

# PUBLIC MATTER

**FILED** 

APR 29 2010

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 08-O-13458-PEM
	)	(08-O-13459; 08-O-13667
RITA CATHERINE CLEGG	)	08-O-13679; 09-O-10003)
	)	
Member No. 194060	)	DECISION INCLUDING DISBARMENT
	)	RECOMMENDATION AND
A Member of the State Bar.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT ORDER.

---

## I. INTRODUCTION

In this disciplinary matter, Tammy M. Albertsen-Murray appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent RITA CATHERINE CLEGG did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and that she be ordered to make specified restitution.

## II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on October 5, 2009, and was properly served on respondent on that same date at her then-official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of

---

<sup>1</sup> Future references to section are to the Business and Professions Code.



mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The NDC was returned as undeliverable by the United States Postal Service. On December 10, 2009, a courtesy copy of the NDC was sent to respondent at her now-current official address by regular, first-class mail. It was not returned as undeliverable or for any other reason.

On October 9, 2009, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on November 16, 2009. This notice was returned as undeliverable by the United States Postal Service.

Respondent did not appear at the November 16 status conference. On November 17, 2009, she was properly served with a status conference order at her official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On December 16, 2009, a motion for entry of default was filed. It had been properly served on respondent at her official address by certified mail, return receipt requested on December 15, 2009. The motion advised her that minimum discipline of disbarment would be sought if she was found culpable.

Respondent did not respond to the motion.

On January 6, 2010, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. The return receipt, signed "Rita C. Clegg," indicates delivery on January 13, 2010.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on

January 29, 2010.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar,<sup>2</sup> rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

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

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 5, 1997, and has been a member of the State Bar at all times since.

#### **B. Case no. 08-O-13458 (The Brillhart Matter)**

##### **1. Facts**

On October 29, 2007, Christine Brillhart hired respondent to represent her in a divorce matter and paid her \$2,500 for her services. The parties executed an attorney-client fee agreement, which included a \$2,500 retainer to be used as a deposit for all costs and expenses. It specified that respondent would provide a monthly accounting of the retainer and that her services would be billed at an hourly rate of \$200.

On February 5, 2008, respondent filed a petition for dissolution of marriage on behalf of Brillhart. (*Christine Brillhart vs. Lawrence Brillhart*, Visalia Superior Court case no. 08-0-226802.) She also filed property and income and expense declarations and a declaration under

---

<sup>2</sup> Future references to Rules of Procedure are to this source.

the UCCJEA. However, she did not serve the documents on Lawrence or pursue the dissolution matter on Christine's behalf.

In August 2008, Brillhart hired new counsel, David Allen, who, on September 30, 2008, served the documents on Lawrence.

Brillhart had communication with respondent until April, 2008. She tried to reach respondent in April, May and June 2008, each time leaving a telephone message for respondent seeking information regarding her case. Although respondent received Brillhart's telephone messages, she did not return the calls or otherwise apprise her of the status of her case.

Brillhart originally met with respondent at her law office on Main Street in Visalia, California. Later, they met at her law office on Church Street in Visalia, California.

Respondent's official State Bar membership records address was at the Main Street address from January 9, 2006 up until June 23, 2006.

On June 23, 2006, respondent updated her membership records address to the Church Street address.

Respondent changed her Church Street address to an address on Campus Drive in Hanford, California, on August 7, 2008.

On September 2, 2008, respondent changed her address from the Campus Drive address to a P.O. Box in Hanford, California.

In July 2008, Brillhart went to visit respondent at the Church Street address, only to find that respondent no longer had offices at that address. The office manager advised her that respondent had packed up her belongings and left. Brillhart was able to retrieve a copy of her file from the office manager. Respondent had left it at the vacated Church Street address. Respondent did not tell Brillhart that she was vacating the Church Street address or provide her with a new address.

Respondent did not notify the Visalia Superior Court in the Brillhart matter when she vacated her Church Street address.

