

PUBLIC MATTER

FILED

1 STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL
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MAY 10 2011
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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9 STATE BAR COURT

10 HEARING DEPARTMENT - LOS ANGELES

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12 In the Matter of:) Case No. 09-O-10332
13 SHERRI L. (LYNN) GARTHWAITE,) NOTICE OF DISCIPLINARY CHARGES
14 No. 119078,)
15 A Member of the State Bar)

16 **NOTICE - FAILURE TO RESPOND!**

17 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**
18 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**
THE STATE BAR COURT TRIAL:

- 19 (1) **YOUR DEFAULT WILL BE ENTERED;**
20 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**
WILL NOT BE PERMITTED TO PRACTICE LAW;
21 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;
22 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**
23 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**
24 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**
25 **ORDER RECOMMENDING YOUR DISBARMENT WITHOUT**
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Sherri Lynn Garthwaite ("Respondent") was admitted to the practice of law in the
4 State of California on June 21, 1985, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 09-O-10332
8 Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

9 2. Respondent willfully violated Rules of Professional Conduct, rule 4-100(A), by
10 failing to maintain the balance of funds received for the benefit of a client and deposited in a
11 bank account labeled "Trust Account," "Client's Funds Account" or words of similar import, as
12 follows:

13 3. In or about April 2008, Mark McGruder ("McGruder") employed Respondent to
14 represent McGruder in a criminal matter in the Los Angeles County Superior Court, case no.
15 NA077819. McGruder agreed to pay Respondent \$5,000 in attorney fees for representation in
16 the criminal matter through the preliminary hearing and arraignment in the superior court, \$1,500
17 in attorney fees for any pre-trial motion, and \$1,500 a day for trial. Thereafter, McGruder
18 entered into a plea bargain and was subsequently convicted.

19 4. On or about April 28, 2008, McGruder executed a Durable Power of Attorney
20 appointing Respondent as his agent to receive disbursements and bequests from the Estate of
21 Theodore McGruder, to deposit the entrusted funds in a trust account on his behalf, and to
22 disburse funds from the trust account upon McGruder's written instructions. McGruder agreed
23 to pay Respondent \$2,500 in attorney fees for these services.

24 5. On or about May 27, 2008, Respondent opened a checking account in the name of
25 "Mark McGruder, Sherri L. Garthwaite POA" at Wells Fargo Bank, account number
26 6044057237 ("POA account"), on behalf of McGruder and deposited approximately \$143,779
27 received from the Estate of Theodore McGruder in the POA account. On or about May 29,
28

1 2008, Respondent deposited in the POA account approximately \$6,852 she received on behalf of
2 McGruder from a child support refund.

3 6. Between in or about May 2008 and October 2008, Respondent withdrew funds from
4 the POA account upon written instructions from McGruder. However, Respondent also
5 withdrew funds from the POA account without written instructions from McGruder totaling
6 approximately \$10,900, including, but not limited to, the following:

7	<u>DATE</u>	<u>AMOUNT (\$)</u>
8	06/06/08	250
9	06/06/08	2,500
10	06/16/08	1,300
11	07/03/08	500
12	07/03/08	3,000
13	07/21/08	500
14	08/14/08	150
15	10/30/08	1,000
16	12/31/08	1,000
17	01/10/09	500
18	01/28/09	400
19	01/28/09	600
20	02/02/09	1,000

21 7. Of the funds which Respondent disbursed from the POA account without McGruder's
22 express authorization, approximately \$9,700 she disbursed to herself as fees to which she was
23 not entitled or as reimbursement of costs for which she had not accounted to McGruder.

24 8. By failing to maintain the funds received on behalf of McGruder in the POA account
25 or other account designated as a trust account, Respondent failed to maintain the balance of
26 funds received for the benefit of a client and deposited in a bank account labeled "Trust
27 Account," "Client's Funds Account" or words of similar import.

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NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: May 10, 2011 By: Dane C. Dauphine
Dane C. Dauphine
Supervising Trial Counsel

DECLARATION OF SERVICE

by

U.S. MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 09-O-10332

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare:

By U.S. Mail:

By U.S. Certified Mail:

- that I am not a party to the within action;
- that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service;
- that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day;
- that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit; and
- that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles...

By Overnight Delivery:

- that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS');
- that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California for overnight delivery is deposited, with delivery fees paid or provided for, with UPS that same day; and
- that in accordance with the practice of the State Bar of California for collection and processing of mail for overnight delivery by UPS, I deposited or placed for collection and overnight delivery by UPS...

By Fax Transmission:

Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

By Electronic Service:

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

on the date shown below, a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES; and STIPULATION TO ASSIGNMENT OF TRIAL JUDGE

(for U.S. Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 7160 3901 9845 4872 9849 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: DANTE S. ARDITE, Law Office 4612 W. 173rd Street, Apt. 6 Lawndale, California 90260, Electronic Notification Address.

in an inter-office mail facility regularly maintained by the State Bar of California addressed to: N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: May 10, 2011

SIGNED:

BERNARD PIMENTEL Declarant