

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 06-O-15085-PEM (07-O-10280;
)	07-O-11861; 09-O-10585;
SHERRI FORD COUSER,)	09-O-10586); 09-O-10583
)	(09-O-12153) (Cons.)
Member No. 93904,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	

I. Introduction

In this contested disciplinary proceeding, respondent **Sherri Ford Couser** is charged with multiple acts of misconduct in seven client matters. This court finds, by clear and convincing evidence, that respondent is culpable of misconduct, including: (1) failing to perform competently; (2) failing to communicate; (3) failing to refund unearned fees; (4) failing to return a client file; (5) failing to obey a court order; (6) improperly withdrawing from employment; (7) failing to cooperate in State Bar investigations; (8) failing to account for client funds; (9) failing to pay client funds promptly ; and (10) failing to maintain a current address with the State Bar.

In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution to three clients.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges

On December 1, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent at her official membership records address a Notice of Disciplinary Charges (NDC) in case Nos. 06-O-15085, 07-O-10280, 07-O-11861, 09-O-10585, and 09-O-10586. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

On February 18, 2010, the State Bar served respondent with a motion for entry of default in case Nos. 06-O-15085, 07-O-10280, 07-O-11861, 09-O-10585, and 09-O-10586; on February 19, 2010, the State Bar filed the motion for entry of default. Respondent did not file an answer to the default motion. Respondent's default was entered on March 15, 2010, and respondent was enrolled as an inactive member on March 18, 2010.¹ The matter was submitted for decision on April 12, 2010, following the filing of the State Bar's brief on culpability and discipline.

B. Second Notice of Disciplinary Charges

On March 5, 2010, the State Bar filed a second Notice of Disciplinary Charges in case Nos. 09-O-10583 and 09-O-12153 and properly served it on respondent at her official membership records address.

On April 19, 2010, a status conference was held in this matter. Respondent failed to appear. At the status conference the court ordered the matter to proceed by default and advised

¹ The lead case number for the cases included in the first NDC is 06-O-15085. Case number 09-O-10585 is one of the cases filed under that lead case number. A clerical error appears on the Order of Entry of Default; in lieu of the lead case number, 06-O-15085, the correlated case number, 09-O-10585, is listed. The court finds the error to be de minimis, since respondent was properly served with the State Bar's motion for entry of default, which listed the lead case number, as well as the correlated case numbers. Respondent did not oppose the motion for entry of default. Moreover, as discussed in this decision under the heading "Second Notice of Disciplinary Charges, respondent was served with the court's April 19, 2010 Status Conference Order, whereby she was notified that case No. 09-O-10583 would be consolidated with case number 06-O-15085, and that the consolidated matter would proceed by default.

that it intended to consolidate case No. 09-O-10583 with case No. 06-O-15085 once the State Bar filed a motion for default in case No. 09-O-10583. The Status Conference Order, which also stated that the consolidated matter would be proceeding by default, was filed on April 19, 2010, and served on respondent on that same date.

On April 27, 2010, the State Bar served respondent with a motion for entry of default in case No. 09-O-10583 and 09-O-12153; on April 29, 2010 the State Bar filed the motion for entry of default. Respondent did not file an answer to the default motion. Respondent's default was entered on May 13, 2010, and respondent was enrolled as an inactive member on May 16, 2010, under section 6007, subdivision (e).

On May 13, 2010, the court consolidated State Bar Court case Nos. 06-O-15319 and 09-O-10583. The court also vacated the submission in case No. 06-O-15319.

Respondent did not participate in the disciplinary proceedings. The consolidated matter was taken under submission on June 7, 2010, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 16, 1980, and has been a member of the State Bar of California since that time.

B. First Notice of Disciplinary Charges

1. Case No. 06-O-15085 (Condon)

In or about December 2005, Jeffrey Condon (Condon) employed respondent to represent him in an upcoming dissolution of marriage. On January 3, 2006, respondent informed Condon that she would accept service of the petition for dissolution and respond to the petition on his behalf. Condon paid a \$15,000 advance fee to respondent for the representation.

On January 6, 2006, Condon's spouse (petitioner) filed a petition for dissolution in a case entitled, *In re Marriage of Wendy and Jeffrey Condon*, in the Los Angeles County Superior Court, case number BD438438 (*Condon* dissolution action). Respondent called petitioner's counsel, Claudia Ribet (Ribet), and instructed her to serve the petition on respondent. Ribet served the petition on respondent as instructed and asked respondent to return a notice and acknowledgement of her receipt of the petition. Respondent received the petition, but did not respond to the petition on behalf of Condon and did not acknowledge receipt of the petition. Nor did she inform Condon that she had not filed a response to the petition.

Ribet served respondent with interrogatories and a request for production of documents on January 25 and February 14, 2006, respectively. Although respondent received the discovery, she did not inform Condon of her receipt of the discovery; nor did she respond to the discovery on his behalf.

On May 17, 2006, Ribet filed a motion to compel Condon's responses to the discovery, which included a request for monetary sanctions against respondent and Condon. Respondent was served with a copy of the motion, which included notice of the hearing on the motion set for June 19, 2006. Respondent did not file a written opposition to the motion.

On February 15, 2006, Ribet sent a letter to respondent regarding support issues. Respondent did not respond to the letter as requested by Ribet. On March 2 and 16, 2006, Ribet

informed respondent that she had not received any response to her February 15, 2006 letter, and, therefore, would be filing a request for a hearing for support orders and for an order of sanctions.

On March 29, 2006, Ribet filed a request for a hearing on an order to show cause for child and spousal support and attorney fees (the OSC). The court set a hearing on the motion for June 5, 2006. Condon's response to the OSC was due on May 22, 2006. On or about May 23, 2006, Ribet contacted respondent about the status of her response to the OSC. Respondent claimed to have miscalendared the due date for the opposition. Despite having agreed to accept service of the petition on Condon's behalf and having been served with the petition, respondent also told Ribet that if she did not agree that respondent could file a late opposition, respondent would try to argue that the court did not have jurisdiction over Condon. As a courtesy to respondent, Ribet gave respondent until May 25, 2006, to file a late opposition, as long as respondent served her with the opposition by 9:00 a.m. on May 25, 2006.