By not pursuing the dissolution action; by relocating without advising her client or the Visalia Superior Court in the Brillhart matter, of her whereabouts; and by leaving the file behind at the Church Street office after she vacated that address, respondent, in effect, withdrew from representing Brillhart by abandoning her.

Respondent did not provide any billing statements to Brillhart.

The services respondent provided to Brillhart were only preliminary in nature. Respondent filed the initiating document but thereafter did not serve them. Brillhart received little or no value from the services respondent performed. Respondent did not earn the \$2,500 advanced fee she received from Brillhart.

On September 19 and October 6, 2008 , a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Brillhart complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable. Although she received the letters, respondent did not answer them or otherwise communicate with the investigator.

## **2. Conclusions of Law**

### **a. Count 1 - Rule of Professional Conduct,<sup>3</sup> Rule 3-110(A) (Competence)**

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

---

<sup>3</sup>Future references to rule are to this source.

By not serving the Brillhart dissolution documents on Lawrence and otherwise not pursuing the dissolution action, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

**b. Count 2 - Section 6068, subd. (m) (Communication)**

Section 6068, subdivision (m) requires 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 responding to Brillhart's inquiries of April - June 2008, respondent did not respond to the reasonable status inquiries of a client in a matter in which she agreed to perform legal services; and by not advising her client when she vacated the Church Street address and not providing her with an updated address, respondent did not keep Brillhart reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

**c. Count 3 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)**

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) and with other applicable laws and rules.

By moving without advising Brillhart or the superior court of her new address and by leaving Brillhart's file behind, respondent effectively withdrew from employment. She did not tell the client that she was withdrawing from employment. Respondent's withdrawal prejudiced Brillhart because she had to obtain new counsel to pursue the dissolution of her marriage. By not informing the client of her intent to withdraw from employment, respondent did not take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

**d. Count 4 - Rule 3-700(D)(2) (Unearned Fees)**

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

Respondent did not pursue the dissolution case after it was filed and abandoned Brillhart. She did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

**e. Count 5 - Section 6068, subd. (i) (Not Participating in Investigation)**

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar's letters of September 19 and October 6, 2008, respondent did not participate in the investigation of the allegations of misconduct regarding the Brillhart case in wilful violation of 6068, subdivision (i).

**C. Case no. 08-O-13459 (The Perez Matter)**

**1. Facts**

On May 17, 2008, client Leticia Perez spoke to respondent regarding her pending divorce matter. (*Elias Guzman vs. Leticia Perez*, Tulare Superior Court case no. VFL223292.) On April 12, 2007, Guzman had filed for divorce from Perez. On April 21, 2008, the court set the matter for trial for May 19, 2008. During their initial meeting on May 17, 2008, respondent agreed to represent Perez.

On May 19, 2008, respondent appeared and requested a continuance on behalf of her client. Elias Guzman stipulated to a continuance. The court reset the matter for trial for July 23,

2008 at 1:30 p.m. in Dept. 8, and gave no further notice of the continued trial date. Since, respondent was present in court, he was aware of the new trial date.

On May 26, 2008, Perez met with respondent and signed an attorney-client fee agreement which specified a retainer of \$1,500 to be billed at the rate of \$200 per hour. Between May 26 and 31, 2008, Perez paid respondent the sum of \$1,500, half in cash when she hired respondent and the balance by check dated May 31, 2008.

Respondent took no further action on Perez's case. She did not prepare for the trial scheduled in July and did not contact Perez in order to prepare for trial.

On July 18, 2008, five days before her scheduled trial, and having not heard from respondent in order to prepare for trial, Perez terminated respondent's services.

Commencing on June, 2008, Perez called respondent's office several times and left messages for respondent, seeking information regarding her case and to prepare for the upcoming trial. Although respondent received Perez's messages, she did not return her calls or otherwise apprise her of the status of the case or prepare for trial.

In early July, 2008, Perez went to respondent's Church Street office in order to contact respondent. She was unable to reach respondent but was advised by another attorney who worked in the same law office that respondent had left a note stating that she would be out of the office from July 3 to 21, 2008.

