

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case No. 05-O-02476-RAH
)	
MELODYE SUE HANNES,)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 192977,)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this disciplinary matter, Shari Svenigson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Melodye Sue Hannes did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on February 2, 2006, 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, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On February 7, 2006, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on March 2, 2006.

Respondent did not appear at the March 2, 2006, status conference. On March 6, 2006,

¹Future references to section are to the Business and Professions Code.

she was properly served with a status conference order at her official address by first-class mail, postage prepaid. This correspondence was returned as undeliverable.

Respondent did not file a responsive pleading to the NDC. On March 9, 2006, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that discipline of disbarment would be sought if she were found culpable. Respondent did not respond to the motion.

On March 28, 2006, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. This correspondence was returned as undeliverable.

The State Bar's efforts to locate and contact respondent were fruitless.

The matter was submitted for decision without hearing on April 17, 2006, after the State Bar filed a brief.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar², rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 9, 1997, and has been a member of the State Bar at all times since.

B. Facts

In 2002, Ronald Puckett retained respondent to represent him in a divorce. (*In the*

²Future references to the Rules of Procedure are to this source

Marriage of Puckett, Alameda County Superior Court case no. 848781-0 (Puckett case or matter).)

Attorney R. Edward Pfeister, Jr., represented Puckett in a personal injury case that was litigated during the marriage.

On August 30, 2002, respondent wrote a letter to Margaret Gannon, attorney for his former spouse, Arnetha, agreeing, among other things, that she would deposit a check from Pfeister made payable to respondent and Puckett in the sum of \$310,766.29 into her “client trust fund” and that the funds would not be released to any person until further order of the court or agreement by stipulation of the parties. The check from Pfeister represented assets from Puckett’s personal injury settlement. It included a then-undetermined sum to which Arnetha would be entitled for her claims arising from the personal injury case.

On August 30, 2002, Puckett gave respondent a check for \$15,000 intended to pay sums then-owed to Arnetha. Respondent deposited this check into her client trust account number 090-4511706 at Wells Fargo Bank (CTA).

On September 3, 2002, respondent deposited the \$310,766.29 check into the CTA.

After these two deposits, there should have been at least \$325,766.29 in the CTA.

In September 2002, the superior court ordered respondent to hold in trust as community property the \$310,766.29 while the Puckett case was pending and until further order of the court.

During the six-month period between September 3, 2002 and February 28, 2003, respondent used \$317,584.41 of the funds Puckett entrusted to her for cross-country and overseas vacations, clothing, hobbies, dining out, dietary supplements, tanning and beauty salons, and other personal expenses. She was never authorized by her client or the court to use any portion of the funds. These expenditures are discussed further below.

Respondent made approximately 30 wire or telephonic transfers totaling more than \$45,000 and approximately 47 cash withdrawals totaling more than \$125,000 from the CTA to various checking accounts for her personal benefit, use and enjoyment during those six months.

Respondent also issued checks from the CTA totaling more than \$25,000 for her personal benefit, use and enjoyment, including over \$17,000 for travel and \$6,500 paid to her law office.

During those six months, respondent made more than 140 point-of-sale or check card purchases from the CTA totaling more than \$40,000 for her personal benefit, use and enjoyment, including expenses for tanning and beauty salons, a weight-loss clinic, travel, dining out, clothing, markets and other stores, utilities and other miscellaneous items.

The entire \$310,766.29 respondent received on Puckett's behalf should have remained in the CTA during those six months, however.

Between September 3, 2002 and February 28, 2003, respondent made only three disbursements, totaling \$8,100, related to the Puckett case from her CTA. These were checks payable to Arnetha or to her attorney, each in the sum of \$2,700, and issued on January 7 and February 1 and 3, 2003. The January check indicated that it was intended to replace a previously-issued CTA check to Arnetha for \$2,700. The memo portion of the February 1 check to Arnetha's lawyer simply stated "July." The last check indicated that it was intended as a "support" payment from Puckett. There were no other disbursements from the CTA to Puckett, Arnetha, her attorney, their creditors or anyone else on their behalf or pursuant to court order. After these disbursements, respondent should have maintained in the CTA \$6,900 of the \$15,000 Puckett entrusted to respondent for Arnetha.

Between September 3, 2002 and February 28, 2003, respondent's CTA balance fell below \$325,807.91 to a low balance of \$81.88 as follows:

<u>Date</u>	<u>CTA Balance</u>
9/30/02	\$288,487.91
10/31/02	245,549.49
11/29/02	181,792.43
12/31/02	95,850.76
1/31/03	34,182.31
2/28/03	81.88

Between August 30, 2002, and February 28, 2003, respondent misappropriated \$317,584.41³ of entrusted funds.

