

1 Dante S. Ardite, State Bar No. 207039
2 **THE ARDITE LAW FIRM**
3 4612 West 173rd Street, Suite 6
4 Lawndale, CA 90260
5 Phone: 323-359-2260
6 Fax: 866-365-9192
7 Email: dantearдите@gmail.com

FILED
JUN 06 2011
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

8 STATE BAR COURT
9 HEARING DEPARTMENT - LOS ANGELES

10 IN RE:)
11) CASES: 09-O-10332
12)
13 SHERRI L. GARTHWAITE,) ANSWER TO DISCIPLINARY
14 NO.: 119078) HEARING
15)
16 RESPONDENT)
17) HONORABLE DONALD F. MILES
18 A MEMBER OF THE STATE BAR) STATE BAR COURT - 5TH FLOOR
19)
20)

21 MEMBER SHERRI L. GARTHWAITE ("Respondent") submits this ANSWER to the Notice
22 of Disciplinary Hearing filed by THE STATE BAR OF CALIFORNIA served via certified
23 mail, received on or about May 13, 2008 (the "Complaint") as follows:

24 GENERAL ALLEGATIONS/JURISDICTION

25 1. Admit.

26 COUNT ONE – RULES OF PROFESSIONAL CONDUCT §4-100(A)
27 [Failure to Maintain Client Funds in Trust Account]

28 2. Denied.

3. Admit to the criminal representation of McGruder, and to the best of the knowledge
and recollection of Respondent, the exact associated fees.



1 4. Admit.

2

3 5. Admit.

4

5 6. In so much as requests were made both orally and in writing, Respondent can only use
6 the accounting as a guide as to transactions, but denies in so much as Respondent can recall,
7 willful or negligently disbursement money without authorization from McGruder, oral,
8 written or otherwise::

8

9 06/06/08 \$ 250 Reimbursement of Out-of-Pocket Costs¹

10 06/06/08 \$2,500 Legal Fee acknowledged in the allegations²

11 06/16/08 \$1,300 unknown³

12 07/03/08 \$ 500 unknown (see fn3)

13 07/03/08 \$3,000 unknown (see fn3)

14 07/21/08 \$ 250 Reimbursement of Out-of-Pocket Costs (see fn1)

15 08/14/08 \$ 150 Reimbursement of Out-of-Pocket Costs (see fn1)

16 10/30/08 \$1,000 Line Entry Unknown⁴

17 12/31/08 \$1,000 Cash payment to Paula Ponce⁵

18 01/10/09 \$ 500 Cash payment to Paula Ponce

19 01/28/09 \$ 600 Cash Payments to Ponce and Benjamin (see fn5)

20 01/28/09 \$ 400 Reimbursement expenses (see fn5)

21 02/02/09 \$1,000 Cash payment to Paula Ponce (see fn5)

21

22 7. Denied, Respondent never took funds without authorization and never used funds
23 except and for the benefit of McGruder.

24

25 ¹ Respondent recalls informing McGruder of the need for and occurrences of reimbursements related to out of
26 pocket costs incurred handling the representation and POA role, included copies, postage, phone charges, for
Respondent and others, to stay in contact with McGruder, parking, mileage.

27 ² See ¶4 of NDC Complaint

28 ³ Respondent maintains that she never misappropriated funds from McGruder and all withdraws were
authorized and used for the benefit and at the direction of McGruder, but cannot recall all instances.

⁴ The only disbursement on 10/30/2008 is related to a payment of \$4,400 to Bethany Adams as directed by
McGruder and confirmed by the receipt of the funds by Adams. There is no \$1000 transaction on said date.

⁵ Recently located correspondence confirms the disbursements as listed – accounting revised accordingly..

1
2 8. Denied, Respondent did open a "trust" account in so much as the account was a
3 personal account to which Respondent was given power of attorney. A customary attorney-
4 client relationship did not exist in so much as Respondent acted under a Durable Power of
5 Attorney and not as an attorney at law, acting only at the direction of McGruder as the
6 principal, there was not an advisor/advisee relationship.

7
8 **COUNT TWO – RULES OF PROFESSIONAL CONDUCT §3-310(B)(1)**

9 **[Conflict – Relationship with a Party]**

10 9. Respondent DENIES willfully violating the RPC and since Respondent orally
11 informed McGruder of the relationship with Reese, in the presence of Reese, at the time the
12 promissory note evidencing said was executed by McGruder and Reese, but ADMITS not
13 providing written notice of said conflict.⁶

14 10. Respondent incorporates by reference the answers to allegation of Count 1.

15
16 11. Admit.

17
18 12. Admit.

