

FILED

AUG 18 2010
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

**REVIEW DEPARTMENT OF THE STATE BAR COURT
IN BANK**

In the Matter of)	No. 10-Q-01322
SHELLI J. LEWIS-GONZALES,)	RECOMMENDATION ON
Member of the State Bar.)	RESIGNATION
_____)	

Shelli J. Lewis-Gonzales was admitted to practice law in California on June 1, 1994, and has no prior record of discipline. After disciplinary charges were filed against her for misappropriating over \$90,000 from a client, Lewis-Gonzales submitted her resignation with charges pending. To date, she has failed to repay her client.

Based on the grounds set forth in rule 9.21(d) of the California Rules of Court,¹ we recommend that Lewis-Gonzales's resignation not be accepted. Due to her failure to repay her client or account for the funds, we find that acceptance of her resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

I. PROCEDURAL HISTORY

On September 24, 2009, the Office of the Chief Trial Counsel (State Bar) filed a formal notice of disciplinary charges against Lewis-Gonzales (case no. 07-O-14877), alleging three counts of professional misconduct in a single client matter. Lewis-Gonzales filed her answer to the charges on October 19, 2009. The trial was set to begin on February 23, 2010.

¹ Unless otherwise noted, all further references to "rule(s)" are to these rules.

On February 12, 2010, 11 days before trial, Lewis-Gonzales filed: (1) her resignation with charges pending; (2) a stipulation to facts and conclusions of law with the State Bar, including the misconduct in the pending case as well as in two cases not yet filed; and (3) her affidavit of compliance with rule 9.20. On February 22, 2010, the hearing judge vacated the trial date and abated the discipline case pending the acceptance or rejection of the resignation.

On April 12, 2010, the State Bar filed a report recommending that Lewis-Gonzales's resignation be accepted. (Rules Proc. of State Bar, rule 658(b).) Although given an opportunity to file a response to the State Bar's report, Lewis-Gonzales did not do so.

On June 16, 2010, we issued an order informing the parties that we were considering recommending that the resignation not be accepted because, although Lewis-Gonzales admitted misappropriating over \$90,000, the stipulation failed to state whether she still possesses any of the funds or why she has not otherwise made any restitution. We ordered the parties to address these issues.

Lewis-Gonzales did not file a response to our order. The State Bar filed a supplemental report, verifying that Lewis-Gonzales has neither paid any restitution nor accounted for the funds. The State Bar also confirmed that a Client Security Fund (CSF) claim by the former client for reimbursement of the misappropriated funds is pending. The maximum CSF payout on any claim is \$50,000. (Rules of the State Bar, Title 3, Div. 4, Chapter 1, Client Security Fund, rule 3.434(A).) Accordingly, if CSF pays the maximum, Lewis-Gonzales's client would still be owed over \$40,000. Nevertheless, the State Bar asserts that the resignation should be accepted since Lewis-Gonzales acknowledged her misconduct in the stipulation, and also, if the resignation is rejected and prosecution of the disciplinary case becomes necessary, CSF would delay paying the client until final disposition of the discipline case.

II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)

We have considered Lewis-Gonzales's resignation in light of the grounds set forth in rule 9.21(d). Below is a summary of the relevant information as to each ground:

1. Whether the preservation of testimony is complete.

Perpetuation of testimony is unnecessary since Lewis-Gonzales has entered into a stipulation to facts and conclusions of law that resolves all disciplinary matters.

2. Whether Lewis-Gonzales committed the unauthorized practice of law after she submitted her resignation.

The State Bar reports that there is no evidence that Lewis-Gonzales continued to practice law or held herself out as entitled to practice law after she tendered her resignation.

3. Whether Lewis-Gonzales performed the acts specified by rule 9.20(a)-(b).

The State Bar reports that it has no "direct evidence" showing whether Lewis-Gonzales performed the acts required by rule 9.20(a)-(d). However, the State Bar believes that Lewis-Gonzales has notified her clients and returned "active" files since it has not received any complaints from clients, which it believes it would have if she had not done so.

We note that Lewis-Gonzales declared in her affidavit of compliance with rule 9.20 that she had "no papers or other property to which clients were entitled" as of February 12, 2010. Yet, in the stipulation filed the same day, she admitted that she failed to release the files in two of the three client matters. More troubling, Lewis-Gonzales neglected to address or acknowledge the more than \$90,000 she has failed to return to her client. Neither she nor the State Bar provided any explanation for these contradictions.

