

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: <b>10-O-08691-LMA</b>
	)	
<b>VERNA JEAN ROSS,</b>	)	
	)	<b>DECISION</b>
<b>Member No. 165744,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

In this contested disciplinary proceeding, respondent Verna Jean Ross is charged with four counts of misconduct in one client matter: (1) acts of moral turpitude; (2) failure to perform services competently; (3) failure to cooperate with the State Bar; and (4) failure to update official membership records address.

This court finds, by clear and convincing evidence, that respondent is culpable of the alleged misconduct. In view of respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, that she be placed on probation for two years and that she be actually suspended for one year.

**Significant Procedural History**

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 31, 2011. Because she did not file a response to the NDC, respondent's default was entered on December 14, 2011, and she was involuntarily enrolled inactive effective December 17, 2011.

On July 9, 2012, the court granted respondent's motion to vacate and set aside the order entering her default; vacated the default order; returned respondent to active status; and allowed her response to the NDC be filed.

On August 3, 2012, the Review Department denied the State Bar's petition for interlocutory review of this court's July 9 order.

A four-day trial was held on November 29-30, 2012, and January 31 and February 1, 2013. Deputy Trial Counsel Robert A. Henderson represented the State Bar. Attorney Jacqueline Coulter-Peebles appeared as co-counsel with respondent. After the filing of closing briefs, this matter was submitted on February 5, 2013.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on September 13, 1993, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the response to the NDC and the testimony and evidence presented at trial.

The court finds certain portions of respondent's testimony lack credibility. For example, she is not credible when she testified that her client Roma and Roma's brother wanted the check sent to Sweden. The court finds the testimonies of Roma and Roma's brother very credible.

### **Facts**

In early 2008, Nega Berhe Gebremedhin ("the decedent") died in Eritrea. On May 16, 2008, respondent on behalf of Roma Mengesha Woldemariam ("Roma"), the decedent's mother,

filed a Petition for Letters of Administration in the Estate of Nega Berhe Gebremedhin a.k.a. Nega Berhe Medhin, Alameda County Superior Court case number RP08388069 ("the petition"). The only relatives listed in the petition were Roma and Letenegus Russom Weldemicael ("Letenegus"), the decedent's widow, a resident of Eritrea.

The petition stated that decedent's probate estate consisted of \$175,000 in an account at Washington Mutual Bank (later, "Chase") in Oakland, California.

On May 22, 2008, respondent served Roma and Tesfaye Mengesha ("Tesfaye"), Roma's brother, with a notice of petition to administer estate of the decedent, which noticed a hearing on the petition to be held on July 2, 2008. Respondent also caused to be published the notice of petition three times in June 2008 in the Inter-City Express, a local legal newspaper.

On August 13, 2008, respondent filed a Statement of Due Diligence, which she executed under penalty of perjury, stating that respondent had served Letenegus by serving "Brian Shelbourn, Vice Counsel, U.S. Embassy of Asmara at 7170 Asmara Pl. Washington, D.C. 20521-7170 and U.S. Embassy of Eritrea, Consular Office, 1708 New Hampshire Ave., N.W., Washington, D.C. 20009" in accordance with Probate Code section 8113,<sup>2</sup> and, if Letenegus was married to the decedent at the time of his death, but could not be located by the time of final distribution of decedent's estate, that respondent would deposit her one-half share of the estate assets with the Alameda County Treasurer pursuant to Probate Code section 11850.

Also on August 13, 2008, respondent filed a Notice of Petition to Administer Estate for an August 14, 2008 hearing date, declaring under penalty of perjury that on July 21, 2008, she had served it by mail on Shelbourn and "Consular's Office."

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<sup>2</sup> Probate Code section 8113 provides: "If a citizen of a foreign country dies without leaving a will or leaves a will without naming an executor, or if it appears that property will pass to a citizen of a foreign country, notice shall be given to a recognized diplomatic or consular official of the foreign country maintaining an office in the United States."

Among other things, the Order for Probate, filed August 14, 2008, appointed Roma as the administrator of the decedent's estate, and ordered that the funds in the Washington Mutual account be placed into a blocked account.

On September 25, 2008, \$174,479.81 was deposited into a blocked account at Washington Mutual.

On April 30, 2009, respondent filed the Petition for First and Final Account and Report, Statutory Fees, Reimbursement of Costs, Settlement and Final Distribution and Notice of Hearing – Decedent's Estate or Trust. The Petition listed Letenegus as the decedent's spouse, but showed her address as the "U.S. Embassy of Asmara" and "U.S. Embassy of Eritrea" in Washington, D.C.