In July 2003, Puckett paid an additional \$9,000 in attorney fees. He was unaware of

³This number is comprised of \$325,766.29 (total amount of entrusted funds) minus \$81.88 (CTA ending balance) minus \$8100 (amount disbursed to Arnetha).

respondent's misappropriation of his and Arnetha's funds.

While the Puckett matter was pending, the mortgage on the Pucketts' community residence went into default.

On January 18, 2005, respondent made an appearance at a hearing on the Puckett case. The court ordered, among other things, that payment to cure the default on the mortgage be made forthwith from the funds entrusted to respondent. On February 17, 2005, the court served respondent with a written notice of the order. Respondent received it.

Respondent did not distribute the funds to cure the default as ordered. A foreclosure sale of the Pucketts' residence was set for March 22, 2005.

On March 15, 2005, the court issued an ex parte order ordering respondent to transfer \$59,116.51 from the CTA to Gannon's CTA so that Gannon would use the funds to cure the default. The transfer of funds to Gannon was to take place within 24 hours' notice to respondent. Respondent received written notice of the court's order. She did not comply with the order to transfer the funds to Gannon.

On April 19, 2005, respondent appeared telephonically at an order to show cause (OSC) hearing in the Puckett case. She told the court and Gannon that she had faxed to Gannon a copy of her most recent CTA statement just prior to the hearing and that the statement showed that there were sufficient funds in the account.

Respondent had sent to Gannon a copy of what purportedly was her CTA statement dated January 31, 2005, and appearing to reflect a balance of \$310,766.29. Before she faxed it to Gannon, however, respondent had altered the actual CTA statement with the intent to deceive Gannon and, indirectly, the court. In fact, respondent's CTA was overdrawn on January 31, 2005, with a negative balance of \$9.87. Respondent intended to mislead and deceive the court and Gannon with false assurances that the Pucketts' funds remained in trust.

After the April 19 OSC hearing, the court issued an order requiring respondent to provide an accounting of the community funds held in her CTA as had been previously ordered, including, but not limited to, copies of monthly statements of the account in which she had held the funds since they had been in her possession, copies of all checks and withdrawal documents

evidencing any disbursement of the funds at any time since they came into her possession. The accounting was to be delivered to Gannon no later than April 29, 2005. The court also ordered respondent to transfer to Gannon forthwith all funds held in trust for the Pucketts. Gannon was to hold them in trust for the Pucketts until further order of the court. On May 9, 2005, the court issued a written order memorializing the orders given verbally at the April 19 hearing.

Respondent did not transfer the funds or render the accounting as ordered by the court.

Arnetha was forced to file a Chapter 13 bankruptcy proceeding in order to forestall the foreclosure sale of the community residence.

On May 18, 2005, the State Bar opened an investigation on case no. 05-O-02476. On June 6 and July 11, 2005, a State Bar investigator sent respondent letters regarding the Puckett matter. They were addressed to her official address and sent by first-class mail, postage prepaid. They were returned to the State Bar as undeliverable.

On August 11, 2005, the investigator wrote again to respondent, sending a copy of the June 6 letter to an alternate address. The letter asked her to respond in writing to specific allegations of misconduct being investigated regarding the Puckett case. This letter was returned as undeliverable too.

Respondent abandoned her office located at her official address and did not provide the State Bar with a change of address or address to be used for State Bar purposes.

B. Conclusions of Law

1. Count One - Rule of Professional Conduct⁴ 4-100(A) (Failure to Maintain Client Funds in Trust Account)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account.

There is clear and convincing evidence that respondent wilfully violated rule 4-100(A). She deposited \$310,766.29 of client funds in the CTA and let the account balance dip to \$81.88.

There is also clear and convincing evidence that respondent wilfully violated rule

⁴Future references to rule are to this source.

4-100(A) by not maintaining in the CTA \$6,900 of the \$15,000 deposited therein for Arnetha and letting the account balance dip to \$81.88 although only \$8,100 was disbursed to her.

There were no other disbursements to Puckett or Arnetha. There were no expenditures on their behalf or pursuant to court order.

2. Count Two - Section 6106 (Moral Turpitude)

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misappropriating \$317,584.41 of client funds for her own use and benefit between September 2002 and February 2003. Accordingly, she committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

3. Count Three - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106. She charged and collected additional attorney fees from Puckett, thereby leading him to believe that she was acting in his best interests although she knew she had misappropriated more than \$317,000 of his and Arnetha's money. Accordingly, she committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

4. Count Four - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act connected with or in the course of his or her profession, which he or she ought in good faith to do or forbear.

