

PUBLIC MATTER

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DEC 15 2011

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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

14 In the Matter of: 15 16 RICHARD ANTHONY LIMA, 17 No. 184783, 18 A Member of the State Bar)))))	Case No. 11-O-12911 NOTICE OF DISCIPLINARY CHARGES
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NOTICE - FAILURE TO RESPOND!

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

- 21 (1) YOUR DEFAULT WILL BE ENTERED;
- 22 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- 23 (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;
- 24 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN 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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The State Bar of California alleges:

JURISDICTION

1. Richard Anthony Lima ("respondent") was admitted to the practice of law in the State of California on December 9, 1996, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 11-O-12911
Rules of Professional Conduct, rule 3-700(A)(2)
[Improper Withdrawal from Employment]

2. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(A)(2), by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client, as follows:

3. On or about September 11, 2007, Carolyn Harr ("Harr") hired respondent to complete her marital dissolution (*In re the Marriage of Harr*, Madera County Superior case number MFL004706), and to obtain restitution from her husband ("Carl") based on Carl's felony domestic violence conviction (*People v. Harr*, Madera County Superior Court case number MCR027241).

4. Pursuant to their written fee agreement, between on or about September 13, 2007, and on or about February 25, 2010, Harr paid respondent \$2,350 as fees for the marital dissolution, and \$1,950 for the restitution case.

5. On or about April 23, 2008, Carl was sentenced and the issue of restitution was reserved by the court. Carl appealed, he was resentenced, and remittitur was filed on or about December 10, 2009.

6. On or about December 7, 2009, the Madera County Office of the District Attorney filed a Notice of Restitution Hearing Setting and People's Request for Restitution Hearing and Points and Authorities in Support Thereof.

7. Between on or about December 7, 2009, and on or about December 24, 2010, respondent took no action to obtain restitution for Harr.

1 8. Effective December 24, 2010, respondent became ineligible to practice law and
2 remains ineligible to date.

3 9. Not before January 25, 2011, was Harr aware of respondent's ineligibility to practice
4 law effective December 24, 2010.

5 10. On or about February 24, 2011, the State Bar received Harr's complaint against
6 respondent.

7 11. On or about June 13, 2011, the court ordered Carl to pay Harr \$8,910.44 in
8 restitution.

9 12. At no time did respondent take any action toward obtaining restitution for Harr.

10 13. By taking no action on behalf of Harr to obtain restitution, respondent abandoned
11 Harr as of December 24, 2010, and thereby failed, upon termination of employment, to take
12 reasonable steps to avoid reasonably foreseeable prejudice to his client.

13 COUNT TWO

14 Case No. 11-O-12911
15 Rules of Professional Conduct, rule 3-700(D)(2)
16 [Failure to Refund Unearned Fees]

17 14. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by
18 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

19 15. The allegations of Count One are incorporated by reference.

20 16. By never refunding any portion of the fee Harr paid to respondent to obtain restitution
21 when respondent took no action whatsoever to do so, respondent failed to refund promptly any
22 part of a fee paid in advance that has not been earned.

23 COUNT THREE

24 Case No. 11-O-12911
25 Rules of Professional Conduct, rule 3-110(A)
26 [Failure to Perform with Competence]

27 17. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by
28 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as
follows:

1 18. The allegations of Count One are incorporated by reference.

2 19. On or about September 11, 2007, respondent signed a Substitution of Attorney in *In*
3 *re the Marriage of Harr* which was filed September 12, 2007.

4 20. At the time Harr hired respondent, she made him aware of a trial setting conference in
5 *In re the Marriage of Harr* calendared for October 2, 2007, both by specifically discussing it
6 with him and providing him with all the pleadings filed by the parties and notices issued by the
7 court in *In re the Marriage of Harr*. Respondent told Harr that he would continue the trial
8 setting conference and that she did not need to appear on October 2, 2007.

9 21. On September 12, 2007, respondent was served with a Notice of Motion to modify
10 Harr's spousal support which motion was calendared to be heard on October 31, 2007.

11 22. Between on or about September 15, 2007, and on or about October 2, 2007,
12 respondent did not attempt to continue the October 2, 2007 trial setting conference in *In re the*
13 *Marriage of Harr*.