The Petition for First and Final Account and Report, Statutory Fees, Reimbursement of Costs, Settlement and Final Distribution stated in pertinent part:

Letenegus Russom Weldemicael resides in Eritrea. If her identity is unable to be verified and/or she is not able to be located, petitioner requests her fifty percent inheritance be deposited with the Alameda County Treasurer in accordance with Probate Code Section 11850(a) or the administrator be authorized to deposit the missing heirs' [sic] share of the inheritance into a blocked account until said missing heir is found to claim her inheritance. . . . Alternatively, in accordance with Probate Code § 11903 after the expiration period of five (5) years, if the individual has not come forward to claim her inheritance, the funds be distributed to the Secretary of State, Unclaimed Property Division or be deemed time barred and said monies be distributed to the other intestate heir, namely, Roma Mengesha Woldemarian [sic] or her heirs at law.

On June 25, 2009, respondent filed an Ex Parte Petition for Preliminary Distribution stating that, among other things, since the filing of the inventory and appraisal of the estate had been filed, a condominium owned by the decedent and an insurance annuity name had been located, and that "decedent's wife allegedly has made a claim against the policy." The Ex Parte Petition again showed Letenegus' address as the "U.S. Embassy of Asmara" and "U.S. Embassy of Eritrea" in Washington, D.C.

On June 30, 2009, respondent sent an e-mail to the U.S. Embassy in Asmara, Eritrea, asking for its assistance in locating Letenegus.

Thereafter, the embassy reached Letenegus.

On July 6, 2009, respondent e-mailed the embassy requesting Letenegus' cell telephone number. Attached to respondent's e-mail was a proposed declaration for Letenegus' signature.

By e-mail dated July 16, 2009, the embassy provided Letenegus' cell telephone number to respondent and advised respondent that the embassy could notarize documents.

On July 21, 2009, respondent filed a "Supplemental 1 (One) Declaration to Petition for First and Final Account and Report, Statutory Fees, Reimbursement of Costs, Settlement and Final Distribution." Respondent also filed a "Statement of Due Diligence Re: Decedent's Spouse" in which respondent stated under penalty of perjury that Letenegus had been located and was not missing, and attached a copy of the unsigned declaration for Letenegus that she had sent to the U.S. Embassy in Eritrea with a request that they contact Letenegus and ask her to come to the embassy and pick up the declaration. By signing the declaration, Letenegus would acknowledge receipt of the "petition for preliminary distribution," that she was entitled to "one-half of [the decedent's] separate property which consists of a bank account [the decedent] had with Washington Mutual . . . .," the amount of which was unspecified, and that she had no objection to "distribution of preliminary distribution to myself and Nega's mother, Roma Woldemariam."

On August 20, 2009, the court rejected respondent's Ex Parte Petition for Preliminary Distribution because the "Order needs to reflect manner of distribution to spouse as her location has not been determined."

In September 2009, respondent learned that Letenegus was represented by Robert D. Sheehan ("Sheehan"), a Michigan attorney licensed to practice in California.

On October 13, 2009, attorney Sheehan appeared at the Final Distribution hearing and represented Letenigus.

On October 13, 2009, the court issued an Order for First and Final Account and Report, Statutory Fees, Reimbursement of Costs, Settlement and Final Distribution, which was drafted by respondent. The Order approved distribution of the decedent's estate, including \$80,240.08 from the cash on hand at Chase, and "any after discovered assets" to Letenigus as "spouse" whose address was listed as "Robert D. Sheehan Esq., Sheehan & Associates, P.L.C., Attorneys and Counselors at Law, 1460 Walton Blvd., Suite 102, Rochester Hills, MI 48309." The Order further stated that "Letenigus Russom Weldemicael resides in Eritrea and upon satisfactory proof of identity said funds can be released to her."

On October 13, 2009, respondent obtained a Washington Mutual cashier's check number 2333809145 in the amount of \$81,536.24 made payable to "Letenigus Woldemicael" [sic].

On November 3, 2009, Chase issued a corrected cashier's check number 1106400158 made payable to Letenigus in the amount of \$81,536.24.

In November 2009, attorney Sheehan was trying to contact respondent to obtain the check made payable to his client Letenigus. He made multiple attempts to contact respondent, but respondent did not return his messages.