Perez continued to telephone respondent but was unable to leave messages for her because the voicemail box was full.

On July 17, 2008 Perez returned to respondent's Church Street office and spoke to a woman who telephoned respondent on Perez's behalf. Perez spoke to respondent and requested the return of her file. Respondent agreed to provide it to her the following morning.



On July 18, 2008, Perez returned to the office to retrieve her file but was unable to do so. She left a letter terminating respondent's services under respondent's office door and seeking the return of her \$1,500.

Respondent performed no substantive work for Perez, and her services provided no benefit to Perez. She did not earn the \$1,500. Upon termination of her services, respondent did not return the unearned \$1,500 to Perez.

By not responding to Perez's communications of June, 2008 and by vacating her office from July 3, 2008 through July 21, 2008 without advising Perez, respondent, in effect, terminated her services.

Respondent did not move to withdraw from the case, or did not file a substitution of attorney in the Perez case.

Between July 18 and 22, 2008, Perez hired attorney David Allen. Allen obtained Perez's file from respondent.

On August 14, 2008, the State Bar opened an investigation pursuant to a complaint filed by Perez regarding allegations of misconduct by respondent in this matter. On September 19 and October 6, 2008, a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Perez complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable. Although she received the letters, respondent did not answer them or otherwise communicate with the investigator.

## **2. Conclusions of Law**

### **a. Count 6 - Rule 3-110(A) (Competence)**

By not taking further action on Perez's case after the May 19, 2008 appearance and by not preparing for trial, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

### **b. Count 7 - Section 6068, subd. (m) (Communication)**

By not responding to Perez's telephone calls of June 2008, respondent did not respond promptly to Perez's reasonable status inquiries; and by not advising Perez that she would be unavailable from July 3, 2008 to July 21, 2008, when Perez's trial was scheduled for July 23, 2008, respondent did not keep Perez reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

### **c. Count 8 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)**

By not responding to Perez's communications of June, 2008 and by vacating her office from July 3 through 21, 2008, shortly before trial, without advising Perez, respondent effectively withdrew from employment. She did not tell the client that she was withdrawing from employment. Respondent's withdrawal prejudiced Perez, who had to retain other counsel shortly before trial. By not informing the client of her intent to withdraw from employment, respondent did not take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

### **d. Count 9 - Rule 3-700(D)(2) (Unearned Fees)**

Respondent did not earn the \$1,500 Perez paid her to represent her and did not refund to Perez the unearned fees after being terminated in wilful violation of rules 3-700(D)(2).

### **e. Count 10 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letters of September 19 and October 6, 2008,

respondent did not participate in the investigation of the allegations of misconduct regarding the Perez case in wilful violation of 6068, subdivision (i).

**D. Case no. 09-O-10003 (The Schafer Matter)**

**1. Facts**

On September 14, 2007, Bryan Schafer, who resided in Colorado, retained respondent to represent him in divorce proceedings. Patricia Bargas, on Schafer's behalf, gave respondent \$2,000 for the representation.

On September 14, 2007, respondent filed a petition for dissolution of marriage and supporting documents, including property and income and expense declarations and declaration under UCCJEA. (*Schafer vs. Schafer*, Kings County Superior Court case no. 07FL0563.)

On September 24, 2007, respondent filed an order to show cause (OSC) for child custody, visitation and temporary orders. A hearing date was set for October 12, 2007.

Respondent appeared in superior court on Schafer's behalf on September 24, 2007. The court issued temporary orders, scheduled the matter for further hearing on October 12, 2007 and ordered respondent to prepare the order after hearing and submit it to the court for signature. Respondent was present in court and aware of its order. Respondent did not prepare the order after hearing or submit it to the court for signature as ordered.

At the October 12, 2007, hearing, the court ordered that the previously-issued temporary orders remain in place, except for certain modifications and also ordered respondent to file an income and expense declaration for her client as soon as the income became known. The court also ordered respondent to prepare the order after hearing and submit it to the court for signature. Respondent was present in court and was aware of its orders. She did not prepare the order after hearing and submit it to the court for signature as ordered.