By not transferring the entrusted funds to Gannon to cure the default on the Puckett's mortgage after receiving notice of the court's order to do so, respondent wilfully disobeyed a court order in wilful violation of section 6103.

5. Count Five - Section 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106.

Respondent altered her CTA statement to create the false impression that the Pucketts' funds were still in her CTA. She provided this statement to Gannon in an attempt to deceive her and the court into believing that she still had the entrusted funds. Accordingly, she committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

6. Count Six - Section 6103 (Violation of Court Order)

By not providing the accounting and supporting documentation as ordered by the court although she knew of the court's order, respondent wilfully disobeyed a court order in wilful violation of section 6103.

7. Count Seven - Section 6068, subdivision (j) (Failure to Maintain Address)

Section 6068, subdivision (j) requires an attorney to comply with the requirements of section 6002.1, which, among other things, requires him or her to maintain a current address and telephone number with the State Bar and to notify the State Bar within 30 days of any change in same.

By not maintaining a current address and telephone number with the State Bar, respondent wilfully violated section 6068, subdivision (j).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁵, std. 1.2(b).)

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) The court notes that the misconduct took place during approximately a three-year period.

Respondent's misconduct significantly harmed clients, the public and the administration of justice. (Std. 1.2(b)(iv).) Because respondent did not turn over entrusted funds as ordered, the default on the mortgage of the Pucketts' community residence was not cured and a foreclosure sale was scheduled. Arnetha was forced to file a Chapter 13 bankruptcy proceeding in order to

⁵Future references to standard or std. are to this source.

forestall the sale. The court held several hearings to address the foreclosure and respondent's failure to transfer the Pucketts' funds.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) She has demonstrated her contemptuous attitude toward disciplinary proceedings as well as her failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

Respondent's nearly six years of practice without discipline at the time the misconduct commenced is not a mitigating factor. (*Kelly v. State Bar* (1988) 45 Cal.3d 649 [seven and one-half years insufficient to establish mitigation].)

C. Discussion

The purpose of State Bar 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 or 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 shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(a) and (b), 2.3 and 2.6(a) and (b) apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline

recommended is one year actual suspension.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of commingling and misappropriating a substantial amount of client funds; engaging in acts of moral turpitude, dishonesty or corruption; disobeying court orders; and not maintaining her official address recorded with the State Bar. Aggravating factors include multiple acts of misconduct that commenced almost six years after being admitted to the practice of law and continued over a three-year period; harm to clients, the public and the administration of justice; and displaying a lack of candor and cooperation to the State Bar during disciplinary proceedings. There are no mitigating factors in this default case.

The State Bar recommends disbarment. The court agrees.

In *Kelly v. State Bar*, *supra*, 45 Cal.3d 649, the attorney was disbarred for wilfully misappropriating \$19,597.05 in client trust funds over a five-month period. He also failed to account to the clients; communicated with the clients after they became adverse parties to him and were represented by counsel⁶; and engaged in acts of moral turpitude and dishonesty. His partial repayment of the misappropriated funds was not a mitigating factor because it occurred after a client told him that she would complain to the State Bar. His seven and one-half years of practice without prior discipline was not a mitigating factor. Lesser discipline than disbarment was not warranted because extenuating circumstances did not show that the misappropriation was an isolated event. The absence of an acceptable explanation for the misconduct along with the self-interest underlying his actions suggest that he is capable of future wrongdoing.

⁶The communications occurred without their attorney’s knowledge or consent and were about the disputed matter (the misappropriated funds).

Similarly, respondent misappropriated much more than Respondent Kelly, over \$317,000 of client funds during a six-month period, and frittered it away on trips, beauty treatments and otherwise living the high life. She had no concern for her client's welfare. The community residence was scheduled for a foreclosure sale and his former spouse filed for bankruptcy to forestall the sale. Overall, she engaged in a course of serious dishonest conduct over three years. Her wrongdoing started not too long after she started practicing law. She offered no mitigating circumstances because she did not participate in these proceedings.

Lesser discipline than disbarment is not warranted because there are no extenuating circumstances in this case and the amount of funds misappropriated is, by no means, insignificantly small. The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent's actions suggest that she is capable of future wrongdoing and raise concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent Melodye Sue Hannes 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.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and

Professions Code section 6140.7 and as a money judgment.

VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June 26, 2006

RICHARD A. HONN
Judge of the State Bar Court