19
20 13. Denies as to informing McGruder orally, admits to a written notice. Respondent
21 recalls informing McGruder of the relationship between Respondent and Reese (they were
22 friends) and the prior loan by Respondent to Reese.⁷

23 //

24 //

25 //

26 //

27 _____
28 ⁶ It should be noted in defense of Respondent that there did not exist a normal and customary attorney-client relationship between the parties where there was a accepting/continuing/terminating moment ... Respondent was acting under a durable power of attorney (his attorney-in-fact) a position that can be occupied by anyone John Q Public over 18 years of age – and in fact is handled now by a friend of McGruder.

⁷ Respondent pointed to the fact that she also made a loan to Reese as a factor in making McGruder comfortable.

1 14. Denies. The document McGruder referenced in the allegation includes the signature
2 of both parties (McGruder and Reese) and provides all of the terms and condition of the loan,
3 including amount, maturity date and interest rate.⁸ Respondent's failure to list the transaction
4 on the "vendor list" referenced was an oversight as the transaction was not part of the normal
5 credit/debit ledger.

6
7 15. In so much as Respondent has no way of knowing if said loan was repaid, the
8 Respondent Denies this allegation.⁹

9
10 16. In so much as no written notice was provided to McGruder, Respondent Admits said
11 allegation (see fn7).

12 **COUNT THREE – RULES OF PROFESSIONAL CONDUCT §4-100(B)(3)**

13 **[Failure to Render Appropriate Accounts]**

14 17. Respondent DENIES willfully violating the RPC, but admits to failing, through
15 oversight and distraction, to render a detailed written accounting of the entrusted funds of
16 McGruder.

17
18 18. Respondent incorporates by reference the answers to allegation of Counts 1 & 2.

19
20 19. Admits.

21
22 20. Admits.

23
24 21. Admits.
25
26

27 ⁸ It should be noted that due to the incarceration of McGruder it was at times difficult to continually document
28 all transactions, requests or approvals and as such according to the recollection Respondent, several requests
and approvals were done via telephone (oral).

⁹ Notwithstanding Respondent's denial, we are not ignorant of the fact that McGruder is making allegations of
non-payment and suing Reese civilly for collection of said sums.

1 22. Admits.¹⁰

2
3 23. Admits.

4
5 24. Admits.

6
7 25. Admits.

8 **COUNT FOUR – BUSINESS AND PROFESSIONAL CODE §6106**

9 **[Moral Turpitude – Misappropriation]**

10 26. Respondent DENIES willfully violating the Business and Professional Code §6106 in
11 anyway and did not commit an act of moral turpitude in relation to McGruder.

12
13 27. Respondent incorporates by reference the answers to allegation of Counts 1 & 2 & 3.

14
15 28. Denies.

16
17 29. Denies.

18
19 Dated: June 3, 2011

20 
Dante Ardite, Esquire
Attorney for Respondent
Sherri L. Garthwaite

21
22
23
24
25
26
27
28 ¹⁰ Respondent did on or about this time send to McGruder copies of the then outstanding bank statements for the account in an effort to clarify the transactions, albeit without detailed itemization of entries or payees.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 4612 West 173rd Street, Suite 6, Lawndale, California 90260.

On May 6, 2011, I served the foregoing documents described as: Accounting Information re: Wells Fargo Bank Trust Account as follows:

Honorable Donald F Miles
State Bar Court of California
1149 South Hill Street, 5th Floor
Los Angeles California 90015
Facsimile: (213)765-1442

Dane Dauphine
State Bar Court of California
1149 South Hill Street, 5th Floor
Los Angeles California 90015
Email: Dane.Dauphine@calbar.ca.gov

(XXX) BY FIRST CLASS MAIL (CCP 1013(a) et. seq.): I am “readily familiar” with the firm’s practice of collecting and processing correspondence for mailing. Under this practice it would be deposited with the US Postal Service on that same day with postage thereon fully prepaid at Lawndale California in the ordinary course of business. I am aware that on motion of the party served, service presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit. Mailed June 4, 2011.

() BY HAND DELIVERY (CCP 1011(a) et. seq.): I caused said documents to be personally delivered by a courier to each addressee.

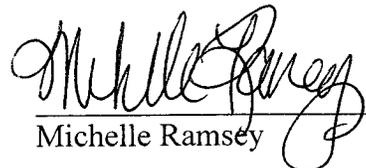
(XXX) BY FACSIMILE (CCP 1012.5 et. seq.): I caused said documents to be personally delivered to each addressee’s facsimile number: See above. Sent June 5, 2011

(XXX) BY ELECTRONIC MAIL (CCP 1010.6 et. seq.): I caused said documents to be personally delivered to each addressee’s email address - See Above. Sent June 5, 2011

() BY EXPRESS MAIL (CCP1013(c)(d) et. seq.): I caused said documents to be deposited in the Federal Express repository in a sealed envelope/pak designed by the carrier as a Federal Express envelope/pak, with delivery costs prepaid and posted on said invoice.

Executed on June 3, 2011 in Lawndale California

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this Court at whose direction the service is made.


Michelle Ramsey