FILED OCTOBER 30, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: **06-O-12488-RAH**
	)	(06-O-13016; 07-O-10066
DANIEL DUCHANIN	)	07-O-11380; 07-O-12845)
	)	
Member No. 189983	)	
	)	**DECISION**
A Member of the State Bar.	)	
	)	

1. INTRODUCTION AND PROCEDURAL MATTERS

The Office of the Chief Trial Counsel of the State Bar of California was represented by Michael J. Glass. Respondent represented himself.

The trial in this matter commenced on March 10, 2009. The parties entered into an extensive stipulation as to facts and admission of documents on March 23, 2009, which the court approves.

2. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on October 29, 1997, and since that time has been an attorney at law and a member of the State Bar of California.

B. Introductory Facts

Respondent had several attorneys that worked in his office, but all were independent contractors, not employees. These attorneys, however, were listed on respondent's letterhead without any qualification that they were not employees. Respondent supervised these attorneys and was ultimately responsible for their work product. The firm had established procedures for following up on cases assigned to its contract attorneys, including regular litigation meetings with the appropriate staff.

C. Facts of Charged Matters

1. Case No. 06-O-12488 [Riddle]

On April 26, 2004, Ben Riddle ("Riddle") employed respondent's law firm, the Duchanin Law Firm, (the "firm") to represent him in a marital dissolution. On May 25, 2004, respondent filed a petition for dissolution of marriage for Riddle in the Orange County Superior Court, entitled *In re the Marriage of Ben Riddle and Melissa Riddle,* case number 04D004643.

After initially representing Riddle himself, respondent later delegated responsibility for handling the case to one of his contract attorneys, Keith Bray ("Bray"). On April 1, 2005, Bray filed a request that the court set Riddle's case for trial. On May 24, 2005, the court set the trial in Riddle's case for August 17, 2005.

On July 13, 2005, Riddle filed for protection under Chapter 7 of the bankruptcy laws. On August 16, 2005, Bray filed a notice of stay of proceeding in Riddle's case because of the pending bankruptcy. But the court did not vacate the August 17, 2005 trial date. On August 17, 2005, neither respondent nor Bray appeared in court for the trial. The court stayed Riddle's case as to property issues, but did not stay Riddle's case as to child custody, visitation and attorney fee issues. On August 17, 2005, the court continued the trial to October 12, 2005 and directed opposing counsel, Robert Waddell to contact respondent. On August 17, 2005, Waddell's office

duly served written notice of the continuance on respondent. Respondent received this notice. However, neither respondent nor anyone else in the office, including Bray, notified Riddle of the new trial date.

On September 20, 2005, Riddle signed a substitution of attorney at respondent's request. Bray executed the substitution of attorney on September 21, 2005. On October 4, 2005, the firm filed the substitution of attorney with the court. Respondent did not provide Riddle with his file prior to the trial, despite three requests from Riddle. In response to Riddle's inquiries, respondent and his office told Riddle that they "were putting the file together." On October 12, 2005, the court issued orders as to Riddle regarding child support and attorney fees. On October 19, 2005, respondent provided Riddle with his file. Riddle had to retain other counsel to complete the matter.

During part of the time he was represented by the firm, Riddle often came to the firm's offices to discuss his case or just to converse with the employees and attorneys in the office. His close relationship with the firm diminished in September or October 2005, and he did not come in as often, if at all. During this time, his inquiries made to the firm as to the status of his case went unanswered.

Conclusions of Law -- Case No. 06-O-12488 [Riddle]

a. Count One – Rule 3-110(A)[1] [failure to perform with competence – failure to supervise]

Respondent signed the retainer agreement with Riddle, and represented him for a period of time. After he delegated the matter to Bray, respondent was still involved with Riddle, since by all accounts, Riddle often came to the firm to meet with the staff and the attorneys. Nevertheless, after delegating the matter to Bray, respondent did not properly supervise the

[1] Unless otherwise noted, references to "rule(s)" are to this source.

handling of the matter and failed to insure that the client was aware of the impending trial date and that the case was properly being prepared for trial. His duty to carefully supervise was heightened by the fact that Bray had already missed one trial date.

The Office of the Chief Trial Counsel has met its burden of proof as to count one.

b. Count Two – Section 6068 subsection (m) [2] [failure to inform client of significant development]

Respondent did not inform Riddle of the impending trial on October 12, 2005. He had delegated his duties of handling the day-to-day work on the case to his contract attorney, Bray. However, respondent again became involved in the case when he asked that Riddle sign a substitution of attorney on or around September 20, 2005. At that point, when it was clear that he was seeking to withdraw from the case, he had a duty to familiarize himself with any significant deadlines in the matter. He did not do so.

The Office of the Chief Trial Counsel has met its burden of proof as to count two.

c. Count Three – Rule 3-700(A)(2) [improper withdrawal from employment]

Respondent did not return the file to Riddle until a week after the trial in the matter. Had he done so, Riddle or his new attorney could have learned of the trial date and made an appearance. This delay occurred because respondent's office was "putting the file together." Given the short period of representation, it is highly unlikely that the task of assembling the file was onerous or time-consuming. This delay constituted a violation of rule 3-700(A)(2).

