

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: <b>09-O-10292-PEM</b>
	)	
<b>CATHYE ELAINE LEONARD,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 177791,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Cathye Elaine Leonard** is charged with five counts of professional misconduct in one client matter, including (1) failure to communicate; (2) failure to render an accounting; (3) failure to return unearned fees; (4) withdrawal from employment without the court’s approval; and (5) failure to maintain a current address with the State Bar. The court finds, by clear and convincing evidence, that respondent is culpable of four of the five charged counts of misconduct.

In view of the misconduct found in this proceeding, the aggravating circumstances surrounding respondent’s misconduct, the lack of mitigating circumstances, and respondent’s failure to participate in the disciplinary process, the court recommends, among other things, that respondent be disbarred from the practice of law.

## II. Pertinent Procedural History

On December 14, 2009, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at her official membership records address.<sup>1</sup> Respondent did not file a response.

Respondent's default was entered on January 29, 2010, and respondent was enrolled as an inactive member on February 1, 2010, under Business and Professions Code section 6007, subdivision (e).<sup>2</sup> The matter was submitted for decision on February 23, 2010, following the filing of State Bar's brief on culpability and discipline.

## III. Findings of Fact and Conclusions of Law

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

Respondent was admitted to the practice of law in California on October 20, 1995, and has since been a member of the State Bar of California.

### A. The Jenkins Matter

On or about November 17, 2004, Lafernita Jenkins (Jenkins) hired respondent to represent her in the marital dissolution matter, *Jenkins-Bynum v. Bynum*, Solano County Superior Court Case No. FFL077921 (dissolution matter). On or about November 17, 2004, respondent and Jenkins also entered into a written fee agreement in the dissolution matter, wherein

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<sup>1</sup> The NDC in the instant matter, filed on December 14, 2009, has been assigned case number 09-O-10292. However, in each of the five counts of the NDC, a clerical error has occurred; case number "09-O-11622" incorrectly appears in lieu of the correct case number, "09-O-10292." Case number 09-O-11622, is the case number assigned to a NDC, which was filed on December 9, 2009, and which bears no connection to respondent Cathye E. Leonard. The court finds the error to be de minimis, as it is clerical in nature and does not affect the substance of the charges.

<sup>2</sup> All references to section (§) are to the Business and Professions Code, unless otherwise stated.

respondent agreed to provide monthly statements to Jenkins. Additionally, on or about the same date, Jenkins paid respondent \$3,000 in advanced fees for legal services in the dissolution matter.

On or about November 18, 2004, respondent substituted in as counsel of record for Jenkins in the dissolution matter. At no time during her representation of Jenkins did respondent provide a monthly statement to Jenkins, or provide any accounting of the \$3,000 advanced legal fee.

From on or about August 16, 2007 through October 4, 2007, and from July 1, 2008, through at least October 8, 2008, respondent was suspended from the practice of law in California for failure to pay her membership dues. During that period, while respondent was not permitted to practice law, she knew that she was suspended for failure to pay her membership dues and not permitted to practice law. During that period, the dissolution matter was still pending before the court and respondent was counsel of record for Jenkins. But, at no time did respondent inform Jenkins that she was suspended for failure to pay her membership dues and not permitted to practice law from August 16, 2007 through October 4, 2007, and from July 1, 2008, through at least October 8, 2008.

As of on or about July 1, 2008, respondent ceased performing work for Jenkins. Thereafter, respondent ceased receiving mail at the address she provided to the court and did not provide any other addresses to the court.

Prior to September 15, 2008, the superior court discovered on its own that respondent was suspended from the practice of law as of July 1, 2008. On September 15, 2008, the court issued an order requiring respondent to attend a hearing on October 30, 2008, to show cause for her failure to attend a mandatory settlement conference on September 5, 2008, and her failure to advise the court of her ineligibility to practice law. The court mailed the September 15, 2008

order to the address previously provided by respondent. The September 15, 2008 order was returned to the court as undeliverable.

On or about October 8, 2008, Jenkins sent a letter to respondent terminating her services and requesting a refund of unearned fees. Soon thereafter, respondent received the October 8, 2008 letter, but failed to provide an accounting of the \$3,000 to Jenkins. Respondent performed little, if any, work on behalf Jenkins in the dissolution matter and did not earn a substantial portion of the advanced fees paid by Jenkins. As of December 14, 2009, the date of the filing of the NDC, respondent had not refunded any portion of the \$3,000 paid by Jenkins as an advanced fee. And, as of December 14, 2009, respondent failed to provide an accounting to Jenkins of the \$3,000 advanced fee.