On May 25, 2006, after having received no opposition from respondent, Ribet sent a letter to respondent. In the letter, Ribet informed respondent that she would seek a monetary sanction against respondent and might also seek a sanction against Condon. On May 26, 2006, Ribet filed and served respondent with a supplemental declaration regarding the OSC, which included a request for a monetary sanction against respondent. Respondent received the supplemental declaration.

Respondent did not serve the opposition on Ribet until May 26, 2006, and did not file the opposition until May 30, 2006.

On June 1, 2006, Ribet filed an objection to the opposition and a motion to strike the opposition, as the opposition was not timely filed.

On June 2, 2006, Condon informed respondent via e-mail that he was terminating her employment and that he had hired attorney Mark Levinson (Levinson) to represent him in the

dissolution. In Condon's June 2nd e-mail to respondent, who had performed no legal service of value to Condon, he also requested that respondent refund the \$15,000 fee he had advanced to her. Respondent, however, did not refund any portion of the \$15,000 advance fee to Condon.

On June 5, 2006, the court held a hearing on the OSC and advanced the hearing on the motion to compel discovery to June 5, 2006. Levinson represented Condon at the hearing. The court ordered Condon to pay petitioner's attorney fees in the amount of \$7,500 and ordered Condon to pay child and spousal support. The court further granted the motion to compel discovery, and ordered that Condon's discovery responses be served, without objection, by June 23, 2006. Additionally, the court continued the OSC hearing to July 26, 2006, and reserved the issue of fees and sanctions on the motion to compel discovery and the OSC.

On June 2, 6, 9, and 12, 2006, Levinson requested on Condon's behalf that respondent release Condon's file to Levinson. On June 6, 2006, Levinson also requested that respondent forward an executed substitution of attorney, so that Levinson could substitute into the case as Condon's attorney. Respondent did not forward an executed substitution of attorney to Levinson.

On June 12, 2006, Levinson also informed respondent that he would be appearing for a hearing on June 14, 2006 to obtain orders that she be relieved as Condon's counsel in the dissolution action, that Levinson be permitted to substitute into the case as Condon's counsel, and that respondent release Condon's file to Levinson.

On June 14, 2006, Levinson filed an ex parte motion for an order that respondent be removed as Condon's attorney of record and that respondent release Condon's client file. The court granted the motion; substituted Levinson in place of respondent as Condon's attorney of record; and ordered respondent to deliver Condon's file to Levinson by 12:00 p.m. on June 16,

2006. Respondent received written notice of the order, but did not release the file to Condon or Levinson.

On or about October 24, 2006, the State Bar opened an investigation, case number 06-0-15085, concerning a complaint submitted against respondent by Condon (the Condon complaint). Thereafter, on or about November 29, 2006, a State Bar investigator mailed a letter regarding the investigation to respondent at her official membership records address of 10850 Wilshire Blvd., Suite 405, Los Angeles, CA 90024 (the membership records address). The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service (USPS) in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter.

In the November 29, 2006 letter, the investigator requested that respondent provide a written response to the allegations raised by Condon's complaint by December 12, 2006. On December 13, 2006, respondent requested a two-week extension to respond to the allegations. The State Bar granted respondent an extension until December 27, 2006, to respond. On December 27, 2006, respondent requested another extension to respond to the allegations. The State Bar granted respondent an extension until January 16, 2007, to respond.

Respondent did not respond to the allegations raised by Condon's complaint.

***Count 1: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))*²**

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

By failing to file a response to the petition for dissolution in the *Condon* dissolution action, by failing to respond to the interrogatories and request for production of documents on

² References to the rules are to the Rules of Professional Conduct, unless otherwise stated.

behalf of her client, by failing to file an opposition to petitioner's motion to compel responses to the discovery and for monetary sanctions, and by failing to timely file an opposition to the OSC, despite having been given an extension to do so, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))³

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

By not informing Condon that she failed to file a response to the dissolution petition and by not informing him of her receipt of discovery, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Counts 3, 4, and 6: Improper Withdrawal From Employment (Rule 3-700(A)(2)); Failure to Return Client File (Rule 3-700(D)(1)); Failure to Return Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(A)(2) provides that a member must not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

After being employed by Condon in December 2005 to represent him in a dissolution matter, respondent did not perform services of any benefit to Condon for half a year. Respondent did not file a response to the dissolution petition and did not respond to discovery requests in the dissolution action. Although on May 30, 2006, she filed an opposition to the petitioner's OSC,

³ References to sections are to the provisions of the Business and Professions Code.

that service was of minimal or no value, as it was untimely filed. As a result, Condon had to hire other counsel, i.e. Levinson, to appear at the hearing on the OSC and to take over the matter. On June 2, 2006, Condon informed respondent that he had hired Levinson to represent him in the dissolution and requested that respondent refund the \$15,000 advance fee that he had paid her. Levinson, on behalf of Condon, made four separate requests to respondent to release Condon's file. Levinson also requested that respondent forward an executed substitution of attorney, so that Levinson could substitute into the case as Condon's attorney. Respondent did not provide an executed substitution of attorney or turn over Condon's file to Levinson or Condon. Moreover, respondent did not refund any portion of the \$15,000 advance fee. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to her client's rights in willful violation of rule 3-700(A)(2).

Accordingly, the court finds by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2) in count 6.

However, as the court has already found respondent culpable of willfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1), as alleged in count 4, and rule 3-700(D)(2), as alleged in count 3. Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly return unearned fees.

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

fees and/or papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to return the Condon's client file and the \$15,000 unearned advance fee is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1) or rule 3-700(D)(2) . The court therefore dismisses counts 3 and 4 with prejudice.

Count 5: Failure to Obey Court Order (Bus. & Prof. Code, § 6103)

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

On June 14, 2006, the court ordered that respondent deliver Condon's file to Levinson on June 16, 2006. By failing to release Condon's file, as she was ordered to do by the court, respondent disobeyed or violated a court order requiring her to do or forbear an act connected with or in the course of respondent's profession, which she ought in good faith to do or forbear, in willful violation of section 6103.