The Office of the Chief Trial Counsel has met its burden of proof as to count three.

[2] Unless otherwise noted, references to "section(s)" are to this source.

2. Case No. 06-O-13016 [Adams]

In November 2004, Lynda Adams ("Adams") hired the firm to represent her in a marital dissolution. On November 4, 2004, the firm filed a petition for dissolution of marriage in the Los Angeles County Superior Court entitled, *In re the Marriage of Lynda Adams and Roger Adams*, case number ND051756. Respondent, as the owner of the firm, assigned the case to attorney Catherine Corcoran ("Corcoran"), who worked as an independent contractor for respondent.

In April 2005, the parties and counsel of record entered into a stipulation regarding the sale of the family residence and the distribution of the proceeds from the sale (the "April 2005 stipulation"). The parties and counsel stipulated that Adams was to receive $10,000 of the proceeds from the sale. The stipulation further provided as follows:

> For the benefit of the parties, all remaining sale proceeds shall be placed in a separate interest-bearing trust account by Catherine Corcoran, Esquire, subject to distribution by the Court. For this purpose all sale proceeds shall be dispersed [sic] and made payable to Catherine Corcoran, Attorney-Client Trust Account, and shall be subject to disposition by the Court. The trust account shall be established at an FDIC insured bank and identified as Marriage of Adams, Attorney-Client Trust Account. No withdrawal shall be made upon the account without the written approval of the parties and counsel, or both attorneys of record, or an order of the court, first obtained.

On July 1, 2005, the April 2005 stipulation was filed with the court and became an order of the court on July 1, 2005. Respondent was aware of the court's July 1, 2005 order. At respondent's direction, on July 13, 2005, $185,406.79 from the sale of the Adams's residence was wire-transferred by Cardinal Pacific Escrow into respondent's trust account at Farmers & Merchants Bank (the "CTA"). The CTA was not identified as Marriage of Adams, Attorney-Client Trust Account. The CTA was not an account which segregated the Adams's funds from funds belonging to respondent's other clients and the interest earned on the account was not paid to respondent's clients, but to the State Bar of California. Respondent was the only signatory to the CTA.

On June 27, 2005, Corcoran filed a request for an order to show cause hearing regarding spousal support, medical hardship and attorney fees and costs on behalf of Adams.

In August 2005, the parties and counsel entered into a stipulation regarding payment of the community debts from the proceeds from the sale of the family residence (the "August 2005 stipulation"). On August 3, 2005, the court held a hearing on Adams's request for an order to show cause regarding spousal support, medical hardship and attorney fees and costs. During the hearing, the court accepted the August 2005 stipulation and made it an order of the court. The court further ordered that $2,500 be paid as attorney fees to Adams and that the fees were pendente lite, without prejudice to later apportionment.

Between August 5 and 31, 2005, several checks totaling $48,652.68 were paid from the CTA for community debts pursuant to the August 2005 stipulation. On August 25, 2005, check number 197 from the CTA for $2,500 payable to Adams was paid as reimbursement of attorney fees pursuant to the court's August 3, 2005 order, leaving a balance of $134,254.11 in the CTA for the Adamses.

On October 7, 2005, Frederick Chemberlen ("Chemberlen") filed a substitution of attorney with the court naming him as Adams's attorney of record in the dissolution case.

On December 14, 2005, respondent sent a letter to Adams and opposing counsel in Adams's dissolution case, Paul Ultimo ("Ultimo"). In the letter, respondent represented that he still maintained $134,254.11 in his attorney-client trust account and that Adams owed $9,214.69 to the firm for legal services rendered. In the letter, respondent proposed that the parties execute a stipulation which released the firm from the responsibility of maintaining the funds in trust and which guaranteed payment of $9,214.69 from the $134,254.11 to the firm. On December 14, 2005, Ultimo sent a letter to respondent in reply to respondent's December 14, 2005 letter. In Ultimo's letter, he replied that he would sign a stipulation to effect the transfer of the funds into a

separate interest bearing trust account, but that Adams had hired Chemberlen as her attorney, so respondent would have to obtain Chemberlen's consent. In Ultimo's letter, he also requested that respondent provide an accounting of all credits and debits related to the proceeds maintained in respondent's trust account. In Ultimo's letter, he further stated that his client would not agree to any further payment of Adams's attorney fees from the remaining trust funds as $2,500 was paid from the trust account as contribution towards Adams's attorney fees as ordered by the court on August 3, 2005.

From the time that respondent was substituted out of the case, he actively sought to have the funds transferred to the trust account of the other attorneys in the case.[3] On April 27, 2006, the court issued an order relieving the firm and Corcoran from all duties as the custodian of the funds held on behalf of the Adamses. The order provided that all funds held for the Adamses in the CTA be deposited into an interest-bearing account in Ultimo's name at Wells Fargo Bank. On May 10, 2006, Ultimo faxed a letter to respondent and Corcoran with a copy of the court's April 27, 2006 order. In the letter, Ultimo requested that respondent comply with the court's April 27, 2006 order by sending a check representing the funds held in trust account for the Adamses. Respondent received the letter and the order, but did not release the funds remaining in the CTA for the Adamses to Ultimo at that time.