On December 19, 2007, respondent appeared at a hearing on Katie Schafer's motion for modification.

On May 21, 2008, respondent filed declarations supporting Schafer's petition for custody of the parties' minor child. She appeared at the May 22, 2008 hearing during which the court ordered her to prepare the order after hearing and submit it to the court for signature. She was aware of the court's order, but did not prepare the order after hearing or submit it to the court for signature as ordered.

Thereafter, respondent performed no additional work on the Schafer matter.

On October 27, 2008, attorney Joseph Simones, representing Katie Schafer, filed a motion for attorneys fees and costs and no communication with opposing counsel in the Schafer matter. A hearing on the motion was set for November 25, 2008.

The motion included the following information: (1) Respondent did not prepare the findings and orders for the custody and visitation hearings that were held September 24, October 12, 2007 and May 22, 2008; (2) She did not file the income and expense report as ordered on October 12, 2007; (3) On October 12, 2007, respondent offered to prepare a marital settlement agreement and address her client's position on the issue of community debts, but did not do so; (4) Shortly after the May 22, 2008, hearing, respondent indicated she would send a draft settlement agreement to Simones but did not do so; (5) Simones mailed a draft settlement agreement to respondent on August 8, 2008 and did not receive a response; the mailed item was not returned, but an attempted fax transmission failed as the fax line was disconnected; (6) Additional efforts to call respondent were not successful as respondent's voicemail box was full and, as of August, 8, 2008, the fax line was not in service; (7) Phone calls to respondent's telephone number of (559) 732-1220 were getting routed to (559) 497-7979, the office of another attorney, and the receptionist at the second attorney's office had no knowledge of respondent or

why the calls were getting routed; (8) The last contact with respondent was a phone call from her on May 13, 2008, in which she advised the office of her new address, a P.O. Box in Hanford; (9) Simones had been unable to conclude the divorce due to respondent's failure to communicate and perform and his belief that the matter was amenable to settlement negotiation if there were an active opposing counsel willing to participate in the proceedings. He stated: "In a case such as this one, without complicated division issues, there is no reasonable explanation for why this matter could not have already been fairly concluded." Simones served the motion on respondent at the Church Street and the Hanford addresses. Katy Schafer also provided a courtesy copy directly to her ex-husband, respondent's client. Respondent received the motion and was aware of its contents; However, she did not contact or communicate with her client regarding this hearing.

At the November 25, 2008, hearing on the motion, Schafer appeared in pro per, by telephone. Respondent did not appear.

Schafer last spoke to the respondent two days before the custody hearing of May 2008. At that time, respondent indicated that she would contact Schafer regarding the marital settlement agreement, but she did not do so. Schafer was unable to contact respondent after May 2008.

In November, 2008, Schafer made numerous attempts to reach respondent regarding his case. He telephoned her law office and left multiple messages for her.

On November 7, 2008, Schafer received a phone call from attorney Mac McGinnis, who advised him that respondent was ill and that he would contact Schafer regarding the dissolution matter.

After November 7, 2008, Schafer again attempted to reach respondent (and/or McGinnis) by leaving several voice messages at respondent's telephone number. Respondent received all of

the messages Schafer left on her voice messaging system but did not return the calls or otherwise contact Schafer regarding his pending hearing in his dissolution matter. McGinnis, on behalf of respondent, did not provide any additional information or communication to Schafer on behalf of respondent.

By not pursuing Shafer's dissolution matter after the May 22, 2008 hearing and by not appearing at the November 25, 2008 hearing, respondent, in effect, withdrew from representing Schafer in the dissolution matter by abandoning Schafer.

Respondent did not advise Schafer or the superior court of her withdrawal. She did not file a substitution in the case.