Count 7: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))

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

By not providing a response to the allegations in the Condon complaint, despite being given two extensions to respond, respondent failed to cooperate and participate in a disciplinary investigation pending against her in willful violation of section 6068, subdivision (i).

2. Case No. 07-O-10280 (Stern)

In June 2005, Sarah Stern (Stern) employed respondent to represent her in a marital dissolution matter, pending in the Los Angeles County Superior Court entitled, *In re Marriage of Douglas Terry Stern and Sarah Stern*, case number LD044165 (*Stern* dissolution action). Stern

paid respondent \$200 as a consultation fee and \$4,800 as an advance fee for the representation. Respondent's fee agreement with Stern provided that respondent's services in the dissolution would be billed on an hourly basis at \$275 per hour. At the time of the employment, respondent agreed to obtain a temporary order for child support on Stern's behalf.

In September 2005, respondent agreed to file a request for a restraining order against Douglas Stern on Stern's behalf. Respondent also filed a response to the petition for dissolution and a request for spousal support, attorney fees and costs, and for an injunctive order on behalf of Stern (the OSC). The court set a hearing on the OSC for November 18, 2005. On November 18, 2005, respondent requested that the hearing on the OSC be continued to January 25, 2006.

Dissatisfied with the progress of the case, Stern terminated respondent's employment in December 2005, and employed another attorney, Eric Lindholm (Lindholm), to represent her.

Aside from having filed the response to the dissolution petition and the OSC, respondent had performed no legal service of value to Stern. Respondent did not fully earn the \$4,800 advance fee. Nor did respondent provide any billing statements to Stern during her representation in the dissolution matter.

On about March 14, 2006, Lindholm sent a letter to respondent on behalf of Stern. In the letter, Lindholm requested an accounting from respondent for the \$4,800 advance fee paid by Stern. Respondent received the letter, but did not provide any accounting to Stern or Lindholm.

On or about June 30, 2006, Lindholm sent another letter to respondent on behalf of Stern. In the letter, Lindholm again requested an accounting from respondent for the \$4,800 advance fee paid by Stern. Respondent received the letter, but did not provide any accounting to Stern or Lindholm. In or about July 2006, Lindholm's employee, Heather Kadeg (Kadeg), also spoke to respondent on two occasions and requested an accounting on behalf of Stern. Respondent told

Kadeg that she would prepare the accounting when she had the time. Respondent did not provide an accounting to Stern or Lindholm.

On or about January 9, 2007, the State Bar opened an investigation identified as case number 07-0-10280, concerning a complaint submitted against respondent by Stern (the Stern complaint). Thereafter, on or about February 1, 2007, a State Bar investigator mailed a letter, regarding the investigation, to respondent at her official membership records address of 10850 Wilshire Blvd., Suite 405, Los Angeles, CA 90024 (the membership records address). The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service (USPS) in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter, which requested a written response by February 16, 2007, to the allegations raised by Stern's complaint. Respondent did not respond to the allegations raised by Stern's complaint.

On or about February 16, 2007, a State Bar investigator mailed another letter, regarding the investigation, to respondent at the membership records address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter, which requested a written response by March 2, 2007, to the allegations raised by Stern's complaint. Respondent did not respond to the allegations raised by Stern's complaint.

Count 8: Failure to Render Accounts of Client Funds (Rules of Prof. Conduct, Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in her possession and render appropriate accounts to the client. By not providing Stern with an

accounting for the \$4,800 advanced fees Stern had paid her, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count 9: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

By not refunding to Stern any portion of the \$4,800 advance fee, which respondent did not fully earn, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 10: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))

By not providing a response to the allegations in the Stern complaint, despite having received two requests from the State Bar to do so, respondent failed to cooperate and participate in a disciplinary investigation pending against her in willful violation of section 6068, subdivision (i).

3. Case No. 07-O-11861 (Jones)

In or about July 2004, Welton Jones (Jones), on behalf of his mother, Jesse Jones (Jesse), employed respondent to file a petition to determine succession to certain real property located in Los Angeles, California (the petition). Specifically, respondent was to obtain an order transferring title to the property from Jesse's mother to Jesse.

On or about July 27, 2004, Jones advanced \$472.50 as costs for the representation. Respondent, however, did not incur any costs regarding the petition. Nonetheless, respondent did not return the \$472.50 in advance costs to Jones.

In or about September 2004, Jones and respondent entered into a written fee agreement regarding the representation. The agreement provided that respondent would charge fees on an hourly basis, and that Jones would pay \$1,500 as a non-refundable retainer to secure

respondent's future availability for the representation. Respondent informed Jones that she was working on a complicated matter at the time, but would be available to work on the matter within six weeks and file the petition.

On or about September 25, 2004, Jones gave respondent a \$1,500 check for her fees.

Respondent prepared a draft of the petition. But, she never filed the petition and never informed Jones that she had not filed the petition.

On December 18, 2004, Jesse died.

In or about August 2005, respondent asked Jones's brother, Darryll Jones (Darryll), to complete some documents so that she could probate Jesse's estate. At this time, Jones and Darryll believed that respondent had filed the petition, that the petition was pending in court, and that the transfer of title to the property would be handled in the probate.

On November 29, 2005, respondent filed a petition for letters of administration on behalf of Darryll (the probate petition). Thereafter, in December 2005, respondent published the probate petition. And, in January 2006, respondent filed waivers for the filing of any bonds from the heirs to Jesse's estate. Respondent provided no other services to finalize the probate.

In or about February 2006, Darryll terminated respondent's employment, and employed attorney Robin Chow (Chow) to represent him in the probate case. Darryll and Jones learned from Chow that respondent had never filed the petition.

In March 2006, respondent executed a substitution of attorney in the probate case.

In or about February and July 2006, Chow sent letters to respondent on behalf of Darryll. In the letters, Chow requested that respondent forward an accounting and the unused portion of the money that Jones had advanced for fees and costs for the petition. Respondent did not refund any portion of the \$1,500 fee or forward any accounting to show that the \$1,500 fee had been fully earned or that any costs were incurred by her.