On May 10, 2006, respondent deducted $62.50 in payment of "invoice 8578" from the funds in the CTA belonging to the Adamses, bringing the balance to $134,191.61. On May 25, 2006, Ultimo sent a letter to respondent. In the letter, Ultimo requested that respondent immediately release the funds remaining in the trust account as ordered by the court within seven days or Ultimo would seek a court order to effect the transfer of the trust funds. In the letter,

[3] During this period, there was some dispute between respondent and other counsel as to whether respondent could pay his outstanding bill from the funds so held. But this dispute did not substantially delay the payment.

Ultimo also requested an accounting of all credits and debits related to the proceeds maintained in respondent's trust account. Respondent received the letter. On June 26, 2006, respondent deducted $ .08 from the funds in the CTA belonging to the Adamses without the consent of all parties and counsel, bringing the balance to $134,191.53. On June 26, 2006, check number 241 from the CTA for $134,191.53, dated June 22, 2006 and payable to Ultimo, was paid.[4]

Conclusions of Law -- Case No. 06-O-13016 [Adams]

a. Count Four – Section 6103 [failure to obey court order]

Respondent failed to comply with the court's July 1, 2005 order, in that he failed to deposit the funds into a separate, interest-bearing account client trust account. As such, respondent violated section 6103.[5]

The Office of the Chief Trial Counsel has met its burden of proof as to count four.

b. Count Five – Section 6103 [failure to obey court order]

The July 1, 2005 order required that respondent hold all funds in trust, and precluded any withdrawal without first obtaining written approval of the parties and counsel or an order of the court. Respondent had no authority to disburse the total of $62.58 from the funds held in trust. Further, he failed to otherwise explain why he deducted these funds. As such, his conduct violated the court's order.

The Office of the Chief Trial Counsel has met its burden of proof as to count five.

[4] Apparently, Ultimo also did not deposit the funds into a separate interest-bearing trust account in Adams' name. His explanation was that the funds were to be immediately distributed, and therefore, were appropriately placed in his regular IOLTA account.

[5] While a violation of the court order, it appears that the only damage resulting from the failure to deposit in a separate interest-bearing account was the monetary loss of interest.

c. Count Six – Rule 4-100(B)(4) -- [failure to pay client funds promptly]

Respondent held the funds for a substantial period of time, and did not transfer them until two months after the court order in April 2005. However, he was actively seeking to transfer the funds prior to that time, and had a legitimate dispute as to his entitlement to a deduction for his attorney's fees from the fund, which he was attempting to resolve.

In summary, respondent actively sought a new "home" for the funds up until the court order. In this endeavor, he faced some hesitancy by opposing counsel in the case. Shortly after the court order, and after some discussion of payment of his fees, he issued a check transferring the funds to Mr. Ultimo's client trust account.

Under these circumstances, respondent did not unreasonably delay the payment of the funds. The Office of the Chief Trial Counsel has failed to meet its burden as to count six and so, it is dismissed with prejudice.

3. Case No. 07-O-10066 [Scott]

On April 26, 2006, Phyllis Scott ("Scott") employed respondent to represent her in a family law matter and to respond to a request for an order to show cause regarding child custody, visitation and the sale of the family residence filed by Johnny L. Scott, Jr. ("Scott, Jr.") on April 5, 2006 in *In re the Matter of Johnny L. Scott, Jr. and Phyllis Cannon Scott*, San Bernardino County Superior Court case number RFL029981 (the "OSC"). Scott had defaulted on the judgment prior to respondent receiving the case.

Scott had told respondent that she was in compliance with all the visitation orders. In fact, she was not. She had repeatedly refused to make the child available to the father because of

her disapproval of his lifestyle.[6] Respondent explained to her that if she continued to refuse to comply with the court's orders, she could be held in contempt. She informed respondent that she "would rather obey God than Man" as her explanation for her failure to comply. To compel her compliance, an order to show cause hearing was set for July 3, 2006.

On April 26, 2006, Scott paid $2,500 to respondent as fees. Thereafter, on May 1, 2006, Scott paid an additional $1,000 to respondent as fees.

On May 30, 2006, Scott faxed a letter to respondent. In the letter, Scott explained her concerns about her daughter's visits with Scott, Jr. Respondent received the fax.

On May 31, 2006, Scott faxed a letter to respondent. In the letter, Scott provided a list of requests she wanted the court to address at the OSC hearing. Respondent received the fax.

On June 2, 2006, Scott faxed a letter to respondent. In the letter, Scott raised additional concerns that she wanted the court to address at the OSC hearing. Respondent received the fax.

On June 27 and 28, 2006, Scott faxed letters to respondent. In the letters, Scott requested that respondent contact her to discuss the OSC hearing and that she be given the opportunity to review respondent's response to the OSC. Respondent received the faxes.

Respondent had contact with the opposing counsel. During these meetings, Respondent was able to negotiate a stipulation to assist in arranging visitation, but Scott refused to sign it.

By the time of the OSC hearing on July 3, 2006, respondent had not filed a response to the OSC. Respondent did not appear with Scott at the OSC hearing because of a sudden herniated back injury he had suffered the weekend before the hearing. He fully prepared attorney Karen Fehlker for the Monday appearance, and sent her in his place, asking her to try to obtain a continuance. Thereafter, Fehlker discussed the case with Scott for about an hour.

