion of the unearned \$1,000. Thus, respondent wilfully failed to take steps to avoid reasonably foreseeable prejudice to her client's rights in wilful violation of rule 3-700(A)(2).

However, as the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of wilfully violating rules 3-700(D)(1) and 3-700(D)(2) as alleged in counts 3D and 3E, respectively. As discussed above, the rule prohibiting withdrawal from employment, rule 3-700(A)(2), is more comprehensive than either rule 3-700(D)(1) or rule 3-700(D)(2). (*In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 280.)

Because, respondent's failure to return her client's file and unearned fees is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under either rule 3-700(D)(1) or rule 3-700(D)(2). The court, therefore, dismisses counts 3D and 3E with prejudice.

***Count 3B: Failure to Respond to Status Inquiries (Bus. & Prof Code, §6068, Subd. (m))***

Respondent failed to respond to Lepper's November 20, 2004 letter, requesting that respondent contact her regarding the two matters for which she had been retained, in wilful violation of section 6068, subdivision (m).

***Count 3C: Failure to Render Accounts (Rule 4-100(B)(3))***

By failing to promptly render an "itemized bill" or any other accounting of the \$1,000 attorney fees advanced to respondent, as was requested of her in Lepper's November 20, 2004 letter, respondent failed to render appropriate accounts to a client regarding funds coming into respondent's

possession, in wilful violation of rule 4-100(B)(3).

**4. *The State Bar Investigations (Count 4)***

**Findings of Fact**

*a. Case No. 05-O-00614 (The Krikorian Matter)*

On March 28, 2005, State Bar Investigator Francoise Jacobs (Investigator Jacobs) sent a letter to respondent advising her of the allegations against her in the Krikorian matter. On May 3, 2005, Investigator Jacobs sent another letter to respondent regarding the Krikorian matter.

Both letters were correctly addressed to respondent at her membership records address. They were not returned as undeliverable or for any other reason.

Each letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Krikorian Matter. Respondent, however, did not respond to either letter or communicate with Investigator Jacobs regarding the Krikorian matter.

*b. Case No. 05-O-01538 (The Rutledge Matter)*

On April 6, 2005, Investigator Jacobs sent a letter to respondent regarding the Rutledge matter. On May 3, 2005, Investigator Jacobs sent a second letter to respondent regarding the Rutledge matter.

The letters were correctly addressed to respondent at her membership records address and were not returned as undeliverable or for any other reason.

The letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Rutledge matter. Respondent did not respond to the letters or communicate with Investigator Jacobs regarding the Rutledge matter.

*c. Case No. 05-O-02173 (The Lepper Matter)*

On May 18, 2005, Investigator Jacobs sent a letter to respondent regarding the Lepper Matter. On June 7, 2005, Investigator Jacobs again wrote to respondent regarding the Lepper matter.

The letters were correctly addressed to respondent at her membership records address and were not returned as undeliverable or for any other reason.

Each letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Lepper matter. Respondent did not respond

to the letters or communicate with Investigator Jacobs about the Lepper matter.

**Conclusions of Law**

***Count 4: Failure to Cooperate with the State Bar (Bus. & Prof. Code, §6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to provide a response to the State Bar’s letters in the three disciplinary matters (the Krikorian matter, the Rutledge matter, and the Lepper matter), respondent failed to cooperate in the disciplinary investigations, in wilful violation of section 6068, subdivision (i).

**C. Second Notice of Disciplinary Charges**

***Violation of California Rules of Court, Rule 955 (Case No. 05-N-04806)***

On May 23, 2005, in California Supreme Court case No. S132087 (State Bar Court case No. 02-O-16089; 03-O-00602 (Cons.)), the Supreme Court suspended respondent from the practice of law for two years and until she complies with the requirements of standard 1.4(c)(ii) and until she makes specified restitution, stayed the execution of the suspension, placed her on probation for two years, and actually suspended her for 30 days and until she makes specified restitution. Among other things, the Supreme Court ordered that if respondent were actually suspended for 90 days or more she must comply with rule 955, subdivisions (a) and (c) within 120 days and 130 days, respectively, after the effective date of the Supreme Court order. The order became effective June 22, 2005, and was duly served on respondent.

Rule 955(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that. . . she has fully complied with those provisions of the order entered pursuant to this rule.”

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rules of Court, rule 24(a) at her address as maintained by the State Bar in accordance with section 6002.1.

As alleged in the Second NDC, as of its filing date, December 13, 2005, respondent was still on suspension. Thus, having remained suspended for more than 90 days, respondent was required

to have filed the rule 955(c) affidavit by November 3, 2005.<sup>6</sup> However, she did not do so and has offered no explanation to this court for her noncompliance.