On or about April 26, 2007, the State Bar opened an investigation, identified as case number 07-0-11861, concerning a complaint submitted against respondent by Jones (the Jones complaint). Thereafter, on or about May 25, 2007, a State Bar investigator mailed a letter, regarding the investigation, to respondent at her official membership records address of 10850 Wilshire Blvd., Suite 405, Los Angeles, CA 90024 (the membership records address). The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service (USPS) in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter, which requested a written response by June 8, 2007, to the allegations raised by Jones's complaint. Respondent did not respond to the allegations raised by Jones's complaint.

On or about June 11, 2007, a State Bar investigator mailed another letter, regarding the investigation, to respondent at the membership records address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter, which requested a written response by June 25, 2007, to the allegations raised by Jones's complaint. Respondent did not respond to the allegations raised by Jones's complaint.

Count 11: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By failing to file a petition to determine succession to the real property located in Los Angeles and by failing to obtain an order transferring title to the property prior to Jesse's death, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 12: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

As set forth, *ante*, rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees. The rule also provides, “This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter.”

The State Bar alleges in the NDC that respondent and Jones entered into a written fee agreement regarding the representation for which Jones hired respondent. The agreement provided that respondent would charge Jones fees on an hourly basis and that Jones would pay \$1,500 as a non-refundable retainer to secure respondent’s future availability for the representation. Jones gave respondent a check for \$1,500 for her fees. Respondent prepared a draft of the petition, but never filed it and never informed Jones that she had not filed it.

The State Bar contends that respondent did not earn the \$1,500 fee in that she never filed the petition and that by not refunding any portion of the \$1,500 fee, respondent failed to refund any part of a fee paid in advance that had not been earned. The State Bar, therefore, is contending that the \$1,500 fee was not a non-refundable retainer, but was an unearned advance fee.

Thus, the issue is whether the \$1,500 fee is in fact a true retainer fee or an unearned advance fee. Even though a fee is designated as a non-refundable retainer in a fee agreement, the mere characterization of a fee as non-refundable retainer is not determinative (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923). The court must look to the contract and the terms of the agreement regarding the fee to determine whether the fee is a true retainer or an advance fee. (*Ibid.*)

However, few, if any, facts concerning the fee agreement are alleged in the NDC. The only fact alleged in the NDC regarding the fee agreement states that “[t]he agreement provided

that [r]espondent would charge Jones on an hourly basis and that Jones would pay \$1,500 as a non-refundable retainer to secure [r]espondent's future availability for the representation."

Given the paucity of facts alleged in the NDC regarding the fee agreement and its terms, the allegations are insufficient to support a finding by clear and convincing evidence that the \$1,500 fee was an unearned advance fee as opposed to a true retainer fee.

Accordingly, count 12 is dismissed with prejudice.

Count 13: Failure to Render Accounts of Client Funds (Rules of Prof. Conduct, Rule 4-100(B)(3))

By not providing an accounting of the fees and costs provided to her by Jones on Jesse's behalf, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count 14: Failure to Promptly Pay Client Funds (Rules Prof. Conduct, Rule 4-100(B)(4))

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds or properties in the possession of the attorney which the client is entitled to receive.

The State Bar asserts that "[b]y not returning the \$472.50 in advance costs to Jones, [r]espondent wilfully [sic] failed to promptly pay, as requested by a client, any funds in [r]espondent's possession which the client was entitled to receive."

First, because of the ambiguity in the NDC, it is not clear if respondent's client was Jones or Jesse. It is alleged in paragraph 76 of the NDC that in July 2004, Jones, on behalf of his mother, Jesse, employed respondent to file a petition to determine succession to certain real property (the petition) and to obtain an order transferring title to the property from Jesse's mother to Jesse. But, in paragraph 78 it is alleged that Jones, not Jesse, and respondent entered into a written fee agreement regarding the representation. In any event, there are no allegations

in the NDC that Jesse or Jones had ever requested of respondent that she pay or deliver to either of them the \$472.50 which Jones had advanced to her as costs for her representation relating to the filing of the petition and to obtain an order transferring that property to Jesse.

Darryll, however, clearly was not the client with regard to the petition. Yet, as alleged in the NDC, it was Darryll's attorney in the probate case, who requested of respondent that she refund the \$472.50, which Jones had advanced as costs.⁴

Thus, the court finds there is no clear and convincing evidence that respondent violated rule 4-100(B)(4) as alleged in count 14 of the NDC.

Accordingly, count 14 is dismissed with prejudice.

Count 15: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))

By not providing a response to the allegations in the Jones complaint, despite having received two requests from the State Bar to do so, respondent failed to cooperate and participate in a disciplinary investigation pending against her in willful violation of section 6068, subdivision (i).

4. Case No. 09-O-10585 (Melamed)

On or about January 17, 2008, Don Melamed (Melamed) employed respondent to represent him in a child visitation, custody, and support matter. Melamed was seeking joint physical and legal custody of his son and reasonable visitation with his son. Respondent agreed to expedite the filing of a petition to establish Melamed's rights. On or about January 23, 2008, Melamed paid respondent a \$5,000 advance fee for the representation.

⁴ In paragraph 83 of the NDC, it is stated that respondent performed legal work on behalf of Darryll in 2005, regarding the probate of Jesse's estate. As alleged in paragraph 86 of the NDC, Darryll terminated respondent's employment regarding the probate matter and hired attorney Chow to represent him in the probate case. It is then alleged in paragraph 91 that Chow, who represented Darryll in the probate case, sent letters to respondent in February and July 2006, requesting that she forward the unused portion of the money, which Jones had advanced for fees and costs for the petition.

On April 7, 2008, Melamed requested information regarding the status of the matter from respondent. Respondent informed Melamed that she would send papers related to the matter for Melamed's signature no later than April 8, 2008. Respondent did not send the papers to Melamed. On April 22, 2008, Melamed informed respondent that he had not received the papers as promised by respondent.