[6] Apparently, Scott did not want the daughter to spend time with Scott, Jr., since Scott was a very religious person, and Scott Jr. "was living in sin with another woman" and was an exotic dancer. Scott did not approve of this as an avocation for the daughter's father.

Fehlker attended the hearing with Scott, and was there until about 4:30 in the afternoon. During this hearing, the court admonished Scott to comply with the court's orders, but did not change any pending visitation orders.

On July 5, 2006, Scott faxed a letter to respondent. In the letter, Scott expressed her dissatisfaction with the services provided by respondent and his firm. In the letter, Scott stated that if respondent did not have the time to commit to her case, then respondent should reimburse the fees paid and she would hire another attorney.

On July 6, 2006, Scott, Jr. filed an ex parte request for an order to show cause regarding child custody. Fehlker appeared with Scott at the hearing on the OSC on July 6, 2006.

On August 8, 2006, Scott terminated respondent's employment and hired another attorney. On August 9, 2006, P. Timothy Pittullo ("Pittullo") sent a letter to Fehlker with the substitution of attorney form. In the letter, Pittullo requested that respondent's firm release Scott's file. On August 10, 2006, Fehlker signed a substitution of attorney naming Pittullo as Scott's new attorney. Respondent received notice of his termination.

In August, September and October, 2006, respondent sent invoices to Scott purporting to show that Scott owed additional fees to respondent. In or about September 2006, respondent reported to credit agencies that Scott was past due on her account with respondent in the amount of $1,305. On October 2, 2006, Scott sent a letter to respondent. In the letter, Scott requested that respondent refund the $3,500 paid as fees and that respondent rescind his claim for additional fees.

On August 1, 2007, a non-binding fee arbitration was held between respondent and Scott. The arbitrator awarded a $1,246 refund to Scott. On September 6, 2007, Scott filed a small claims action against respondent in the San Bernardino County Superior Court, case number RS72607, to recover unearned fees from him.

On October 22, 2007, Scott sent a letter to respondent. In the letter, she requested that respondent release her original file. Respondent received Scott's letter. On November 20, 2007, Scott sent another letter to respondent. In the letter, she requested that respondent release her file. Respondent received Scott's letter. On approximately November 29, 2007, respondent released a file to Scott.

On November 28, 2007, respondent filed a request for change of venue in the small claims action. On December 27, 2007, the court denied respondent's request for a change of venue and a trial was held. On December 31, 2007, the court entered judgment in favor of Scott for $1,000 and $50 in costs. This judgment was later reduced to $210.20 plus $50 in costs, after a full hearing on the merits.

On January 8, 2008, Scott sent a letter to respondent. In the letter, Scott requested that respondent provide confirmation that respondent had corrected any negative reporting against Scott's credit history with the credit reporting agencies.

Scott received a letter from American Credit Bureau, Inc. ("ACB"), dated April 24, 2008, on behalf of respondent. In the letter, ACB was attempting to collect $1,354.82 as fees for respondent. On July 2, 2008, Scott sent a letter to respondent. In the letter, Scott requested that respondent pay the May 2, 2008 judgment and provide confirmation that all negative reporting against Scott's credit history was corrected with the credit reporting agencies.

Conclusions of Law -- Case No. 07-O-10066 [Scott]

a. Count Seven – Rule 3-110(A) [failure to perform with competence]

Respondent failed to file a response to the OSC. Although there appears to have been no substantial negative effect from his failure to do so, it nevertheless was a violation of his duties as Scott's attorney. The Office of the Chief Trial Counsel has met its burden as to this aspect of count seven.

As a result of his back injury, respondent was unable to attend the OSC hearing. However, he prepared a replacement attorney who, by all accounts, adequately represented Scott at the hearing. As such, as to the allegation that respondent failed to appear in court with Scott, the Office of the Chief Trial Counsel has failed to meet its burden, and that portion of the count is dismissed with prejudice.

b. Count Eight – Rule 3-700(D)(2) [failure to refund unearned fees]

Respondent was found, after several rounds of litigation, to have failed to refund $210.20 in fees and $50.00 in costs. This amount remained due as of the date of trial. As such, the Office of the Chief Trial Counsel has met its burden as to count eight.

c. Count Nine – Rule 3-700(D)(1) -- [failure to release file]

Respondent was substituted out of the case on August 8, 2006. He did not return the file until November 29, 2007. This is a violation of rule 3-700(D)(1). The Office of the Chief Trial Counsel has met its burden as to count nine.

4. Case No. 06-O-11380 [Gamarra]

On February 24, 2003, Vivian Gamarra ("Gamarra") employed respondent for representation in a very emotional marital dissolution pending in the Orange County Superior Court entitled, *In re the Marriage of Omar Gamarra and Vivian Gamarra*, case number 01D006752. Gamarra paid respondent $2,500 as fees. On October 28, 2003, the parties entered into a stipulation to judgment in the dissolution. Under the stipulation, Omar Gamarra was to pay funds to Gamarra (the "stipulation").

