

**FILED**

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**DEC 27 2010**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**REVIEW DEPARTMENT OF THE STATE BAR COURT**

**IN BANK**

In the Matter of	)	<b>10-Q-07797</b>
	)	
<b>RUSSELL EUGENE HLYWA</b>	)	<b>RECOMMENDATION ON</b>
	)	<b>RESIGNATION</b>
Member No. 123780	)	
	)	
<u>A Member of the State Bar.</u>	)	

On August 24, 2010, Russell Eugene Hlywa submitted his resignation with disciplinary charges pending. In light of the grounds set forth in rule 9.21(d) of the California Rules of Court,<sup>1</sup> we recommend that Hlywa's resignation be accepted. We make this recommendation based on the following: (1) Hlywa stipulated to the facts and conclusions of law regarding the pending disciplinary matters; (2) he repaid his client almost all the money he misappropriated; (3) the amount of the remaining money owed is modest (\$100) and, if necessary, can be enforced as a money judgment; and (4) he has cooperated in this resignation proceeding. Under the circumstances, we conclude that the acceptance of his resignation would be consistent with the need to protect the public, the courts, and the legal profession.

**I. BACKGROUND**

Hlywa was admitted to practice law in California on July 7, 1986, and has been previously disciplined. By order filed October 15, 1998, he was suspended for one year, execution of which was stayed, and he was placed on probation for two years on conditions, including seven months actual suspension. The records of the State Bar Court show that Hlywa was disciplined in this prior case for his: (1) failure to communicate with a client regarding the

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<sup>1</sup> All further references to rules are to these rules unless otherwise noted.

status of her case, (2) failure to cooperate with the State Bar in the investigation of the matter, and (3) conviction in 1997 for one count of petty theft in violation of Penal Code section 488, a misdemeanor which inherently involves moral turpitude.<sup>2</sup>

There are currently two disciplinary matters pending against Hlywa that have not been filed in the State Bar Court as of yet. As part of this resignation proceeding, the parties entered into a stipulation to facts and conclusion of law regarding these cases.

In the first matter, Hlywa was hired to represent a husband in a dissolution case. The parties to the dissolution agreed to sell their home and to place the net proceeds in Hlywa's trust account pending further order of the court or agreement of the parties. The home was sold in 2008 and \$325,246.25 was deposited into Hlywa's trust account. Over the course of the next year, Hlywa misappropriated \$108,100 because he was experiencing financial problems. Between October 2009 and April 2010, Hlywa repaid \$108,000 as "partial restitution." He stipulated that his misappropriation was an act of moral turpitude. (Bus. & Prof. Code, § 6106.)

In the second matter, Hlywa represented a family of four in a personal injury case. Although he performed some work for his clients he ultimately failed to respond to discovery which resulted in evidentiary sanctions against his clients, failed to convey a written settlement offer to the clients, and failed respond to a summary judgment motion which resulted in judgment against his clients. Hlywa stipulated that he failed to perform legal services competently, failed to communicate the settlement offer, and failed to keep his clients reasonably informed of significant developments in their case. (Rules Prof. Conduct, rules 3-110(A) and 3-510, Bus. & Prof. Code, § 6068, subd. (m).)

On October 3, 2010, the State Bar filed a report regarding Hlywa's resignation and recommended that the resignation be accepted. Hlywa did not file a response to the report. The State Bar reports that there is one claim for reimbursement currently pending with the Client Security Fund (CSF). That claim was filed by the client in the first matter seeking

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<sup>2</sup> We take judicial notice of the State Bar Court records regarding this prior discipline and direct the clerk to include a copy in the record of this resignation proceeding.

reimbursement for the misappropriated money. As indicated above, Hlywa repaid all but \$100 of the principal amount of the money.

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

We have considered Hlywa'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.**

The State Bar reports that perpetuation of testimony is unnecessary since the parties have stipulated to the facts and conclusions of law regarding the pending disciplinary matters.

### **2. Whether Hlywa committed the unauthorized practice of law after he submitted his resignation.**

The State Bar reports that it has no information suggesting that Hlywa continued to practice law and/or held himself out as entitled to practice law since he tendered his resignation.

### **3. Whether Hlywa performed the acts specified by rule 9.20(a)-(b).**

The State Bar reports that it has no information from clients, opposing counsel or the courts that would give rise to an investigation on this issue.

### **4. Whether Hlywa provided proof of compliance with rule 9.20(c).**

On October 13, 2010, Hlywa filed his affidavit of compliance with rule 9.20.

### **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 Hlywa's disbarment.

### **7. Whether Hlywa previously resigned or has been disbarred and reinstated to the practice of law.**

Hlywa has not previously resigned or been disbarred.

### **8. Whether Hlywa entered stipulation with the State Bar as to facts and conclusions of law regarding the pending disciplinary matter.**

Hlywa entered into a stipulation as to facts and conclusions of law regarding the pending disciplinary matters, which was filed on October 1, 2010.

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

Hlywa has stipulated to the facts and conclusions of law as to the disciplinary matters pending against him. This stipulation provides a complete account of the nature and extent of Hlywa's professional misconduct and will be made public through the State Bar's website and as part of Hlywa's membership record. Thus, the public and any future employer, licensing agency or other jurisdiction would not be misled regarding his disciplinary record.

Further, Hlywa has cooperated in this resignation proceeding and has complied with rule 9.20. We recognize that Hlywa's misappropriation was serious and could result in his disbarment. (*Kelly v. State Bar* (1988) 45 Cal.3d 649, 656 [misappropriation generally warrants disbarment unless clearly extenuating circumstances are present].) However, he repaid all but a modest amount of the money relatively promptly. In view of the amount of money at issue and the other circumstances present in this resignation matter, we conclude that public confidence in the discipline system would not be undermined by requiring Hlywa to pay the remaining sum owed as part of the order accepting his resignation and, if necessary, enforcing that order under Business and Professions Code section 6140.5, subdivision (d).

In sum, we have considered the nature and extent of the misconduct set forth in the stipulation, Hlywa's compliance with rule 9.20, his other cooperation in this resignation matter, and the amount of restitution owed and the authority to enforce it as a money judgment. Under the circumstances, we find that permitting Hlywa to resign would be consistent with the need to protect the public, the courts, and the legal profession.

**III. RECOMMENDATION**

We recommend that the Supreme Court accept the resignation of Russell Eugene Hlywa, State Bar number 123780.

We also recommend that Hlywa be ordered to make restitution to James Kesterson in the amount of \$100 plus 10 percent interest per year from June 18, 2009 (or reimburse the Client Security Fund, to the extent of any payment from the fund pursuant to this order, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

**REMKE**

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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 of California. 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 December 27, 2010, I deposited a true copy of the following document(s):

ORDER FILED DECEMBER 27, 2010

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

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

RUSSELL E. HLYWA  
LAW OFFICE OF RUSSELL E HLYWA  
440 E COMMONWEALTH AVE  
FULLERTON, CA 92832

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- ☒ 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 December 27, 2010.



Milagro del R. Salmeron  
Case Administrator  
State Bar Court