Respondent commenced Schafer's dissolution proceedings but did not complete them. She did not reduce the court orders to a finding and order after hearing as she was ordered to do. Without completing the divorce and reducing the court's orders to final documents, respondent's services were of nominal value to Schafer. She did not earn the \$2,000 fee. She did not refund the \$2,000 in fees to Schafer.

Respondent did not abide by the court orders of September 24 and October 12, 2007 and May 22, 2008. Each time she had been ordered to prepare the findings and order after hearing for the court's signature.

On January 23, 2009, a State Bar investigator sent respondent a letter requesting that respondent answer in writing specific allegations of misconduct regarding the Schafer matter. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was not returned to the State Bar as undeliverable. Respondent did not answer the letter or otherwise communicate with the investigator.

## **2. Conclusions of Law**

### **a. Count 11 - Rule 3-110(A) (Competence)**

By not preparing the orders after hearings as ordered on September 24 and October 12, 2007 and May 22, 2008; by not sending the proposed settlement agreement to opposing counsel as she indicated that she would do shortly after the May 22, 2008 hearing; by not notifying opposing counsel of her client's position on the outstanding community; by not providing opposing counsel with viable contact information such as a working telephone number and fax; and by not appearing at the November 25, 2008 hearing for attorney's fees, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

### **b. Count 12 - Section 6068, subd. (m) (Communication)**

By not responding to Schafer's telephone calls of November 2008, respondent did not respond promptly to Schafer's reasonable status inquiries and by not communicating with her client regarding the marital settlement agreement and the November 25, 2008 hearing, she did not keep Schafer reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

### **c. Count 13 - Rule 3-700(A)(2) (Improper Withdrawal from Representation)**

By not notifying Schafer or the court of her withdrawal and by not filing a substitution in the case, respondent did not, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to her client, in wilful violation of rule 3-700(A)(2).

### **d. Count 14 - Rule 3-700(D)(2) (Unearned Fees)**

By not refunding \$2,000 in fees to Schafer, respondent did not, upon termination of her services, to refund promptly any part of a fee paid in advance that has not been earned in wilful violation of rule 3-700(D)(2).

**e. Count 15 - Section 6103 (Violation of Court Order)**

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

Respondent did not comply with the court's orders in the Schafer matter issued on September 24 and October 12, 2007 and May 22, 2008 and, therefore disobeyed court orders in wilful violation of section 6103.

**f. Count 16 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letter of January 23, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Schafer case in wilful violation of 6068, subdivision (i).

**E. Case no. 08-O-13679 (The Munoz Matter)**

**1. Facts**

On February 22, 2008, Connie Roman filed a motion to modify child custody and visitation. (*Jorge Munoz vs. Constance Roman*, Visalia Superior Court case no. VFL-225874.) She sought to modify the court's December 11, 2007, order granting temporary custody of the parties' minor child to Jorge Munoz.

On March 20, 2008, Munoz, in pro per, filed a response thereto as well as a request for a restraining order against Roman. At the April 1, 2008, hearing on the domestic violence matter, Munoz appeared in pro per. The court granted the restraining order and continued the matter to May 29, 2008.

On April 15, 2008, Munoz met with respondent at her Main Street office. He signed an attorney-client fee agreement and hired her to represent him in the family law matters involving child custody, visitation, child support and move-away provisions as well as the restraining



order. Munoz had custody of his son and wished to relocate. On April 11, 2008, Munoz had paid respondent \$2,000 for her legal fees.

On May 29, 2008, respondent appeared at the hearing in the restraining order matter and advised the court that Munoz's father had passed away the day before. The court granted respondent's request for a continuance on Munoz's behalf and reset the matter to June 20, 2008.

Respondent took no further action on behalf of Munoz. She did not prepare and file pleadings regarding Munoz's request to move away and obtain full custody of his son. She did not file a substitution of attorney, notifying the court that she represented Munoz. She did not appear at the June 20, 2008 hearing on the domestic violence matter. Munoz appeared and represented himself.

On June 20, 2008, respondent advised Munoz that she did not have the court papers prepared for the motion for the move-away order.