During the representation of Ms. Gamarra, respondent observed her emotional state become more and more fragile as a result of the proceedings. She became increasingly irrational in her handling of decisions necessary in the case. On one occasion, she stormed out of court in tears as a result of the court's rulings.

On November 17 and 19, 2003, Gamarra sent letters to respondent's office after receiving invoice number 3106 regarding respondent's fees. In the letters, Gamarra disputed respondent's accounting as she was not given a $258 credit for passage into Disneyland for respondent and his family pursuant to a prior verbal agreement between them. The court finds, however, that there was no agreement for such a credit.[7]

On March 18, 2004, respondent deposited a $16,245.29 cashier's check, payable to respondent's law firm and Gamarra and received from Omar Gamarra pursuant to the stipulation, into his client trust account at Farmers & Merchants Bank (the "CTA"), but not into a segregated and interest-bearing trust account for Gamarra**.**

On April 19, 2004, an attorney working for respondent, Lisa Marie Stribling ("Stribling"), sent a letter to Gamarra which stated in part:

> We are holding a check for you in the amount of $12,577.25 representing the balance due from your spousal support payments after your attorney fees have been deducted. As you know the judgment needs your signature before it can be submitted to the Court and the provisions in the Judgment carried out.
> …
> To put it bluntly, you are holding up the process. Your case has been settled. You agreed with the terms of the settlement and I have your signature on the Stipulated Judgment signed in October. I am sorry that you now feel the settlement is unfair and regret the arrangement you made, but you must nevertheless, abide by its terms.

According to Gamarra, she did not go in to sign the judgment because she had just started a new job and could not get time off work.

On April 23, 2004, after speaking with Gamarra, Stribling sent another letter to Gamarra. With the letter, Stribling sent a copy of respondent's client ledger reflecting services rendered for Gamarra through March 31, 2004, and a balance of $12,577.25 from the $16,245.49.
On or about April 30, 2004, respondent withdrew $429.03 as fees, leaving $12,148.22 in the CTA related to Gamarra.

[7] Further, it is unclear that Gamarra even paid for any such entrance fee. She appears to have received this benefit as a result of her status as an employee of The Walt Disney Company.

On April 30, 2004, Gamarra faxed a letter, dated April 29, 2004, to Stribling. In the letter, Gamarra asked that Omar Gamarra pay the attorney fees she incurred since early December 2003. Gamarra requested that $200 be returned to her.

On June 7, 2004, Stribling filed the judgment with the court in the dissolution.

On June 30, 2004, respondent withdrew $248.80 as fees, leaving $11,899.42 in the CTA related to Gamarra.

On July 1 or 2, 2004, Gamarra sent a letter to Stribling in which she indicated that she had not received a response to her April 29, 2004 letter.

On September 27, 2004, Stribling sent a letter to Gamarra. In the letter, Stribling stated that she had made "many attempts" to get a hold of Gamarra and that respondent's office was holding an $11,899.42 check for Gamarra, which represented the balance in the CTA after all legal fees had been deducted. In the letter, Stribling stated that she was enclosing an accounting of the services rendered by respondent's office. On October 20, 2004, Stribling filed a notice with the court that the firm was withdrawing as Gamarra's attorney of record.

On March 17, 2006, Gamarra sent a letter to respondent which stated:

> I'm writing this letter to ask one more time about the settlement that was to be mine. I have written many times requesting this be sent to me by mail so that I can sign. But no respond [sic] has ever given [sic]. I had car problems and work time issues. I have been unable to retrieve the monies due me. All I ask is that the papers for me to be sign [sic] be mailed to me. So that the settlement can be sent to me. I went to our office on my time and I want is the same courstey [sic] for this.

During this period, respondent and Stribling had serious difficulties contacting Gamarra, despite the fact that she lived only about twelve miles away from respondent's office. Letters were not delivered and telephone calls not returned.[8] Lisa Stribling credibly testified that she

[8] Particularly credible evidence was provided by Rosalie Nuñez, a receptionist and bookkeeper for the firm from late 2006 to October 2008. She noted that many mailings to Gamarra were returned undelivered. She attempted to find her approximately 20 times using various skip-tracing methods on the Internet, but was unsuccessful. She was particularly adept at

wrote about four to six letters and made about eight to ten telephone calls to Gamarra, none of which were answered. Gamarra changed both her home and work addresses without informing respondent's firm. At one point, respondent instructed Stribling to contact the Ethics Hotline of the State Bar of California. She did so, and explained the problem. The advice given to Stribling was to "safeguard the money."

On March 20, 2006, respondent sent a letter to Gamarra which stated:

> I am in receipt of your March 17, 2006 correspondence. Enclosed please find letters sent to you on prior occasions. You have money in my trust account and you need to call to set up a time to come in and sign for your distribution. There is nothing else to sign. The rest of your letter is unintelligible, so I cannot respond to your concerns. I just don't know what you're saying.

On May 29, 2006, Gamarra sent a letter to Stribling. In the letter, Gamarra stated that she would come into respondent's office and sign paperwork for the release of the $12,577.25. Gamarra also stated that she did not receive a credit for the passage to Disneyland as agreed. On June 3, 2006, Gamarra sent a letter to Stribling. In the letter, Gamarra stated that she would sign any paperwork as needed and requested the status of the funds owed to her. Gamarra also requested that she not be charged any more fees.