Whether respondent is aware of the requirements of rule 955 or of her obligation to comply with those requirements is immaterial. “Wilfulness” in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.<sup>7</sup>

### ***Violation of Section 6103***

Accordingly, respondent’s failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>8</sup>

### **B. Aggravation**

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

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. On May 23, 2005, upon stipulation, respondent was suspended from the practice of

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<sup>6</sup>The Second NDC contains a harmless typographical error. As was acknowledged in the State Bar’s brief on culpability and discipline, the Second NDC erroneously states that the deadline by which respondent was to have complied with rule 955(c) was “November 31, 2005.”

<sup>7</sup>Specifically, rule 955(d) provides that a suspended attorney’s wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

<sup>8</sup>All further references to standards or std. are to this source.

law for two years and until she complies with the requirements of standard 1.4(c)(ii) and until she makes specified restitution, stayed, placed on probation for two years and actually suspended for 30 days and until she makes specified restitution. Respondent was found culpable of failure to pay unearned fees, failure to render appropriate accounts to a client, failure to maintain disputed trust funds in her client trust account, failure to promptly release a client file at the client's request, and failure to cooperate with the State Bar. (Supreme Court case No. S132087; State Bar Court case No. 02-O-16089; 03-O-00602 (Cons.))

2. On February 17, 2006, respondent's probation was revoked and was suspended for two years and until she makes specified restitution, stayed, placed on probation for two years and actually suspended for six months and until she makes specified restitution. Respondent's culpability included failure to comply with probation conditions by failing to make a written offer to a former client to participate in binding fee arbitration as had been court-ordered, failing to provide proof to the Office of Probation (OP) that she returned disputed funds to her client trust account, and failing to cooperate with the OP. (Supreme Court case No. 132087; State Bar Court case No. 05-PM-03468.)

Respondent committed multiple acts of wrongdoing, including failing to obey court orders improperly withdrawing from employment, failing to respond to status inquiries, failing to render appropriate accounts to a client, and failing to cooperate with State Bar investigations. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed her clients and the administration of justice. (Std. 1.2(b)(iv).) By failing to return unearned fees of \$1,000 to Lepper and \$5,000 to Rutledge, respondent caused significant harm to her clients. By failing to obey the court order in the Krikorian matter, respondent harmed the administration of justice.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by failing to comply with rule 955(c) even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

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

## V. Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating and aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Respondent's misconduct in three matters included failure to obey a court order, improper withdrawal from employment, failure to communicate, failure to render appropriate accounts to a client, failure to cooperate with State Bar investigations, and failure to comply with rule 955. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victims. (Stds. 1.6, 1.7, 2.2, 2.4, and 2.6.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (Id. at p. 251.) The court will look to the applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains "grave doubts" as to its propriety. (*Ibid*; *In re Naney* (1990) 51 Cal.3d 186, 190.)

Even though the standards are merely guidelines for imposing discipline, there is “no reason to depart from them in the absence of a compelling reason to do so. [Citation.]” (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges disbarment, citing *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 and *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480 in support of its recommendation. The court agrees.

In *Taylor*, the attorney had committed serious misconduct in three client matters. He also had a prior record of discipline. Because the risk of future misconduct was great, disbarment was necessary. Accordingly, the court found that respondent was not a good candidate for suspension and/or probation because “. . . these facts reflect respondent’s disdain for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great.” (*Id.* at p. 581.)

As in *Taylor*, here, the respondent has committed serious misconduct. She wilfully failed to comply with rule 955. In the Krikorian matter respondent failed to obey a court order. In two other matters she failed to respond to reasonable status inquiries from her clients, failed to render appropriate accounts of funds coming into her possession, and improperly withdrew from employment. Encompassed in respondent’s improper withdrawal from employment was her failure to return unearned fees in two of the matters and her failure to return a client file in one matter. In all three of the client matters respondent failed to participate in State Bar investigations as required by the State Bar Act.

In recommending discipline “the paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Here, respondent, has clearly demonstrated indifference to the importance of her discipline. She has had two prior records of discipline within the past year. Disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.)

Moreover, respondent’s failure to comply with successive orders of the Supreme Court has burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to the court. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508 [contemptuous attitude

toward disciplinary proceedings is relevant to determination of appropriate sanction].) Respondent has had opportunity to conform her conduct to the ethical requirements of the profession, but has failed or refused to do so. Probation and suspension have proven inadequate to prevent continued misconduct. (See *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Respondent has displayed total indifference and lack of remorse by ignoring her present disciplinary proceeding and her second disciplinary proceeding. Such failure to participate leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding the misconduct. Her lack of participation indicates that far more severe discipline is required to achieve the purposes of attorney discipline set forth in standard 1.3.

Accordingly, lesser discipline than disbarment is not warranted. In view of the serious and unexplained nature of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, and the existence of a prior disciplinary record, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

#### **VI. Discipline Recommendation**

It is hereby recommended that respondent **Ann Taylor Garrett** be disbarred from the practice of law in the State of California and that her name be stricken from the rolls of attorneys in this state.

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

#### **VII. Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6068.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.



### **VIII. Order Regarding Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment will become effective three calendar days from the date of service of this order.

Dated: July 10, 2006

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**JOANN M. REMKE**  
Judge of the State Bar Court