

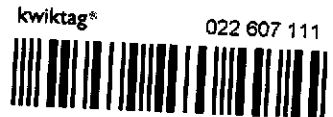
PUBLIC MATTER

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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO



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| In the Matter of |) | Case No. 06-O-12794-PEM |
| JUDITH ANNE FINCH, |) | |
| Member No. 114851, |) | DECISION AND ORDER OF |
| <u>A Member of the State Bar.</u> |) | INVOLUNTARY INACTIVE |
| |) | ENROLLMENT |

I. Introduction

In this default matter, respondent **Judith Anne Finch** is found culpable, by clear and convincing evidence, of violating her probation conditions, as ordered by the California Supreme Court on March 22, 2004, in S121784.

In view of respondent's misconduct and three prior records of discipline, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent at her official membership records address on June 14, 2006.

On motion of the State Bar, respondent's default was entered on August 3, 2006. The order of entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e),¹ on August 6, 2006.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

¹All references to sections are to the Business and Professions Code, unless otherwise indicated.

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on August 31, 2006, following the filing of State Bar's brief on culpability and discipline.²

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed 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).)

Respondent was admitted to the practice of law in California on December 3, 1984, and has since been a member of the State Bar of California.

A. Violation of Probation Conditions in Supreme Court Case No. S121784

On March 22, 2004, the California Supreme Court ordered respondent suspended from the practice of law for two years, that execution of the suspension be stayed, and that she be placed on probation for two years subject to the conditions of probation, including an actual suspension of 60 days, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed November 25, 2003. (Supreme Court case No. S121784, State Bar Court case No. 02-O-109061.) The order became effective April 21, 2004, and was duly served on respondent.

Among other probation conditions, respondent was required to:

1. Submit quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation stating under penalty of perjury whether she had complied with the State Bar Act and the Rules of Professional Conduct; and
2. Attend and pass State Bar Ethics School within one year of the effective date of the Supreme Court order.

By letter dated March 30, 2004, the Office of Probation advised respondent of the probation conditions to which she had stipulated and enclosed a quarterly report form which had been

²Due to the late filing of the State Bar's brief on culpability and discipline on August 31, 2006, the court hereby vacates the original submission date of August 21, 2006, and takes this matter under submission as of August 31, 2006.

customized for her use.

On August 13, 2004, the Office of Probation advised respondent that it had not received her first quarterly report (due July 10, 2004) and enclosed a copy of the March 30 letter. The Office of Probation also advised respondent that it would not send any further reminder letters and that, in the future, such matters would be automatically referred for determination of possible action.

Respondent received the March and August 2004 letters from the Office of Probation. She filed six quarterly reports late, ranging from several days to two months late, as follows:

| <i>Date Report Due</i> | <i>Date Filed</i> |
|------------------------|-------------------|
| 7/10/04 | 9/8/04 |
| 10/10/04 | 11/15/04 |
| 1/10/05 | 2/10/05 |
| 4/10/05 | 4/28/05 |
| 7/10/05 | 7/22/05 |
| 10/10/05 | 11/15/05 |

Furthermore, respondent did not file the three quarterly reports that were due January 10, April 10 and April 26, 2006.

On June 3, 2005, respondent sought relief from the Ethics School requirement. On June 22, 2005, the State Bar Court issued an order, modifying her probation condition in that she was to complete six hours of pre-approved CLE ethics courses in lieu of attending the Ethics School during her probation. A copy of the order was mailed to respondent and she had notice of the order. Respondent's quarterly reports contained no information as to whether she completed the CLE courses. To date, respondent has not attended the State Bar Ethics School or completed any of the CLE courses as required by the June 22, 2005 State Bar Court order.

B. Failure to Comply With Probation Conditions (Bus. & Prof. Code, § 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

By failing to timely file the July 10 and October 10, 2004, and the January 10, April 10, July 10, and October 10, 2005 quarterly reports; by failing to file the January 10, April 10, and April 26,

2006 quarterly reports; and by failing to complete six hours of CLE ethics courses, respondent failed to comply with conditions attached to her probation under S121784, in violation of section 6068, subdivision (k).