In March 2010, attorney Sheehan wrote to respondent and was willing to hold respondent harmless and bear full responsibility for delivering and distributing the check to Letenigus.

From November 2009 to October 2010, respondent did not deliver the check to Letenigus or attorney Sheehan.

In June 2010, Yohannes Russom, Letenigus' brother and a resident of Michigan, submitted a complaint against respondent to the State Bar.

On October 6, 2010, respondent visited the State Bar's office in San Francisco and was connected by telephone from the State Bar lobby to Investigator Dolores Ziegler ("Ziegler"). Respondent had a brief telephone conversation with Ziegler confirming respondent's then current address and telephone number as those listed on the State Bar membership records, and stated that she anticipated changing her address within the week and that she would duly notify membership records.

Respondent then dropped off a copy of the letter addressed to Tesfaye in Sweden, dated October 6, 2010. The letter stated that the \$81,536.24 Chase cashier's check made payable to Letenigus was enclosed. At no time did Roma or Tesfaye ask respondent to mail the check to Sweden to get the check to Letenigus in Eritrea.<sup>3</sup>

On October 6, 2010, respondent mailed the \$81,536.24 cashier's check made payable to Letenigus to Tesfaye in Sweden. It was received in Sweden on October 12, 2010.

By letter dated October 19, 2010, addressed to respondent's membership records address unchanged since April 10, 2009, a State Bar investigator requested that respondent respond in writing to Yohannes' complaint by November 2, 2010, and advised her of her duty pursuant to Business and Professions Code section 6068, subdivision (i), to cooperate with the State Bar's investigation. Respondent received the October 19, 2010 letter, but did not respond to it.

By letter dated November 2, 2010, addressed to respondent's membership records address – unchanged since April 10, 2009 – a State Bar investigator requested that respondent respond in writing to Yohannes' complaint by November 12, 2010, and advised her of her duty to cooperate with the State Bar's investigation. Respondent received the November 2, 2010 letter, but respondent again did not respond to it.

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<sup>3</sup> Respondent was not credible when testifying that Roma and Tesfaye wanted her to mail the check to Tesfaye. Tesfaye and Roma, however, were credible at trial.

On October 25, 2010, respondent told the Office of Probation through her quarterly report (which was a probation condition requirement in her prior discipline) that she had a new address effective November 1, 2010. Respondent did not change her State Bar membership records address until January 7, 2011.

Shortly after April 27, 2011, respondent received back the original \$81,536.24 cashier's check which had been sent to Tesfaye in Sweden in October 2010.

Between April 27 and June 21, 2011, respondent did not deliver the check to Letenigus.

On June 21, 2011, the State Bar took respondent's deposition to investigate this matter.

During the entire year between June 2011 and June 2012, respondent did not take any steps to deliver the estate check to Letenigus.

On June 27, 2012, respondent filed a petition to deposit funds of Letenigus Weldemicael with the Alameda County Treasurer.

In August 2012, Letenigus through her brother Yohannes, hired Patricia Scott, a California attorney, to help him recover the funds from respondent.

Between August and November 2012, respondent and attorney Scott worked together to prepare a power of attorney that respondent found acceptable to turn over the check.

Finally, on November 6, 2012, respondent turned over the check to attorney Scott.

### **Conclusions**

#### ***Count One – (§ 6106 [Moral Turpitude])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

The State Bar alleges that respondent committed acts involving moral turpitude by withholding the \$81,536.24 cashier's check from Letenigus since July 2009. It contends that the



lapse of three years is so grossly negligent so as to constitute the effective misappropriation of the funds.

Respondent argues that she did not violate section 6106 because she did not cash the check and never used it for her own benefit.

Although respondent did not act intentionally or dishonestly, she acted with gross negligence in discharging her duties. It is well settled that “[g]ross carelessness and negligence constitute violations of the oath of an attorney to faithfully discharge [her] duties to the best of [her] knowledge and ability, and involve moral turpitude as they breach the fiduciary relationship owed to clients.” (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.)

Respondent has a personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. The law is clear that where an attorney’s fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support a charge of violating section 6106. (*In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627.)

However, a conclusion that an attorney engaged in acts of moral turpitude does not necessarily follow from a finding that the attorney misappropriated client funds. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153.)

Here, respondent did not misappropriate the funds for her own benefit but she violated her fiduciary duties to her client by failing to properly and promptly distribute the funds to the surviving spouse. Her retention of the heir’s property for three years was not reasonable. Because of such gross negligence, Letenigus was deprived of her funds for three years and had to hire two attorneys to assist her to recover the funds.