On April 25, 2008, Melamed requested that respondent file a petition to establish his rights within a week or so. On that same date, respondent informed Melamed that she would file the petition within his stated time frame. Respondent, however, did not file the petition in April or May 2008. It was not until June 27, 2008, that respondent filed a petition to establish child support, custody, and visitation orders on behalf of Melamed in the Los Angeles County Superior Court in a case entitled, *In the Matter of Don Melamed and Patricia Alvarez*, case number BF034468.

On August 25, 2008, counsel for Patricia Alvarez (Alvarez) filed a response to the petition. A hearing was set on the petition for November 5, 2008. Respondent received notice of the November 5, 2008 hearing.

On September 30, 2008, Alvarez's counsel filed a request that Melamed be ordered to pay Alvarez's attorney fees and costs (the OSC). Thereafter, on October 1, 2008, respondent was served with the OSC. Respondent did not respond to the OSC on behalf of Melamed and did not inform Melamed about the OSC.

On October 24, 2008, the court vacated the November 5, 2008 hearing date due to a peremptory challenge filed by Alvarez against the assigned judge. On October 31, 2008, the court directed counsel to reschedule the hearing date. On or about November 5, 2008, respondent informed Melamed that the hearing on his petition was going to be continued at the request of Alvarez's counsel, and that she would inform Melamed of the new hearing date.

On or about November 11, 2008, Alvarez served notice on respondent of a hearing set on the petition and on the OSC for January 12, 2009. Respondent received notice of the January 12, 2009 hearing. Respondent, however, did not inform Melamed of the hearing set for January 12, 2009.

On or about January 8, 2009, Alvarez informed Melamed about the hearing set for January 12, 2009. On January 8, 2009, Melamed sent an e-mail to respondent, asking her to confirm whether there was a hearing set for January 12, 2009, and to contact him to discuss her representation of him. Respondent did not respond to Melamed's e-mail.

After November 5, 2008, including but not limited to January 8, 2009, Melamed left several telephone messages for respondent in which he requested that respondent inform him of the status of his matter. Respondent did not respond to Melamed's messages.

On January 12, 2009, Melamed appeared at the hearing. Respondent, however, did not appear at the hearing. The court granted the OSC and ordered Melamed to pay \$5,500 for Alvarez's attorney fees and \$2,167 per month for child support.

On January 12, 2009, Melamed sent respondent an e-mail. In the e-mail, Melamed requested that she contact him to discuss her abandonment of his case and a substitution of attorney. Respondent did not respond to Melamed's e-mail.

Respondent effectively terminated her representation of Melamed by abandoning the case in November 2008.

On January 13, 2009, Melamed employed attorney Paul Tobin (Tobin) to represent him in the case. In January 2009, Tobin, on behalf of Melamed, made repeated requests that respondent substitute out of the case. Respondent did not comply with Tobin's requests that she execute a substitution of attorney for Melamed.

Count 16: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By failing to expedite the filing of the petition to establish Melamed's rights as she had agreed to do, by failing to respond to the OSC, and by failing to appear for the January 12, 2009 hearing on the OSC respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Counts 17 and 18: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By clear and convincing evidence, respondent willfully violated section 6068, subdivision (m), in that she failed to promptly respond to Melamed's reasonable status inquiries and failed to keep her client reasonably informed of significant developments: (1) by not responding to Melamed's telephone messages or his e-mail; (2) by not informing Melamed of the OSC; and (3) by not informing Melamed that the hearing on the petition and on the OSC was continued to January 12, 2009.

Count 19: Improper Withdrawal from Employment (Rule 3-700(A)(2))

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2).

Respondent effectively terminated her services when she took no action on behalf of Melamed and abandoned Melamed's case in November 2008. The client had to hire another attorney to take over the child visitation, custody, and support matter. Despite successor counsel's repeated requests to respondent that she substitute out of the case, respondent never executed a substitution of attorney. Thus, respondent improperly withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to her client's rights in willful violation of rule 3-700(A)(2).

5. Case No. 09-O-10586 (Easter)

In or about January, 2006, Josephine Easter (Easter) employed respondent to represent her in a dissolution of marriage matter. Respondent agreed to expedite the dissolution on behalf of Easter. Easter advanced \$4,000 as attorney fees for the representation.

In March 2006, respondent sent a fee agreement and the petition for dissolution to Easter for her signature. Respondent requested that Easter forward \$320 for the court's filing fee. Easter forwarded the \$320 and the executed documents as instructed.

On April 18, 2006, respondent filed the petition for dissolution of marriage on behalf of Easter in the Los Angeles County Superior Court matter, entitled, *In re Marriage of Josephine Easter and William Timothy Flynn*, case number BD444408 (the dissolution action). Respondent did not file a preliminary declaration of disclosure, a schedule of assets and debts or an income and expense declaration. Nor did respondent ask Easter to execute such documents.

On May 11, 2006, William Flynn (Flynn) filed his response to the petition, his preliminary declaration of disclosure, and his income and expense declaration in pro per. After Flynn responded to the petition, respondent conducted no discovery in the action and did not request that the matter be set for trial.

On May 2, 2007, Flynn substituted attorney Jason Shyres (Shyres) as his attorney for the dissolution. From May to July 2007, Shyres left numerous telephone messages for respondent in which he asked her to contact him to discuss resolution of the dissolution. Respondent did not contact Shyres. But, in or about June 2007, Shyres was able to reach respondent by telephone. During his discussion with respondent, Shyres informed her that he had not received any legal documents from Easter. Respondent told Shyres that she would forward all legal documents from Easter to Shyres by June 29, 2007. Respondent, however, did not forward any documents

to Shyres, including a declaration of disclosure, a schedule of assets and debts or an income and expense declaration on behalf of Easter.

On July 6, 2007, Shyres filed a request that Easter pay Flynn's attorney fees and costs, that the court bifurcate the property and support issues from the issue of marital status, and that the marital status of the parties be terminated (the OSC). The court set a hearing on the OSC for August 22, 2007.

On or about July 16, 2007, Shyres served the OSC and notice of the August 22, 2007 hearing on respondent. Respondent received the OSC and notice of the hearing. Respondent did not file a response to the OSC by August 22, 2007.