On June 29, 2006, attorney William Murphy Swain ("Swain"), on behalf of Gamarra, faxed and mailed a letter to respondent. In the letter, Swain requested an accounting of monies received on Gamarra's behalf and copies of all checks (front and back) for all disbursements made on her behalf. On June 29, 2006, respondent telephoned Swain and stated that he may have to request copies of the cancelled checks. On August 10, 2006, Swain faxed and mailed another letter to respondent. In the letter, Swain stated that he had not heard from respondent about the accounting and asked respondent to contact him. On August 21, 2006, respondent sent a letter to Swain. In the letter, respondent stated that respondent and his wife were involved in a

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locating individuals, since she had worked for the previous 18 years in the collections department of a mortgage banking company.

divorce and that respondent's estranged spouse had the records. She was to produce the records by August 15, 2006 under a stipulated agreement, but did not do so. Respondent also stated that he was preparing a motion to compel the production of the records and would keep Swain informed of the status.

On September 27, 2006, Swain received a copy of the face page of respondent's motion for attorney fees and costs and a motion to compel and for sanctions in *In re the Marriage of Daniel Duchanin and Tracy Duchanin*, San Bernardino County Superior Court case number SBFSS092356 from respondent's office via fax.

On April 25, 2008, Gamarra sent a letter to respondent. In the letter, Gamarra requested an updated accounting of the fees and requested the release of her funds. On May 14, 2008, respondent's account manager, Rosalie Nuñez, sent a letter to Gamarra with an accounting. In the letter, Nuñez stated that an $11,899.42 check was submitted to her in August 2004. In the letter, Nuñez asked for instructions as to where to mail the check if Gamarra wanted it mailed to her. In the accounting, respondent charged Gamarra $45 for a telephone call to the State Bar of California and $45 for a memorandum to the file regarding unclaimed funds on September 9, 2004; $45 for writing to Gamarra regarding the check on September 27, 2004; and $9 for "file request for archive" on May 31, 2005.

On May 19, 2008, respondent's account manager, Nuñez, sent a letter to Gamarra. With the letter, Nuñez enclosed a declaration under penalty of perjury for Gamarra's signature. Nuñez requested that Gamarra sign the declaration in order to receive her funds. On May 20, 2008, Gamarra faxed a letter to respondent. In the letter, Gamarra requested that respondent release $12,577.25 within five days. On May 29, 2008, Nuñez sent a letter to Gamarra with an accounting. The accounting stated that the balance in the CTA was $11,899.42. On June 3, 2008, Nuñez sent a letter to Gamarra which stated:

> Your check has not been mailed yet. I have requested for you to sign a document which includes your signature, and how you will retrieve the check. We can mail it, at your expense or you may pick it up at our office. Those are the choices. You have failed to provide me with this information.

On June 27, 2008, Gamarra executed a written request, prepared by respondent's office, for the release of Gamarra's funds and faxed the request to respondent. On July 15, 2008, respondent sent check number 324 from the CTA for $11,638.70 to Gamarra.[9]

On June 28, 2007, a State Bar investigator sent a letter to respondent regarding Gamarra's complaint. The letter was received by respondent. On July 20, 2007, a State Bar investigator sent another letter to respondent, which was also received by him. In the investigator's July 20, 2007 letter, she requested that respondent respond in writing to specified allegations being investigated by the State Bar regarding Gamarra's complaint by August 3, 2007.

On August 2, 2007, the investigator received a letter from Nuñez, respondent's accounts manager. In the letter, Nuñez confirmed receipt of the investigator's correspondence and stated that respondent's office was still investigating the matter and compiling data requested by the State Bar, and expected to conclude the matter on August 6, 2007. In the letter, Nuñez further stated, "I will send you my written response to confirm our findings via mail and fax."

On October 15, 2007, a State Bar investigator sent another letter regarding Gamarra's complaint with copies of the investigator's June 28 and July 20, 2007 letters and Nuñez's August 2, 2007 letter to respondent at the membership records address. The letter was received by respondent. On November 6, 2007, a State Bar investigator sent another letter regarding Gamarra's complaint with copies of the investigator's October 15, 2007 letter to respondent at the membership records address. The letter was also received by respondent. On May 7, 2008, a

[9] Respondent acknowledged that this lengthy series of correspondence resulted in a delay in the payment of the amounts due. However, it was respondent's position that he did not want to send a check as large as this one in the mail, and did not feel it was safe either going to her house himself or sending staff to do so. As such, he continued to insist that Gamarra come into the office to pick up the check.

State Bar investigator sent another letter regarding Gamarra's complaint with copies of the investigator's October 15 and November 6, 2007 letters to respondent at the membership records address. The letter was also received by respondent.

On June 11, 2008, after the investigation was concluded, respondent faxed a letter and documents to the investigator regarding Gamarra's complaint. The June 11, 2008 letter was jointly compiled by respondent and Stribling. Respondent did not know that Stribling's response referenced a different case number, since Stribling was also being investigated.[10] Respondent thought that, since the facts were identical, that there was only one investigation and that the two of them were preparing a joint response. The Office of the Chief Trial Counsel did not offer into evidence the Stribling file to determine if contacts were made in that file and inadvertently filed there instead of respondent's file.