Thus, the court finds that, by withholding the \$81,536.24 cashier's check for three years and violating her fiduciary duty in failing to distribute the funds, from November 2009 to

November 2012, respondent committed an act of gross negligence, a well-established basis for finding an act of moral turpitude, in willful violation of section 6106. (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15; *Simmons v. State Bar* (1970) 2 Cal.3d 719, 729.)

***Count Two - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

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

By continuing to withhold the \$81,536.24 cashier's check from Letenagus for more than three years and by sending the check to Sweden without the client's consent or instructions to do so, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

***Count Three - (§ 6068, subd. (i) [Failure to Cooperate])***

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

Respondent argues that she tried to cooperate with the State Bar by coming to the State Bar's office on October 6, 2010. However, the State Bar's letters were sent on October 19 and November 2, 2010, which were after her visit to the State Bar's office on October 6.

Therefore, by not responding to the State Bar investigator's two letters, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

***Count Four - (§ 6068, subd. (j) [Failure to Update Membership Records Address])***

Section 6068, subdivision (j), provides that it is an attorney's duty to comply with the requirements of section 6002.1. Section 6002.1 requires, in pertinent part, that members

maintain, on the official membership records of the State Bar, their current office address and telephone number; and in the event that a member's address or office telephone information changes, the member must notify the membership records office of the State Bar within 30 days. If the member does not maintain an office, then the member is required to maintain on the State Bar's membership records an address to be used for State Bar purposes.

Respondent admitted that she told the State Bar investigator and the Office of Probation in her quarterly report that she would change her official membership records address. But she failed to do so for over 30 days.

Thus, by not notifying the State Bar of an address at which she could be contacted or receive mail from the State Bar until more than 30 days after she was no longer able to receive mail at her membership records address, respondent failed to maintain on the official membership records of the State Bar the address to be used for State Bar purposes in willful violation of section 6068, subdivision (j).

#### **Aggravation<sup>4</sup>**

##### **Prior Record of Discipline (Std. 1.2(b)(i).)**

On September 29, 2009, respondent was publicly reprimanded for her misconduct in one client matter, including improper withdrawal from employment; failure to communicate; failure to promptly return client file; failure to perform services competently; failure to obey court order; and failure to maintain an official membership records address. Her probation period was extended to April 30, 2011. (State Bar Court case No. 08-O-10961.)

In August 2010, respondent was studying for the Multistate Professional Responsibility Examination ("MPRE").

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<sup>4</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent's misconduct in this proceeding occurred during the probationary period of her prior record of discipline. Aggravating circumstance of prior misconduct was magnified by the fact that respondent committed the current misconduct while on probation in prior disciplinary proceeding. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.)

**Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)**

Respondent's misconduct caused significant harm to Letenegus by depriving her of her inheritance for three years and causing her to expend additional legal fees to recover the funds.

**Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)**

Respondent demonstrated lack of insight or remorse into her wrongdoing. She does not believe that she had any role or responsibility in getting the money to Letenegus. She blamed attorney Sheehan for not doing his job right and testified that "it's not my job." She argued that she never had proper authorization from Sheehan to release the money. But, she never took any steps to obtain the authorization. At the same time, she attributed her inaction to her illness.

The court finds her arguments without merit. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

**Mitigation**

**Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)**

From November 2009 to August 2010, respondent's life was "out of control" and went on a "downward spiral." Her condo was foreclosed; she was suffering from severe depression and was recovering from bowel obstruction problems. During that period, respondent was not

being attentive to her office, was not opening her mail, and was not returning telephone calls to her office.

In the summer of 2011, respondent felt overwhelmed and suffered from anxiety and depression because of the State Bar investigation and the pending short sale of her primary residence.

In June 2012, respondent's residence was sold as a short sale and respondent started feeling better and started dealing with her State Bar issues.

Respondent suffers from emotional difficulties, financial stress and family problems. Because there is no clear and convincing evidence that all of these issues have been dealt with or that respondent no longer is suffering from the emotional difficulties, the court gives little weight to respondent's mental and financial problems in mitigation.

**Good Character (Std. 1.2(e)(vi).)**

Respondent presented eight character witnesses who attested to her good character. Six of whom are attorneys. They testified to her honesty and competence. They also believed that her misconduct was aberrational. Favorable character testimony from attorneys is entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and attorneys have a "strong interest in maintaining the honest administration of justice" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), "[t]estimony of members of the bar . . . is entitled to great consideration." (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

Respondent has performed valuable community and pro bono work. She is active in the Alameda County Bar, Charles Houston Bar Association, and her church.