During the August 22, 2007 hearing, respondent requested a continuance of the hearing. The court continued the hearing to August 28, 2007, over Shyres's objection. The court directed respondent to file Easter's Income and Expense Declaration and response to the OSC forthwith and to serve the documents on Shyres by August 23, 2007. Respondent filed and served the documents as directed.

On August 28, 2007, the court granted the OSC and ordered Easter to pay spousal support and attorney fees to Flynn. The court also bifurcated the issue of marital status from the other issues in the dissolution.

Although she gave assurances to Easter in the Spring and Summer of 2008, that she was moving the case forward, respondent took no action, following the August 28, 2007 hearing to resolve the remaining issues in the dissolution or to set the matter for trial as requested by Easter. Respondent effectively terminated her representation of Easter by abandoning the case in August 2007.

Between September and October 2008, Easter left several messages for respondent in which she requested information regarding the status of the dissolution matter. Respondent did not respond to Easter's messages.

On November 18, 2008, Shyres served respondent by mail with a copy of a request, on behalf of Flynn, to set the trial. Respondent received the request. On November 19, 2008, Shyres filed the request to set the trial.

On November 21, 2008, the court set a trial setting conference for January 2, 2009, and served notice of the conference on respondent. Respondent received the notice of the conference. Respondent did not inform Easter that Flynn had requested that the matter be set for a trial, that a trial setting conference was set for January 2, 2009, or that respondent would not be appearing for the conference.

In late December 2008, Flynn informed Easter of the January 2, 2009 conference.

On January 2, 2009, respondent did not appear for the conference. Easter appeared on her own behalf. The court set the trial date for June 11, 2009.

On or about January 21, 2009, Easter mailed a substitution of attorney for respondent's signature and requested that she return it to Easter as soon as possible. Respondent received the substitution of attorney, but did not return a signed substitution to Easter.

On March 13, 2009, Easter filed a motion to remove respondent as her attorney. On April 15, 2009, the court granted Easter's motion.

Count 20: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By conducting no discovery in the dissolution action, by failing to request a trial in the dissolution action, and by failing to appear or represent her client at the January 2, 2009 trial setting conference, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 21: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

The court finds by clear and convincing evidence that by not responding to any of Easter's several telephone messages, requesting information from respondent regarding the status of the dissolution matter, respondent willfully failed to respond to client inquiries in willful violation of section 6068, subdivision (m).

Count 22: Improper Withdrawal from Employment (Rule 3-700(A)(2))

The State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2).

Respondent effectively terminated her services when she took no action on behalf of Easter and abandoned Easter's case in August 2007. Respondent had not informed Easter that respondent would not be appearing at the January 2, 2009 trial setting conference. Thus, Easter, who appeared at the trial setting conference, had to represent herself. On January 21, 2009, Easter mailed a substitution of attorney to respondent for her signature and requested that respondent return the signed substitution of attorney as soon as possible. Although respondent received the substitution of attorney, she did not return it to Easter. Thus, respondent improperly withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to her client's rights in willful violation of rule 3-700(A)(2).

6. Case Nos. 09-O-10585 and 09-O-10586 (Failure to Update Official Membership Records)

On or about February 5, 2009, the State Bar opened an investigation (the Melamed investigation), identified as case number 09-O-10585, based on a complaint submitted against respondent by Melamed, and an investigation (the Easter investigation), identified as case number 09-O-10586, based on a complaint submitted against respondent by Easter.

On or about February 24 and March 11, 2009, a State Bar investigator mailed letters, regarding the Melamed and Easter investigations, to respondent at her official membership

records address of 10850 Wilshire Blvd., Suite 405, Los Angeles, CA 90024 (the membership records address). The letters were mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business.

On March 30, 2009, the investigator's letters were returned to the State Bar by the USPS as undeliverable. To date, respondent has not updated her membership records address with the State Bar.

Count 23: Failure to Update Membership Address (Bus. & Prof. Code, § 6068, Subd. (j))

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides, among other things, that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes.

By on or about February 4 and March 11, 2009, respondent failed to maintain on the official membership records of the State Bar a current address where she could be contacted, as required. Accordingly, the court finds by clear and convincing evidence that by not updating her State Bar membership records address, respondent failed to maintain a current address to be used for State Bar purposes, in willful violation of section 6068, subdivision (j).

C. Second Notice of Disciplinary Charges

1. Case No. 09-O-10583 (Cambridge)

In or about September 2004, Robert Cambridge (Cambridge) employed respondent to represent him in a dissolution of marriage matter. From in or about September 2004 through in or about November 2004, Cambridge paid respondent a total of \$3,500 as advance attorney fees for representation in the dissolution matter.

In or about October 2004, respondent filed a petition for dissolution of marriage on Cambridge's behalf in *Robert Cambridge v. Cheryl Cambridge*, Los Angeles Superior Court, case number SD022307 (dissolution action).

On or about November 16, 2004, Cheryl Cambridge (Mrs. Cambridge) filed a request for a temporary restraining order against Cambridge. The court granted the temporary restraining order. At the hearing, the court also granted an ex parte request for appointment of counsel for the minor. On or about January 3, 2005, the court ordered that the Cambridge's minor child be enrolled in therapy. The court also reissued the temporary restraining order.

Beginning in or about November 2005, Cambridge began having problems contacting respondent. Specifically, Cambridge left numerous messages for respondent requesting that she contact him regarding his dissolution action and Mrs. Cambridge's violation of court orders regarding the minor child. Respondent requested that Cambridge communicate with her by e-mail.

Beginning in or about November 2005 and continuing through in or about August 2006, Cambridge contacted respondent by e-mail as respondent had requested. Respondent answered the e-mails sporadically.

From in or about August 2006 through in or about December 2006, Cambridge called respondent and sent her several e-mails inquiring as to the status of his dissolution action. Respondent received the e-mails, but failed to respond to them.

On or about December 10, 2006, Cambridge sent a letter to respondent by registered mail. In the letter, Cambridge complained that respondent had not responded to his inquiries about his dissolution action and expressed concern about the status and progress of the dissolution, including visitation with his daughter, the temporary restraining order, assets, and Mrs. Cambridge's violation of court orders. Respondent received the letter, but did not respond.