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).)³

B. Aggravation

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

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

1. In her first prior record, respondent stipulated to two years of stayed suspension, two years of probation and 30 days of actual suspension and until she provided proof of satisfaction of a certain judgment. Respondent was culpable of failing to avoid interests adverse to a client, which misconduct occurred between 1988 and 1996. (Supreme Court case No. S086594, filed May 12, 2000; State Bar Court case No. 97-O-11894.)
2. In her second prior record, the underlying matter, respondent stipulated to two years of stayed suspension, two years of probation and 60 days of actual suspension for her misconduct involving improper business transactions with clients and failure to perform services competently, which occurred in 1999 and 2000. (Supreme Court case No. S121784, filed March 22, 2004; State Bar Court case No. 02-O-10906.)
3. In her third prior record, respondent was suspended for two years, stayed, and actually suspended for one year and until she files and the State Bar Court grants a motion to terminate her actual suspension. Her misconduct included unauthorized practice of law, violation of court order and an act of moral turpitude in 2004. (Supreme Court case No. S145177, filed September 26, 2006; State Bar Court case

³All further references to standards are to this source.

Respondent's misconduct demonstrates multiple acts of misconduct involving her inattention to the disciplinary order (S121784). (Std. 1.2(b)(ii).) Despite repeated warnings and advice from the Office of Probation, respondent failed to timely file six probation reports, failed to file three probation reports and failed to complete six hours of CLE ethics courses.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct despite repeated warnings from the Office of Probation and despite the State Bar Court's order granting her relief from the Ethics School requirement. (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.)

Respondent's misconduct included repeated violations of her probation conditions. The standards provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7 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 three 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

⁴The court takes judicial notice of the Supreme Court case No. S145177 which was filed on September 26, 2006, effective October 26, 2006, and which occurred after this matter had been submitted. (Rules Proc. of State Bar, rule 216(a); Evid. Code, § 452.)

p. 251.) The court will look to 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 State Bar urges disbarment, citing *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480, and *Barnum v. State Bar* (1990) 52 Cal.3d 104 in support of its recommendation.

In *In the Matter of Rose, supra*, 3 Cal. State Bar Ct. Rptr. 646, the attorney, who had four prior records of discipline and a history of serious professional misconduct, was disbarred for his probation violations. He committed professional misconduct during 18 of the 26 years of his practice. As a result, the Review Department found that he had ample opportunity to conform his conduct to the ethical requirements of the profession, but has repeatedly failed or refused to do so in his 26 years of practice and that, therefore, disbarment was appropriate. Similarly, respondent began her misconduct four years after she was admitted to the practice of law and has continuously violated her professional obligations since 1988.

In *Barnum v. State Bar, supra*, 52 Cal.3d 104, the Supreme Court disbarred the attorney for collecting an unconscionable fee and disobeying court orders to return the fee and refusing to participate in the disciplinary proceeding. The court concluded that Barnum was “not a good candidate for suspension and/or probation. He has breached two separate terms of our prior disciplinary order, leading to the imposition of additional sanctions. He also defaulted before the State Bar here and in one other proceeding.” (*Id.* at p. 106.) Like *Barnum*, respondent defaulted in her third prior record of discipline and in this proceeding and is not a good candidate for suspension or probation.

“[A] probation ‘reporting requirement permits the State Bar to monitor [an attorney probationer’s] compliance with professional standards.’” (*In the Matter of Weiner* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 759, 763, citing *Ritter v. State Bar* (1985) 40 Cal.3d 595, 605.) In addition, “an attorney probationer’s filing of quarterly probation reports is an important step towards the attorney’s rehabilitation.” (*In the Matter of Weiner, supra*, 3 Cal. State Bar Ct. Rptr. at p. 763.)

Here, respondent has repeatedly failed to timely file her probation reports in 2004 and 2005 and has not filed any quarterly report in 2006.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for her repeated probation violations, particularly in view of her three prior records of discipline.

VI. Discipline Recommendation

The court recommends that respondent **Judith Anne Finch** be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 955(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

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.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: November 16, 2006



PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on November 20, 2006, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

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

JUDITH ANNE FINCH
1752 CRESCENT DR
WALNUT CREEK, CA 94598

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

MARK HARTMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 20, 2006.**



Laurretta Cramer
Case Administrator
State Bar Court