Between June 23 and July 1, 2008, Munoz called respondent on several occasions, seeking the status of his case. He left messages for respondent on her voicemail. Although respondent received Munoz's messages, she did not respond or otherwise apprise him of the status of his case.

On June 27, 2008, Munoz wrote and mailed a letter to respondent asking about her welfare and advising that he had been unable to reach her as one phone number was disconnected and another phone mailbox was full. Munoz advised that he did not require an answer to his letter. Although respondent received Munoz's June 27, 2008 letter, she did not respond.

On July 1, 2008 Munoz again wrote and mailed a letter to respondent asking about the status of his matter: "just let me know how things are going and if there is anything I can do to

help." Although respondent received the letter, she did not respond or otherwise apprise Munoz of the status of his legal matter.

On July 3, 2008, Munoz wrote and sent an additional letter to respondent, advising her that his employment was terminated and that he needed to relocate to New Jersey. Munoz asked respondent for the status of his matter and to let him know if she could not help him. Although respondent received the letter, she did not respond or otherwise apprise him of the status of his legal matter.

On July 18, 2008, Munoz terminated respondent's services.

On July 29, 2008, Munoz, in pro per, filed a motion of modification for a move-away order on his own behalf. On October 16, 2008, attorney Robert Bartlett substituted in on Munoz's behalf to represent him in his pending proceedings.

Other than requesting a continuance on May 29, 2008, respondent provided no legal services of any value to Munoz. She did not file pleadings on his behalf and did not appear at the June 20, 2008 hearing. Respondent did not earn at least \$1,400 of the \$2,000 fee.

On October 27, 2008, Munoz wrote and mailed a letter to respondent asking for a detailed accounting of any and all fees in regards to his case for a move-away order. He also requested a return of any unearned fees. Although respondent received the letter, she did not respond or otherwise return \$1,400 of Munoz's fees. She also did not provide Munoz with an accounting of fees.

On October 14 and 27, 2008, a State Bar investigator sent respondent letters requesting that respondent answer in writing by specified dates specific allegations of misconduct regarding the Schafer matter. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable. Respondent did not answer the letters or otherwise communicate with the

investigator.

**2. Conclusions of Law**

**a. Count 17 - Rule 3-110(A) (Competence)**

By not filing a substitution of attorney or notifying the court of her representation of Munoz; by not appearing at the June 20, 2008 hearing; and by not filing pleadings for Munoz to address custody, visitation and the move-away issue, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

**b. Count 18 - Section 6068, subd. (m) (Communication)**

By not responding to Munoz's letters, respondent did not respond promptly to Munoz's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

**c. Count 19 - Rule 3-700(D)(2) (Unearned Fees)**

Respondent did not refund \$1,400 to Munoz after her services were terminated and, therefore, did not return an advanced, unearned fee in wilful violation of Rule of Professional Conduct 3-700(D)(2).

**d. Count 20 - Rule 4-100(B)(3) (Failure to Account)**

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing Munoz with an accounting of his funds as requested, respondent wilfully violated rule 4-100(B)(3).

**f. Count 21 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letters of October 14 and 27, 2008, respondent did not participate in the investigation of the allegations of misconduct regarding the Schafer case in

wilful violation of 6068, subdivision (i).

**F. Case no. 08-O-13667 (The Ceballos, Hayes & Nail Matters)**

**1. Facts**

**Ceballos**

On January 9, 2007, Michelle Luna obtained a judgment of dissolution which specified that she would have sole legal and physical custody of the parties' minor children and that Alfred Ceballos would have reasonable visitation as agreed upon by the parties. (*Luna vs. Ceballos*, Tulare Superior Court case no. 06-220374.)

On July 3, 2007, Ceballos, in pro per, filed a motion to modify the parties' visitation schedule. On August 2, 2007, respondent substituted in as counsel for Ceballos in this matter.

On January 10, 2008, the court held a contested hearing in the matter and, on January 24, 2008, issued an order regarding visitation and other matters and set a new court date of June 4, 2008.