On or about March 5, 2007, Faith A. Ford (Ford), counsel for Mrs. Cambridge, sent respondent a letter requesting Cambridge's permission to sell the family residence. Respondent received the letter, but did not respond to it. Respondent initially did not inform Cambridge that Mrs. Cambridge wanted to sell the property.

On or about March 26, 2007, Ford called respondent regarding the community property residence. Ford left a voicemail; but, respondent did not return her call.

On or about March 28, 2007, Ford sent respondent another letter. In the letter, Ford served notice of an April 2, 2007 ex parte hearing about the sale of the community property residence.

In or about March or April 2007, respondent contacted Cambridge about his dissolution action. Respondent informed Cambridge that she received a Special Notice of Hearing from the Court for April 2, 2007. Respondent advised Cambridge that she would appear at the hearing. Respondent appeared at the hearing.

On or about April 6, 2007, respondent and Cambridge met at respondent's office. According to Cambridge, respondent informed him that she had been under significant stress and was unable to meet certain clients' needs. Respondent stated that she had worked through the stress issues and was ready to assist Cambridge in his dissolution action.

On or about May 16, 2007, the parties in the dissolution action, stipulated regarding the sale of the community property. As part of the stipulation, the parties also agreed that Cambridge would receive half of Mrs. Cambridge's retirement until she filed a Qualified Domestic Relations Order (QDRO).

On or about June 25, 2007, the court in the dissolution action filed the order.

Beginning in or about August 2007, Cambridge began receiving funds from his wife's pension. The disbursement checks were sent to respondent, who demanded that Cambridge pay

her \$1,000 from each check for legal fees. Cambridge received the retirement checks until in or about August 2008. From in or about May 2007 through on or about August 4, 2008, Cambridge paid respondent a total of \$10,000 for legal services.

Beginning in or about November 2008 through in or about February 2009, Cambridge made numerous attempts to contact respondent by e-mail and phone. Cambridge left a voicemail asking respondent to return his calls. Respondent received the e-mails. Respondent did not respond.

In or about November 2008, Cambridge, who learned that Mrs. Cambridge was planning to move to Atlanta, Georgia, contacted respondent by phone to inform her that his wife was planning to leave the state. Respondent asked Cambridge to call her the following week. Cambridge called respondent as she had requested. Respondent did not return his call.

On or about January 2, 2009, Cambridge sent respondent a certified letter regarding: (1) Mrs. Cambridge leaving the state with the minor child and ceasing to make payments to Cambridge in violation of the court orders; (2) his request that respondent bifurcate the case, so he could obtain a final divorce decree; (3) his concern that the delay in the case was causing irreparable harm, and (4) respondent's failure to respond to his calls, letters, and e-mails. On or about January 6, 2009, respondent received the letter; she did not respond.

On March 13, 2009, Cambridge filed an ex parte motion to substitute respondent out as his counsel. On that same date, the court ordered respondent relieved as counsel.

Count 1: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By not acting to enforce court orders with regard to Mrs. Cambridge's ceasing to make payments to Cambridge, by not acting in response to Cambridge's informing respondent that his wife was planning to leave the state with their minor child, and by not acting so that Cambridge

could obtain a final divorce decree, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

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

By not responding to Cambridge's numerous calls, letters and e-mails and not communicating with him and by failing to take action on behalf of Cambridge in the dissolution matter, including not taking steps to obtain a final divorce decree, respondent abandoned her client and constructively terminated her employment. Respondent did not inform Cambridge that she was withdrawing from representation or take any other steps to avoid reasonably foreseeable prejudice to Cambridge.

Accordingly, the court finds by clear and convincing evidence that respondent improperly withdrew from employment in willful violation of rule 3-700(A)(2).

Count 3: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By not responding to Cambridge's numerous attempts to contact her by e-mail and phone beginning in November 2008 through in or about February 2009, and by failing to respond to the January 2, 2009 certified letter that Cambridge sent and that respondent received on January 6, 2009, respondent willfully failed to respond to client inquiries in willful violation of section 6068, subdivision (m).

2. Case No. 09-O-12153 (Richardson)

In or about July 2005, Charlotte Richardson filed a petition for a dissolution of marriage.

In or about October 2005, Charles V. Richardson (Richardson) employed respondent to represent him in a dissolution of marriage action, entitled *Charlotte P. Richardson v. Charles V. Richardson*, case number BD429426 (Richardson dissolution action). In or about October 2005, Richardson paid respondent \$2,500 in advance legal fees.

Thereafter, respondent provided no legal services of value. Among other things, respondent failed to file a response on Richardson's behalf in the dissolution action. On or about April 4, 2006, Richardson sent respondent a letter by express mail complaining that she had not contacted him regarding the status of his case and requested that she return his calls. Respondent received the letter on or about April 4, 2006.

On or about April 24, 2006, Jacqueline Staten, attorney for petitioner Charlotte Richardson, filed a request for entry of default in the Richardson dissolution action as respondent did not file an answer to the petition for dissolution of marriage on Richardson's behalf. The request for entry of default was properly served on respondent. Although respondent received the request for entry of default, she did not respond. On or about May 26, 2006, the court in the Richardson dissolution action entered the default.

From on or about April 5, 2006 through on or about July 3, 2006, Richardson left several telephone messages, and sent letters and emails requesting that respondent contact him to discuss the status of his dissolution action. Included among the e-mails, which Richardson sent to respondent, was one that he sent on or about May 17, 2006, and another that he sent on or about June 8, 2006. Respondent did not respond to Richardson's telephone messages, letters or emails.

On or about July 3, 2006, Richardson sent respondent a letter by express mail, complaining that respondent had not returned his calls or e-mail and that her inactions had jeopardized his ability to obtain a resolution to the case. In his letter, Richardson also demanded the return/refund of the \$2,500 advance legal fee and terminated respondent's services. As respondent performed no legal services of value to Richardson, she did not earn the \$2,500 fee. Respondent received Richardson's letter on or about July 3, 2006. But, to date, respondent has not refunded any portion of the \$2,500 fee.