Therefore, the testimony of her character witnesses and her community service and pro bono activities are given significant weight in mitigation.

## **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.)

The gravamen of respondent's misconduct is based on one client abandonment – gross negligence of her fiduciary duties to her client in a probate matter.

The applicable standards provide a broad range of sanctions ranging from suspension to disbarment. (Stds. 1.6, 1.7, 2.3, 2.4, and 2.6.)

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

Standard 1.7(a) provides that, when an attorney has one prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty, or of concealment of a material fact, must result in actual suspension or disbarment depending upon the degree of harm to the victim, the magnitude of the misconduct, and the extent to which it relates to the member's practice of law.

Standard 2.4(b) provides that a member's culpability of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or a

member's culpability of willfully failing 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 violation 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, with due regard for the purposes of discipline.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Respondent contends that she did not commit any acts of misconduct. Particularly, she argues that she never cashed the estate check or converted it for her personal benefit or use. She merely held the check until "such time as credible proof was available to release the check." Thus, she requests that the court exercise leniency in the recommended level of discipline.

The State Bar acknowledges that respondent performed services in the probate matter but that it was only at the end of her responsibilities (final distribution of the estate) that respondent failed. The State Bar urges disbarment, arguing that respondent has manifested complete disregard for her duties as an attorney.

The court looks to comparable case law for guidance and finds *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366 and *Lister v. State Bar* (1990) 51 Cal.3d 1117 to be instructive.

In *Layton*, an attorney was actually suspended for six months, with a two-year stayed suspension and three-year probation, for his one count of failure to perform services competently in a single probate matter. There, the court found that in both his prior and current matters, the

attorney failed to apply the diligence necessary to bring the two estates to closure for over five years without justification. In aggravation, the attorney harmed the beneficiaries in that they incurred attorney fees and expenses in seeking to remove the attorney as executor and they were deprived for an unwarranted period of time of the use of the money that was eventually distributed to them.

Similarly, in this disciplinary matter, respondent failed to diligently perform services in a single probate matter, causing an unwarranted delay of three years in the administration of the estate. But her misconduct was more serious than that of the attorney in *Layton* in that she was also found culpable of committing an act of moral turpitude, failure to cooperate with the State Bar and failure to update her membership records address.

In another analogous case, *Lister*, an attorney kept an \$18,000 check from the Internal Revenue Service in his file, which belonged to his clients, for two and one-half years. The court did not find misappropriation but concluded that he failed to use his best judgment and learning in accomplishing the settlement with reasonable speed. Because he failed to pursue his clients' estate matter, it was finally turned over to another attorney to handle. He had a prior disciplinary record but it was minor (private reproof) and remote in time. The attorney was actually suspended for nine months with three years' stayed suspension and three years' probation for his misconduct in three client matters, which included his failure to communicate with clients, failure to return client file, failure to perform services competently, and failure to cooperate with the State Bar.

Similarly, respondent kept the \$81,536 estate check for three years, claiming that she was waiting for authorization to distribute it to the heir. While such an act of gross negligence did not constitute misappropriation or dishonesty, it did amount to a finding of moral turpitude due



to her failure to discharge her duties to the best of her knowledge and ability. Unlike *Lister*, whose prior discipline was remote in time, respondent was disciplined as recently as in 2009.

Therefore, respondent's blatant disregard of her professional responsibilities weighs heavily in assessing an appropriate level of discipline. Her inactions caused the matter to drift for three years, resulting in substantial harm to the heir. Yet, disbarment would clearly be excessive, would not further the objectives of attorney discipline and would be punitive in nature.

Based on respondent's misconduct, the case law, and the mitigating and aggravating evidence, the court concludes that the degree of discipline in this current proceeding should be greater than that was imposed in *Layton* and *Lister*. Placing respondent on an actual suspension for one year would be appropriate to protect the public and to preserve public confidence in the profession.

### **Recommendations**

It is recommended that respondent Verna Jean Ross, State Bar Number 165744, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>5</sup> for a period of two years subject to the following conditions:

1. Respondent Verna Jean Ross is suspended from the practice of law for the first one year of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person

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<sup>5</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

### **Multistate Professional Responsibility Exam**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

**California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**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.

Dated: May \_\_\_\_, 2013

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LUCY ARMENDARIZ  
Judge of the State Bar Court