The State Bar investigators assigned to respondent's case testified that there was no contact between respondent and the State Bar in between the letters sent by respondent in 2007 and 2008. However, the credible testimony of Rosalie Nuñez, the office manager at the firm from November 2006 to October 2008, was clear that several contacts between the State Bar and respondent and/or Stribling were made during this period. On one occasion, Nuñez spoke with a State Bar investigator on her own about the matter, and on another occasion, she sat in on a telephone conference call between the State Bar investigator and respondent.

Conclusions of Law -- Case No. 06-O-11380 [Gamarra]

a. Count Ten – Rule 4-100(B)(4) [failure to pay client funds promptly]

Much of the delay in providing Gamarra with the funds can be attributed to Gamarra's failure to respond to attempts by respondent and Stribling to contact her. Gamarra's

[10] Two separate files were created for respondent and Stribling, and two separate investigators were assigned to these cases.

explanations as to why she did not pick up the check in a timely fashion were not persuasive. On numerous occasions, respondent attempted to get his client into the office, which was approximately twelve miles from her home. She refused, despite these attempts.

The Office of the Chief Trial Counsel has failed to sustain its burden as to count ten, and this count is dismissed with prejudice.

b. Count Eleven – Rule 4-100(B)(3) [failure to render accounts of client funds]

Respondent failed to send the demanded accounting to his client's new counsel for over two years. While he did write to Mr. Swain and tell him of his problems with the files being held by his estranged wife, he did not follow up on that letter with an update, as promised. The amount of time that elapsed was excessive. The Office of the Chief Trial Counsel has met its burden of proof as to count eleven.

c. Count Twelve – Section 6068 (subsection (i)) -- [failure to cooperate in State Bar investigation]

Respondent received the initial correspondence from the State Bar shortly after it was mailed on June 28, 2007. Subsequent letters were sent when no immediate written response was received from respondent. On August 2, 2007, respondent office manager responded in writing, indicating that they were assembling the documents and estimated that they would be completed within a few days. Thereafter, respondent had ongoing conversations with the State Bar's investigators, but respondent did not further respond *in writing* until much later. One of the State Bar's investigators testified that there was no written or other contact after the August 2, 2007 letter from respondent. However, this investigator also noted that the two files, respondent's and Stribling's, were handled by two separate investigators. There was no evidence presented at trial of the correspondence that occurred in the Stribling investigative matter. As

such, it is possible that respondent's or Stribling's correspondence or comments were routed to that file and not respondent's. Finally, a substantial response was prepared and delivered to the State Bar on June 11, 2008. This response was comprehensive, and provided copies of all the relevant correspondence.

Based on the foregoing, the court finds that the Office of the Chief Trial Counsel has not proved by clear and convincing evidence that respondent failed to cooperate in the State Bar investigation. Count twelve is dismissed with prejudice.

5. Case No. 07-O-12845 [Coe Sardeson ("Coe")]

On January 6, 2005, Julie Coe Sardeson ("Coe") employed respondent to represent her in a dissolution of marriage pending in the Orange County Superior Court entitled, *In re the Marriage of Julie Coe and David Coe*, case number 02D004251. On December 4, 2006, respondent received $750 from the sale of the Coe's truck. Respondent sent his invoice number 9857, dated December 19, 2006, for his costs to Coe. The invoice reflected that the $750 respondent received for Coe on December 4, 2006 had been paid to Coe on December 6, 2006; that $2.20 was transferred from the CTA in payment of invoice number 9857; and that the balance of Coe's funds in the CTA was $6,292.90.

On April 17, 2007, Coe sent a letter to respondent regarding invoices she had received from respondent. In the letter, Coe stated that she never received $750 for the sale of the red truck from respondent. However, this was in error. She had received the client trust account check and acknowledged this fact at trial. (See exhibit 119.) However, there was no evidence that the funds from the truck were ever deposited in the CTA.

Also in the April 17, 2007 letter, Coe requested that respondent resolve some outstanding matters related to the dissolution. She also requested that respondent release the balance of the

funds maintained in the CTA on her behalf and maintain only the minimum balance required to handle the outstanding matters. Respondent received the letter.

Respondent sent his invoice number 10751, dated June 27, 2007, to Coe. The invoice reflected that $29 was due and that the balance of Coe's funds in the CTA was $6,292.90. Respondent sent his invoice number 11222, dated August 15, 2007, to Coe. The invoice reflected that $0 was due and that the balance of Coe's funds in the CTA was $6,263.90. Respondent sent his invoices, dated September 28 and October 30, 2007 and May 14, 2008, to Coe which reflected that the balance of Coe's funds in the CTA was $6,263.90.

At various points in the representation of Coe, she provided conflicting advice as to whether she wanted the balance of her trust account returned to her. At one point, she advised respondent to keep the funds in the trust account, because she had other legal matters for which she may need respondent's help.

On May 30, 2008, Coe sent a letter to respondent in which she terminated his employment. In the letter, Coe requested that respondent release her client file and the $6,263.90 maintained in the CTA.