Respondent appeared on Ceballos' behalf at the June 4 hearing during which the court ordered the parties to appear for a further review hearing on September 17, 2008. She was aware of the new court date, but did not appear on September 17, 2008 as ordered.

**Hayes**

Respondent represented Heather Hayes. On June 17, 2008, the parties and respondent appeared in court at a contested hearing in which the court issued orders related to visitation and ordered the matter continued to August 14, 2008, for a contested hearing. (*County of Tulare v. Josh Moore*, Tulare County Superior Court case no. VFS071432.) Respondent was present in court on June 17, 2008 and was aware of the court's order. She also signed the findings and order after hearing dated June 17, 2008 which also notified her of the August 14, 2008 hearing. Respondent did not appear at the contested hearing on August 14, 2008.

## Nail

Respondent represented Dina Nail since July 27, 2007, when she substituted into her ongoing family law matter. (*Norman S. Nail vs. Dina Nail*, Tulare County Superior Court case no. VFL221586.) On August 4, 2008, respondent did not appear at a status conference as ordered by the court on June 2, 2008.<sup>4</sup>

On August 4, 2008, the court issued an order to show cause (OSC) against respondent and her client as to why sanctions should not be imposed for respondent and her client's failure to appear on August 4, 2008. The court clerk duly served a copy of the OSC by mailing a true and correct copy to respondent at her Main Street address. It ordered respondent and her client to appear on August 20, 2008. Respondent received the OSC.

Respondent did not appear at the August 20, 2008, OSC as ordered but her client, Dina Nail, appeared. At that time, Dina Nail submitted a substitution of attorney form to the court, substituting herself in pro per in the pending action. Respondent did not sign the form.

By not appearing on August 20, 2008, as ordered by the court, respondent, in effect, abandoned her client. When respondent abandoned the case, she did not properly withdraw from the matter pending before the court. Respondent did not file a motion to withdraw or sign the substitution of attorney for Dina Nail. Respondent did not seek nor obtain permission from the court to withdraw.

## **2. Conclusions of Law**

### **a. Count 22 - Section 6103 (Violation of Court Order)**

By not appearing in court on September 17, 2008, as ordered, respondent wilfully disobeyed a court order in wilful violation of section 6103.

---

<sup>4</sup> The certified court file in this matter does not confirm whether the June 2, 2008 order, scheduling the August 4, 2008 continued status conference date, was served on respondent.

**b. Count 23 - Rule 3-110(A) (Competence)**

There is not clear and convincing evidence that respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A) by missing one court appearance on September 17, 2008.

**c. Count 24 - Section 6103 (Violation of Court Order)**

By not appearing at the contested hearing on August 14, 2008, as ordered, respondent wilfully disobeyed a court order in wilful violation of section 6103.

**d. Count 25 - Rule 3-110(A) (Competence)**

There is not clear and convincing evidence that respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A) by missing one court appearance on August 14, 2008.

**e. Count 26 - Section 6103 (Violation of Court Order)**

By not appearing on August 20, 2008, as ordered, respondent wilfully disobeyed a court order in wilful violation of section 6103.

**f. Count 27 - Rule 3-110(A) (Competence)**

There is not clear and convincing evidence that respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A) by missing one court appearance on August 20, 2008.

**g. Count 28 - Rule 3-700(A)(1) (Improper Withdrawal from Tribunal)**

Rule 3-700(A)(2) provides that, if permission for termination of employment is required by the rules of a tribunal, an attorney shall not withdraw from employment in a proceeding before that tribunal without obtaining its permission.

Although the tribunal's rules required her to obtain permission to withdraw from representation, respondent withdrew from employment in a pending matter without obtaining its

permission either by filing a motion or by signing a substitution of attorney form. In so doing, she wilfully violated rule 3-700(A)(1).