Richardson hired new counsel, Jeffrey S. Jacobson.

On or about November 6, 2006, the parties filed a stipulation and order to set aside the default. The court signed the order.

Count 4: Failure to Perform Competently (Rules of Prof. Conduct, Rule 3-110(A))

By not filing a response in the dissolution action and by failing to file a response to petitioner's request for entry of default in the dissolution action, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 5: Failure to Return Unearned Fees (Rules of Prof. Conduct, Rule 3-700(D)(2))

Respondent performed no legal services of value to her client in the in the Richardson dissolution of marriage action. In his July 3, 2006 letter to respondent, Richardson terminated respondent's services and demanded that respondent refund the \$2,500 fee he had advanced to respondent for legal services. By not refunding to Richardson any portion of the \$2,500 advance fee, which she did not earn, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Count 6: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By not responding to the telephone messages, letters, and e-mails, which Richardson sent her from on or about April 5, 2006 through on or about July 3, 2006, wherein Richardson requested that respondent contact him to discuss the status of his dissolution action, respondent willfully failed to respond to client inquiries in willful violation of section 6068, subdivision (m).

3. Case Nos. 09-O-10583 and 09-O-12153 (Failure to Update Official Membership Records)

On or about February 20, 2009, the State Bar opened an investigation (the Cambridge investigation), identified as case number 09-O-10583, based on a complaint submitted by Cambridge against respondent. On or about March 2 and March 24, 2009, the State Bar

investigator mailed letters, regarding the Cambridge investigation, to respondent at her membership records address at 10850 Wilshire Blvd, Suite 405, Los Angeles, CA 90024. The letters were mailed in a sealed envelope by first class mail, postage, prepaid by depositing for collection by the USPS in the ordinary course of business. On or about March 30, 2009, the investigator's letters were returned to the State Bar by the USPS, indicating that delivery had been attempted and the USPS was unable to forward the letters.

On or about April 6, 2009, the State Bar opened another investigation (the Richardson investigation), identified as case number 09-0-12153, based on a complaint submitted against respondent by Richardson. On or about May 5, 2009, a State Bar investigator mailed letters, regarding the Richardson investigation, to respondent at her membership records address. The letters were mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The investigator's letters were returned to the State Bar by the USPS on or about May 11, 2009, as undeliverable.

On or about July 8, 2009, a State Bar investigator again mailed letters regarding the Richardson investigation to respondent at her membership records address. The letters were mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. On or about July 20, 2009, the investigator's letters were returned to the State Bar by the USPS as undeliverable.

To date, respondent has not updated her membership records address with the State Bar.

Count 7: Failure to Update Membership Address (Bus. & Prof. Code, § 6068, Subd. (j))

The court finds by clear and convincing evidence that by not updating her State Bar membership records address, respondent has failed to maintain a current address to be used for State Bar purposes, in willful violation of section 6068, subdivision (j).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁵ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

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

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) In her previous disciplinary matter, case No. 94-O-19561, respondent entered into a stipulation of facts and disposition in 1997, for collecting an illegal fee in violation of rule 4-200(A) by failing to obtain a court order authorizing payments to her from estate assets as fees for legal services rendered as required by section 10810 of the Probate Code and for failing to obey a court order to repay the fees in violation of Business and Professions Code section 6103. Respondent stipulated to a public reproof and was ordered to pay restitution to the estate.

Respondent's misconduct demonstrated a pattern of misconduct by repeatedly failing to perform services competently and failing to communicate with clients.. (Std. 1.2(b)(ii).)

Respondent also committed multiple acts of wrongdoing by improperly withdrawing from employment, failing to return unearned fees, failing to return client files, failing to obey a court order, failing to cooperate with the State Bar, and failing to update her official membership address.

⁵ Future references to standard(s) or std. are to this source.

Respondent's misconduct significantly harmed her clients. (Std. 1.2(b)(iv).) Respondent abandoned clients, failed to return unearned fees, and failed to return client files. Several clients had to hire new counsel to substitute in respondent's place.

Respondent's failure to return any portion of the unearned fees of \$22,300 to her clients demonstrates indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).)

Respondent's failure to participate in these proceedings prior to the entry of default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.6, 1.7, 2.2, 2.4, 2.6, and 2.10 apply in this matter.

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.) As 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.)

Standard 1.6(a) provides that when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(a) provides that if a member has a record of one prior imposition of discipline, the degree of discipline in the current proceeding must be greater than that imposed in the prior proceeding, unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust. Here, the offenses for which the prior discipline was imposed were not so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, which offense does not result in willful misappropriation of entrusted funds or property, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.4 (a) provides that culpability of a member of a pattern of willfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained must result in disbarment.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges disbarment. The court agrees.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091,

1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that in the future she will not continue to engage in misconduct, similar to that misconduct of which she has been found culpable in this disciplinary proceeding. Instead of cooperating with the State Bar or rectifying her misconduct, respondent defaulted in this disciplinary proceeding. The court has no information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding her misconduct.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Therefore, based on the severity of the misconduct, the serious aggravating circumstances, in particular, respondent's pattern of client abandonments, and the lack of any mitigating factors, the court recommends disbarment.

Additionally, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084,1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by her misconduct in real, concrete terms. (*Id.* at 1093.) Therefore, it is recommended that respondent be ordered to refund all unearned legal fees to her clients.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Sherri Ford Couser** 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.

B. Restitution

It is also recommended that respondent make restitution to the following:

1. **Jeffrey Condon** in the amount of \$15,000 plus 10% interest per annum from June 2, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Jeffrey Condon, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. **Sarah Stern** in the amount of \$4,800 plus 10% interest per annum from March 14, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Sarah Stern, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
3. **Charles V. Richardson** in the amount of \$2,500 plus 10% interest per annum from July 3, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Charles V. Richardson, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

Respondent must furnish satisfactory proof of payment 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, subdivisions (c) and (d).

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁶

D. Costs

It is further 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.

⁶ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. 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: March _____, 2011

PAT McELROY
Judge of the State Bar Court