On June 3, 2008, respondent charged Coe $130 for copies of her file. Respondent sent his invoice, dated June 3, 2008, to Coe which reflected that the balance of Coe's trust funds was $6,133.90. On June 4, 2008, respondent sent check number 322 from the CTA for $6,133.90 to Coe. Coe departed the firm with no hard feelings. In fact, she acknowledged that on June 4, 2008, when she received her final check for her balance in the CTA, respondent acted very professionally "like always." Since she was substituting herself into the case and would be unrepresented, respondent even offered to go help her in court for an event scheduled about three weeks later. She declined the offer. Finally, she acknowledged that respondent did "a lot of work on her case" and that she was not contesting the hours spent or the costs incurred.

Conclusions of Law -- Case No. 07-O-12845 [Coe Sardeson ("Coe")]

a. Count Thirteen – Rule 4-100(A) [failure to deposit client funds in trust account]

Although respondent apparently wrote a check from the CTA to Coe for the truck (exhibit 119), there was no evidence in the record that he had deposited the initial payment for the truck in the CTA. As such, the Office of the Chief Trial Counsel has met its burden of proof as to count thirteen.

b. Count Fourteen – Rule 4-100(B)(4) [failure to pay client funds promptly]

Coe did not unequivocally demand return of the funds held in trust. In fact, after requesting the funds, she changed her mind and asked that the funds be held in the trust account for other legal matters for which she may need assistance. As such, there was no violation of 4-100(B)(4). The Office of the Chief Trial Counsel failed to meet its burden of proof as to count fourteen, and it is dismissed with prejudice.

c. Count Fifteen – Rule 4-100(B)(3) -- [failure to maintain records of client funds and to render appropriate accounts]

The Office of the Chief Trial Counsel failed to produce clear and convincing evidence both of respondent's failure to reconcile the balance of the funds that he maintained for Coe on a monthly basis, and his failure to provide accurate invoices to Coe. As such, the Office of the Chief Trial Counsel has failed to meet its burden of proof as to count fifteen, and it is dismissed with prejudice.

d. Count Sixteen – Section 6068 subsection (m) -- [failure to respond to client inquiries]

The Office of the Chief Trial Counsel failed to produce clear and convincing evidence of respondent's failure to respond promptly to Coe's inquiries. As such, the Office of the Chief Trial Counsel has failed to meet its burden of proof as to count fifteen, and it is dismissed with prejudice.

3. LEVEL OF DISCIPLINE

A. Factors in Aggravation

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. Misconduct[11] std. 1.2(b).)

Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Adams did not earn interest on her entrusted funds as they were placed in an IOLTA trust account rather than in one segregated for her benefit as ordered by the court. Also, respondent did not correct negative reporting as to Scott's credit history. Riddle had to retain other counsel to complete his matter.

B. Factors in Mitigation

Respondent practiced law without discipline for approximately eight years prior to the commencement of the misconduct. (Std. 1.2(e)(i). This is afforded some, but not significant, mitigating weight. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years of discipline-free practice given minimal weight].)

[11] Future references to standard or std. are to this source.

Respondent demonstrated spontaneous candor and cooperation to the victims of the misconduct and to the State Bar during disciplinary investigations and proceedings. (Standard 1.2(e)(v).) He agreed to an extensive stipulation which preserved court resources in adjudicating this matter.

4. DISCUSSION

Standard 1.3 provides that the primary purposes of discipline are to protect the public, the courts and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

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(b), 2.4(b), 2.6(b) and 2.10 apply in this matter. The most severe sanction is suggested by standard 2.2(b): at least three months' actual suspension regardless of mitigating circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

Respondent has been found culpable, in five client matters, of not communicating, abandoning a client, not returning files or unearned fees and disobeying a court order (one count each). He was also found culpable of commingling and not accounting for client funds (one count each) and not performing services (two counts). Aggravating factors include multiple acts of misconduct and client harm. Respondent's approximately eight years of blemish-free practice

is afforded some mitigating weight. In addition, respondent's candor and cooperation during these proceedings was a mitigating factor.

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.) There is no reason to deviate from the standard in this case.

Accordingly, having considered the evidence, the standards and relevant law, the court believes that two years' stayed suspension and two years' probation on conditions, including 90 days' actual suspension to continue until he makes restitution to Phyllis Scott, among other things, is sufficient to protect the public in this instance.

5. RECOMMENDED DISCIPLINE

This court recommends that respondent DANIEL DUCHANIN be suspended from the practice of law for two years; that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent shall be actually suspended from the practice of law for the first 90 days of probation and until he makes restitution to Phyllis Scott in the amount of $260.20 plus 10% interest per annum from December 31, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Phyllis Scott, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d). If respondent is actually suspended for two years or more, he shall remain actually suspended until he provides proof to

the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct;

2. During the period of probation, respondent shall comply with the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change, respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the State Bar Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent shall submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent shall state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent shall answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

6. Within one year of the effective date of the discipline herein, respondent shall provide

to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent shall not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.);

7. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years shall be satisfied and that suspension shall be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation within one year of the effective date of the discipline herein. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the

Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.[12]

6. COSTS

Finally, the court recommends 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.

Dated: November ___, 2009

RICHARD A. HONN
Judge of the State Bar Court

[12] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)