#### **IV. LEVEL OF DISCIPLINE**

##### **A. Aggravating Circumstances**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>5</sup>, std. 1.2(b).)

Respondent has engaged in a pattern of misconduct resulting in the abandonment of her clients. (Std. 1.2(b)(ii). In four of the client matters addressed in this decision, she did not perform with competence, communicate with her clients or return their unearned fees, comply with court orders or participate in the State Bar's investigation of misconduct allegations. In three matters, she completely abandoned her clients.

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Brillhart, Perez and Munoz had to obtain other counsel. Respondent did not provide to Brillhart the monthly billing statements as required by their fee agreement. Shafer's dissolution was delayed and he had to appear without counsel at a hearing, as did Munoz. Nail substituted herself in pro per at a hearing in which respondent did not attend.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter her default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

---

<sup>5</sup>Future references to standard or std. are to this source.

## **B. Mitigating Circumstances**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than discipline-free practice for nearly 10 years at the time the misconduct commenced. (Std. 1.2(e)(i).)

## **C. Discussion**

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive; However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.2, 2.4, 2.6 and 2.10 apply in this matter. The most severe sanction is prescribed by standard 2.4(a) which suggests disbarment for culpability of a pattern of wilfully failing to perform services demonstrating the attorney's abandonment of the causes for which he or she was retained.

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 Silvertown* (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.)

The State Bar recommends disbarment. The court agrees.

Respondent's misconduct involves seven client matters. In four of those matters, she did not competently provide legal services, communicate with her clients or return their unearned fees, comply with court orders or participate in the State Bar's investigation of misconduct allegations. In three matters, she completely abandoned her clients. Due to the nature and extent of this misconduct, the court finds that respondent's disregard of her clients' interests is habitual. Her misconduct evidences a pattern of wilfully failing to perform services demonstrating her abandonment of the causes in which she was retained under standard 2.4(a).

Cases involving a pattern of misconduct similar to respondent's where the attorney has no prior record of discipline generally result in the attorney's disbarment. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 ["panoply" of misconduct affecting more than 20 clients over a 10-year period; disbarment]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not imposed for a pattern of misconduct similar to respondent's, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar*, 49 Cal.3d 753 (1989) 49. Cal.3d 753 [Although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the

disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself, and his concurrent family problems]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [Ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, attorney was experiencing severe financial and emotional problems during period of misconduct, and attorney thereafter substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [Disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].) Other than nearly 10 years of discipline-free practice, respondent's matter is devoid of mitigation which could justify a discipline recommendation short of disbarment.

Lesser discipline than disbarment is not warranted. The serious, habitual and unexplained nature of the misconduct and the lack of participation in these proceedings suggest that respondent is capable of future wrongdoing and raise concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

#### **V. DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent RITA CATHERINE CLEGG be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days

following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Christine Brillhart in the amount of \$2,500 plus 10% interest per annum from October 29, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Christine Brillhart, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Leticia Perez in the amount of \$1,500 plus 10% interest per annum from May 31, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Leticia Perez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Bryan Schafer in the amount of \$2,000 plus 10% interest per annum from September 14, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Bryan Schafer, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
4. to Jorge Munoz in the amount of \$1,400 plus 10% interest per annum from May 29, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Jorge Munoz, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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

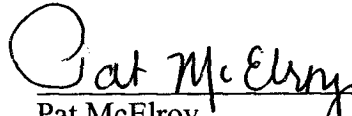
## **VI. COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **VII. ORDER REGARDING INACTIVE ENROLLMENT**

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

Dated: April 29, 2010

  
\_\_\_\_\_  
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, April 29, 2010, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT**

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

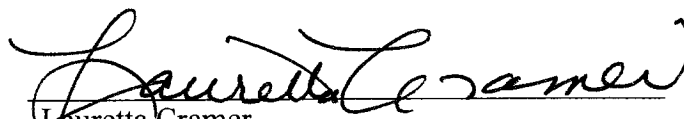
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**RITA C. CLEGG  
PO BOX 1772  
HANFORD, CA 93232**

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

TAMMY ALBERTSEN-MURRAY , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 29, 2010.

  
Lauretta Cramer  
Case Administrator  
State Bar Court