4. Whether Lewis-Gonzales provided proof of compliance with rule 9.20(c).

Lewis-Gonzales filed her affidavit of compliance on February 12, 2010.

5. Whether the Supreme Court has filed a disbarment order.

The Supreme Court has not filed a disbarment order.

6. Whether the State Bar Court has filed a decision recommending disbarment.

The State Bar Court has not filed a decision recommending Lewis-Gonzales's disbarment. The discipline case was abated pending the outcome of this resignation matter. However, if the State Bar were to prevail on the pending disciplinary charges, Lewis-Gonzales most likely would face a disbarment recommendation. (See Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 2.2(a) [misappropriation shall result in disbarment unless amount is insignificantly small or most compelling mitigating circumstances clearly predominate].)

7. Whether Lewis-Gonzales previously resigned or has been disbarred and reinstated to the practice of law.

Lewis-Gonzales has not previously resigned or been disbarred.

8. Whether Lewis-Gonzales entered stipulation with the State Bar as to facts and conclusions of law regarding the pending disciplinary matter.

Lewis-Gonzales has stipulated to the facts and conclusions of law in all disciplinary matters pending against her. The stipulation included the current case and two additional disciplinary cases that have not been filed with the State Bar Court. In total, the stipulation encompassed three client matters and nine counts of misconduct. Lewis-Gonzales pleaded nolo contendere to the facts and violations in the stipulation, but also acknowledged that the plea is considered the same as an admission for purposes of attorney discipline. (Rules Proc. of State Bar, rule 132(b)(4).)

The most serious culpability finding is based on Lewis-Gonzales's admission of misappropriating over \$90,000 from a client. In addition to her misappropriation, Lewis-Gonzales stipulated to the following violations: (1) one count of Business and Professions Code section 6068 subdivision (m) (failure to communicate with a client); (2) one count of rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in a trust account); (3) two counts of rule 3-110(A) (failure to perform legal services competently); (4) two counts of rule 4-100(B)(3) (failure to render an accounting to the client); and (5) two counts of rule 3-700(D)(1) (failure to release the file to the client).

9. Whether the acceptance of Lewis-Gonzales's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.

Lewis-Gonzales has committed serious professional misconduct. Although she stipulated to that misconduct, she has otherwise failed to participate in this resignation proceeding. She has not offered any explanation for her theft or her failure to make restitution. As the State Bar notes, even if she does not have the ability to fully repay her client, she has not explained her failure to pay any amount at all. We find that the acceptance of Lewis-Gonzales's resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

We disagree with the State Bar's assertion that the public harm in this case is borne solely by the client. The legal profession is harmed immeasurably by an attorney's unexplained and unreimbursed theft of over \$90,000. As the Supreme Court has often stated, misappropriation of client funds is a grievous breach of an attorney's professional ethics that not only harms the individual client, but also endangers public confidence in the legal profession. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128.) Lewis-Gonzales has in effect enriched herself, leaving her client and the profession to deal with the consequences.

In this case, Lewis-Gonzales would benefit from a resignation by evading the opprobrium of her potential disbarment. She should not be entitled to do so when she has misappropriated over \$90,000, offered no explanation for the theft, and failed to repay any of the money according to her means. To allow Lewis-Gonzales to resign under these circumstances would undermine public confidence in the disciplinary system and the legal profession.

III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Shelli J. Lewis-Gonzales, State Bar number 170161.



Presiding Judge

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 Los Angeles, on August 18, 2010, I deposited a true copy of the following document(s):

RECOMMENDATION ON RESIGNATION FILED AUGUST 18, 2010

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

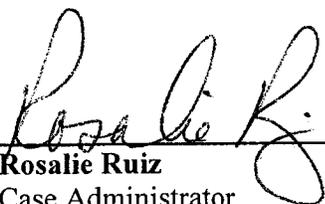
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

PAUL J. VIRGO
PO BOX 67682
LOS ANGELES, CA 90067 - 0682

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

ELI D. MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 18, 2010.



Rosalie Ruiz
Case Administrator
State Bar Court