14 23. Neither respondent or Harr appeared at the October 2, 2007 trial setting conference in
15 *In re the Marriage of Harr*.

16 24. Respondent did not file any opposition to the motion to modify Harr's spousal
17 support.

18 25. At the hearing conducted on or about October 31, 2007, on Carl's motion to modify
19 temporary spousal support, Harr's spousal support was reduced from \$1,200 per month to zero.

20 26. On or about February 21, 2008, trial in *In re the Marriage of Harr* commenced.
21 Respondent did not attempt to submit full and accurate evidence regarding community debts,
22 Harr's income and expenses, Carl's hidden assets and income, the respective retirement accounts
23 of Harr and Carl, and the separate property nature of certain gifts – all of which Harr had
24 participated in obtaining for respondent and specifically requested be introduced into evidence.

25 27. Also on or about February 21, 2008, in respondent's presence, the court ordered that
26 respondent serve and file a declaration of disclosure no later than March 6, 2008. Respondent
27 did not serve or file a declaration of disclosure.

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1 28. On or about March 19, 2008, trial resumed. Respondent represented to the court that
2 he would submit a declaration re: attorney's fees at least five days prior to the next day of trial
3 scheduled for May 21, 2008. Respondent did not file any declaration prior to May 21, 2008.

4 29. On May 21, 2008, respondent told the court that he was not aware of any declaration
5 that he was supposed to file.

6 30. During trial – which concluded on or about July 3, 2008 – and immediately thereafter,
7 Harr asked respondent why all the evidence regarding community debts, Harr's income and
8 expenses, Carl's hidden assets and income, claimed separate property, and the respective
9 retirement accounts of Harr and Carl was not being presented and requested that the issues of
10 community debt allocation, spousal support, hiding of community assets and income, claimed
11 separate property, and the retirement accounts be addressed. Respondent assured Harr that all
12 would be addressed in post-trial briefs.

13 31. On or about July 3, 2008, in respondent's presence, the court verbally ordered
14 respondent to file a post-trial brief within 20 days of receipt of trial transcripts. Thereafter, the
15 order was reduced to a minute order.

16 32. Thereafter, respondent told Harr that he would move to "re-open the case" to address
17 the evidence which he did not attempt to introduce.

18 33. On or about November 6, 2008, Harr gave respondent \$300 toward the cost of the
19 transcript.

20 34. On or about December 4, 2008, Harr gave respondent an additional \$300 toward the
21 cost of the transcript.

22 35. On or about January 21, 2009, the court mailed notice to respondent of a Review on
23 Briefing Schedule Hearing to take place on February 3, 2009. Respondent received the court's
24 notice shortly after January 21, 2009.

25 36. On February 3, 2009, respondent did not appear in court for the Review on Briefing
26 Schedule Hearing.

27 37. On or before October 30, 2009, respondent received the trial transcript.
28

1 38. By motion filed March 9, 2010, Carl's counsel sought attorney's fees as a sanction
2 against respondent for delaying the proceedings. However, Carl's counsel cited *Marriage of*
3 *Daniels* (1993) 19 Cal.App.4th 1102, at 1110, for the proposition that "[T]he fees and costs are
4 awarded against the party even where the sanctionable conduct lies solely with a party's
5 counsel."

6 39. At a hearing on or about April 15, 2010, in respondent's presence, the court verbally
7 ordered that Harr pay \$6,000 in attorney's fees to Carl's attorney incurred because of
8 respondent's delay in filing the post-trial brief, and that respondent pay \$500 as sanctions.
9 Thereafter, the order was reduced to a minute order.

10 40. Thereafter and to date, respondent took no action to augment the record. Nor did
11 respondent take any post-trial action on behalf of Harr, other than submitting a post-trial brief on
12 or about April 26, 2010.

13 41. On or about June 17, 2010, in respondent's presence, the court ordered respondent to
14 file a response re: attorney's fees on or before July 16, 2010.

15 42. Thereafter, respondent did not file any response re: attorney's fees.

16 43. On or about August 2, 2010, the court issued a written order regarding the \$6,000
17 attorney's fees sanctions against Harr and \$500 sanctions against respondent. Respondent
18 received the order shortly after August 2, 2010. Respondent has not, to date, made any payment
19 toward the sanctions.