On or about October 30, 2008, a hearing was held in the dissolution matter. At that time, the court granted Jenkins' oral motion to dismiss respondent as her counsel of record.

#### **B. Respondent's Official Address**

Respondent's current office address, as maintained on the official membership records of the State Bar, is P.O. Box 813, Berkeley, CA 94701-0813 (the Berkeley address).<sup>3</sup> By on or about October 15, 2009, respondent had ceased receiving mail at the Berkeley address. At no time did respondent change or attempt to change her current office address as maintained on the official membership records of the State Bar from the Berkeley address. To date, the Berkeley address remains respondent's current office address as maintained on the official membership records of the State Bar. Respondent has failed to maintain with the State Bar a current address and telephone number where she can be contacted, as required.

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<sup>3</sup> The court takes judicial notice of respondent's official membership records maintained by the State Bar, which shows that P.O. Box 813, Berkeley, CA 94701-0813 (the Berkeley address) has been respondent's official address since October 23, 2007.

***Count 1: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

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 her client, Jenkins, that she was suspended for failure to pay her State Bar membership dues and not permitted to practice law from August 16, 2007 through October 4, 2007, and from July 1, 2008, through at least October 8, 2008, while the dissolution matter was still pending before the court and while she remained counsel of record for Jenkins, 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).

***Count 2: Failure to Render Accounts of Client Funds (Rules Prof. Conduct, Rule 4-100(B)(3))<sup>4</sup>***

Rule 4-100(B)(3) provides that a member of the State Bar must maintain records of all funds of a client in the member's possession and render appropriate accounts to the client.

By failing to provide an accounting to Jenkins of the \$3,000 fees that Jenkins had advanced to her, respondent willfully failed to render appropriate accounts to the client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

***Count 3: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

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<sup>4</sup> References to rules are to the current Rules of Professional Conduct, unless otherwise stated.

Respondent, who performed little, if any, work on behalf of Jenkins in the dissolution matter, did not earn a substantial portion of the \$3,000 fee Jenkins advanced to her. Moreover, on or about October 8, 2008, Jenkins sent a letter to respondent, terminating respondent's services and requesting a refund of unearned fees. Respondent received Jenkins' October 8, 2008 letter, soon after that date.

As of December 14, 2009, the date of the filing of the NDC in this proceeding, respondent had not refunded any portion of the \$3,000 advance fee paid by Jenkins. Thus, the court finds, by clear and convincing evidence, that respondent failed to promptly refund any part of the \$3,000 fee that was not earned, in willful violation of rule 3-700(D)(2).

***Count 4: Withdrawal from Employment Without Court's Permission (Rule 3-700(A)(1))***

Rule 3-700(A)(1) provides that an attorney must not withdraw from employment in a proceeding without the tribunal's permission if its rules require such permission for the termination of employment.

In Count 4 of the NDC, the State Bar alleges that respondent failed to obtain permission of the court to withdraw from employment on behalf of Jenkins in the dissolution matter. However, nowhere is it alleged or otherwise demonstrated that the superior court rules required respondent to obtain the court's permission to withdraw from employment in the dissolution matter.

Here, there is no clear and convincing evidence to support the State Bar's allegation that respondent was required by the court's rules to obtain the court's permission to withdraw from employment in the dissolution matter.

Moreover, the NDC contains contradictory allegations. In paragraph 23 of Count 4, the NDC alleges that as of July 1, 2008, respondent effectively withdrew from employment on behalf of Jenkins and ceased performing work for Jenkins. But, in paragraph 5 of the NDC,

which is incorporated by reference into Count 4, it is alleged that “[f]rom on or about July 1, 2008, through at least . . . October 8, 2008, respondent was suspended from the practice of law in California for failure to pay her membership dues. During that period, respondent was not permitted to practice law.” Additionally, it is alleged in paragraph 5 of the NDC that respondent knew that she was suspended for failure to pay her membership dues and not permitted to practice law. Thus, as a suspended attorney, respondent had an absolute duty to stop practicing law until she was returned to good standing. (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.)

Although as a suspended attorney, respondent had a duty to advise the superior court of her ineligibility to practice law, that duty is different from the duty under rule 3-700(A)(1) to obtain the tribunal’s permission prior to withdrawal from employment in a proceeding where the rules of the tribunal require such permission.