20 44. On or about October 15, 2010, the court issued its tentative decision in *In re the*
21 *Marriage of Harr* and ordered that Harr pay an additional \$500 in attorney's fees to Carl's
22 counsel for "a failure to appear causing Husband to incur unnecessary fees."

23 45. By not seeking to continue the October 2, 2007 trial setting conference after he had
24 told Harr he would do so and telling Harr that she did not need to appear on October 2, 2007, by
25 not appearing at the October 2, 2007 trial setting conference although he had not in fact sought to
26 continue it, by not filing any opposition to the motion to modify child support, by not attempting
27 to introduce full, accurate, and material evidence which was available to him by the time of trial,

1 by not filing a declaration of disclosure, by not appearing at the duly noticed February 3, 2009
2 hearing, by not submitting a declaration re: attorney's fees, and by not attempting to augment the
3 record or take any post-trial action on behalf of Harr, other than submitting an untimely post-trial
4 brief, and not filing a response re: attorney's fees, respondent recklessly and repeatedly failed to
5 perform legal services in *In re the Marriage of Harr* with competence.

6 COUNT FOUR

7 Case No. 11-O-12911
8 Business and Professions Code, section 6106
9 [Moral Turpitude – Misrepresentations to a Client]

10 46. Respondent wilfully violated Business and Professions Code, section 6106, by
11 committing an act involving moral turpitude, dishonesty or corruption, as follows:

12 47. The allegations of Counts One and Three are incorporated by reference.

13 48. By telling Harr during trial that evidence that he did not attempt to introduce at trial
14 would be addressed in post-trial briefs when respondent knew that post-trial briefs may not refer
15 to documents or testimony not in the trial record, respondent committed an act involving moral
16 turpitude, dishonesty or corruption.

17 COUNT FIVE

18 Case No. 11-O-12911
19 Business and Professions Code, section 6068(m)
20 [Failure to Respond to Client Inquiries]

21 49. Respondent wilfully violated Business and Professions Code, section 6068(m), by
22 failing to respond promptly to reasonable status inquiries of a client in a matter in which
23 respondent had agreed to provide legal services, as follows:

24 50. The allegations of Counts One and Three are incorporated by reference.

25 51. Between on or about January 12, 2009, and on or about July 21, 2010, Harr made at
26 least seven office appointments with respondent at which he did not appear.

27 52. Between on or about January 12, 2010, and on or about January 8, 2011, Harr
28 telephoned respondent at least eight time and left messages for him requesting return calls.
Respondent did not return Harr's calls.

1 53. By not appearing for at least seven office appointments with Harr between on or
2 about January 12, 2009, and on or about July 21, 2010, and by not responding to at least eight
3 telephone messages from Harr between on or about January 12, 2010, and on or about January 8,
4 2011, respondent failed to respond promptly to reasonable status inquiries of a client in a matter
5 in which respondent had agreed to provide legal services.

6 **NOTICE - INACTIVE ENROLLMENT!**

7 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR
8 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE
9 SECTION 6007(e), THAT YOUR CONDUCT POSES A SUBSTANTIAL
10 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO
11 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN
12 INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
13 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
14 RECOMMENDED BY THE COURT.**

15 **NOTICE - COST ASSESSMENT!**

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

21 Respectfully submitted,

22 THE STATE BAR OF CALIFORNIA
23 OFFICE OF THE CHIEF TRIAL COUNSEL

24 DATED: December 15, 2011

25 By: Sherrie B. McLetchie
26 Sherrie B. McLetchie
27 Deputy Trial Counsel

28 BRUCE H. ROBINSON
ASSIGNED DEPUTY TRIAL COUNSEL

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DECLARATION OF SERVICE BY CERTIFIED AND REGULAR MAIL

CASE NUMBER: 11-O-12911

I, the undersigned, am over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare 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 San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, **Article No.: 7160 3901 9849 1845 9956** and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

**Richard A. Lima
PO Box 28402
Fresno, CA 93729**


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 San Francisco, California, on the date shown below.

DATED: December 15, 2011

Signed: _____


Mazie Yip
Declarant