Accordingly, there exists no clear and convincing evidence to support a finding of culpability under rule 3-700(A)(1). Thus, Count 4 is dismissed with prejudice.

***Count 5: 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 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.

Respondent’s official membership record address has not been updated since October 23, 2007; by on or about October 15, 2009, respondent ceased receiving mail at that address. Thus, by on or about October 15, 2009, respondent failed to maintain on the official membership records of the State Bar a current address where she could be contacted, as required. 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,<sup>5</sup> 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 two prior records of discipline. (Std. 1.2(b)(i).)

1. On December 16, 2005, the Supreme Court issued an order (S137830) suspending respondent from the practice of law for one year and until she makes specified restitution, stayed the execution of the suspension, and placed respondent on probation for two years subject to certain conditions of probation for willfully violating: (1) rule 3-110(A) by recklessly failing to perform legal services with competence; (2) section 6068, subdivision (m) by failing to respond to her client's status inquiries; (3) rule 3-700(D)(2) in two matters by failing to refund unearned advanced fees to her client; (4) rule 4-100(B)(4) by failing to promptly pay, as requested by her client, funds in her possession which the client was entitled to receive; (5) rule 3-310(F) by accepting fees for representation of her client from someone other than her client without obtaining her client's informed written consent after written

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



disclosures; (6) rule 3-700(A)(2) by failing to substitute out as her client's attorney of record; (7) rule 3-700(D)(1) by failing to release her client's documents to him promptly upon request; and (8) rule 4-100(B)(4) by failing to promptly pay, upon request, a certain amount from funds she held in trust.

2. On January 8, 2010, the California Supreme Court issued an order (S177708) suspending respondent from the practice of law for two-years, stayed the execution of the suspension subject to certain conditions, including a minimum 90-day actual suspension and until respondent makes specified restitution and the State Bar Court grants a motion to terminate her suspension. Respondent's misconduct included failing to competently perform legal services, failing to promptly return unearned fees, failing to promptly release a client file, and failing to cooperate in a disciplinary investigation. Respondent defaulted in the disciplinary proceeding.

Respondent committed multiple acts of misconduct by failing to communicate, failing to render an accounting of client funds, failing to return unearned fees, and failing to maintain a current address with the State Bar. (Std. 1.2(b)(ii).)

Respondent's misconduct harmed significantly her client. (Std. 1.2(b)(iv).)

Respondent's failure to return unearned fees deprived Jenkins of her funds.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.2(b)(v).) She has not yet reimbursed her client the \$3,000 unearned fee the client advanced to her.

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 1.7(b), 2.2(b), 2.4(b), 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(b) provides that if the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances clearly predominate. Here, there is no mitigation.

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(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

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.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges disbarment, citing *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382, in support of its recommendation.

The court agrees with the recommendation of disbarment.

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.) Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against her nor her duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Respondent's failure to participate in this proceeding leaves the court without information about the underlying cause of her misconduct or of any mitigating circumstances surrounding her misconduct.

Moreover, the court is extremely concerned about the possibility of similar misconduct recurring. Here, respondent has been previously disciplined two times; yet, the present matter reflects some of the same misconduct for which respondent has been disciplined in the past—namely failing to communicate with her client and failing to pay unearned fees. As noted, *ante*, under standard 1.7(b) if a member has two prior records of discipline, the degree of discipline in the current proceeding should be disbarment unless the most compelling mitigating circumstances predominate. In the instant matter, respondent failed to appear and did not submit any mitigating circumstances. Respondent has offered no indication that she will not continue engaging in similar misconduct in the future. Instead of rectifying her misconduct and participating in this disciplinary proceeding, respondent has apparently chosen to ignore the disciplinary process.

Accordingly, lesser discipline than disbarment is not warranted. In view of respondent's misconduct, the lack of participation in these proceedings, the lack of any mitigating factors, the existence of a prior disciplinary record and other aggravating circumstances, and respondent's repeated unwillingness to comply with the professional obligations and rules imposed on California attorneys, despite having been given opportunities to do so, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

Finally, 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 legal fees to her client.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent **Cathye Elaine Leonard** 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 Lafernita Jenkins in the amount of \$3,000 plus 10% interest per annum from July 1, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Lafernita Jenkins, 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.<sup>6</sup>

### **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. It is also recommended that Cathye Elaine Leonard reimburse the Client Security Fund to the extent that the misconduct in

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<sup>6</sup> 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.)

this matter results in payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

**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

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PAT McELROY  
Judge of the State Bar Court