

NOV 27 2013

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In the Matter of:

Case No.: 12-O-10185

DAVID CURTIS HOLLINGSWORTH

No. 203887

FIRST AMENDED ANSWER

A Member Of The State Bar

JURISDICTION

1. Without waiving any defense, Jurisdiction as stated in the Notice of Disciplinary Charges is not contested. Counsel for the State Bar sent two Notices which appear to be identical - one sent regular mail, the other sent certified mail Return Receipt Requested. I was not present when the notices arrived in the post box used by my office nor did I sign the return receipt for the Notices. Neither notice had attached to it a signed "DECLARATION OF SERVICE BY REGULAR AND CERTIFIED MAIL".

COUNT 1

Alleged Violation Of Business And Professions Code, Section 6068(1)

[Alleged Failure To Comply With The Conditions Attached To An Agreement In Lieu Of Discipline]

2A. Failing to timely submit three (3) quarterly reports by the due dates of January 10, 2013, April 10, 2013 and July 10, 2013. -- DENY

1 2B. Failing to submit the final report by the due date of September 19, 2013-- DENY

2 2C. Failing to attend Ethics school by the due date of September 19, 2013--DENY; and

3 2D. Failing to attend Trust Fund Accounting school by the due date of September 19, 2013--
4 DENY

5
6 COUNT 2

7 Alleged Violation Of Rules of professional conduct, rule 4-100(A)

8 [Alleged Failure To Deposit Client Funds in Trust Account]

- 9 3. From on or about April 25, 2011 through or on about July 21 2011, Respondent received
10 on behalf of Respondent's client, Connie Gatewood, two checks totaling \$1,900.
11 Respondent failed to deposit \$1,900 in funds received for the benefit of the client in a bank
12 account labeled "Trust Account," "Client's Funds Account" or words of similar import, in
13 willful violation Rules of Professional Conduct, rule 4-100(A). – **DENY**

14
15 **AFFIRMATIVE DEFENSES:**

- 16 a) I performed all the acts that were required under my Agreement In Lieu Of Discipline with
17 the State Bar (hereafter, "Agreement"),.
18 b) My Agreement with the State Bar did not require the actions alleged.
19 c) The act or omission to act on my part that the State bar alleges that I should have done, as a
20 matter of law, is not required.
21 d) The term of the Agreement that describes the duty that the State Bar alleges I did not
22 comply with is **vague and ambiguous** in that I didn't know if I should wait to send out my
23 quarterly report until the quarter that I am certifying my compliance in was over first before
24 I certified it, OR if I should Certified my compliance for the entire quarter BEFORE the
25 quarter was over.
26 e) My actions that I performed were materially and substantially in compliance with
27 agreement (hyper-technical violation but still there was substantial compliance). In the
28 alternative, any deviations in my acts or omission(s) to act that differs from the
expectations that the State Bar's might have under the Agreement was de minimus.

- 1 f) If any act or omission to act on my part was required under my Agreement, was not done
2 intentionally, i.e. the computer or software responsible for the office calendaring system
3 malfunctioned or the employee responsible for ensuring the reminder to issue the quarterly
4 report timely made an error in inputting the reminder in our new cloud based calendar
5 system (www.goclio.com), which we did in fact upgrade our calendaring system during the
6 relevant dates mention in the complaint by gradually changing over from the local server
7 based system Abacus to an internet cloud based system, Clio.
- 8 g) On at least one occasion, was physically ill and unable to comply on the date due.
- 9 h) The term(s) of my Agreement, even if *arguendo*, my submission of the first three (3)
10 quarterly reports were untimely, the State Bar **waived** any right to now complain of their
11 untimeliness due to the person who receives my reports told me that 'timeliness' of my
12 reports was no longer a problem. In the alternative, by the State Bar telling the past three
13 reports were not a problem, the State Bar was informing me that they were modifying the
14 Agreement slightly to include a grace period "window" of which, if the reports are received
15 within that grace period window, it was not a problem that the State Bar would come back
16 and complain about.
- 17 i) All actions alleged not performed were attempted in good faith but for circumstances
18 beyond my control, I was not able to comply with the Agreement, i.e. I made three good
19 faith attempts at attending the Ethics school and the Trust Fund Accounting School in Los
20 Angeles to no avail. On my first attempt, Fresno Superior Court scheduled a trial which
21 conflicted with the firm time set for the schools but at the time there were plenty of time to
22 complete the schools before the agreement period ended in September. On my second
23 attempt to drive from Fresno to Los Angeles to attend the schools, my radiator
24 malfunctioned and I broke down on the way. I was told that I had to reschedule the schools.
25 My third attempt, I was forced to stop along the way on the Highways in Los Angeles
26 several times for significant periods of time due to the road handlers for Cal Trans. I had
27 left Fresno at 4AM with plenty of time to get to the schools. I was anticipating delays in
28 traffic and had left with almost 2 hours to spare. However, because of some extensive
work that was being done on the highway and overpasses by Caltrans, I saw that even with
that buffer, I was probably going to be a little late. I called ahead to Ms. Lettie Ramos of
the State Bar who helped me reschedule the schools on the first 2 attempts who said she

1 was going to inform the instructor of the problem. I was about 45 minutes late and
2 requested if I could work through the 1 hour lunch to make up the time while the others had
3 lunch which was denied, so I had to drive back to Fresno.

- 4 j) Regarding Count 2, Ms. Gatewood waived the requirement that the \$1900 had to be placed
5 in the trust account as the State Bar alleges. I contest the legal contention that ALL money
6 received on behalf of the client must be deposited into the trust account. The
7 circumstances like circumstances alleged by the State Bar in count 2 namely, the attorney's
8 receipt of money less the undisputed expenses that have already been fronted by the
9 attorney and approval by the client in writing to be allowed to use that money to pay down
10 on what is owed to the attorney, does not violate rule 4-100 of the Rules of Professional
11 Conduct.

12 Although Ms. Gatewood claims she doesn't remember me personally telling her promptly
13 of receiving these funds, and that she personally approved my recommendation to hold a
14 \$900 check for a while which was sent to me unsolicited by surprise by the defendant. Ms.
15 Gatewood and I had a long discussion that because the check came with a note that
16 implied that by cashing Defendant's check, we may by agreeing to the terms of a payment
17 plan that Defendant wanted us to agree to that he had written on the check and in the letter
18 he sent me. We were not in agreement with his payment plan.

19 At that time, Ms. Gatewood was way behind in reimbursing me \$2400 worth of undisputed
20 expenses that I had paid out of my own pocket in her case. When Gatewood and I decided
21 to cash the check, I told her that I was going to use the \$1900 to pay down some of the
22 expenses she owed me which she agree to BEFORE the check was deposited in any
23 account. In addition, the terms of our retainer provides by agreement that payments to be
24 used to pay expenses are mine upon receipt whether the source of the money is directly
25 from the client or indirectly from the client via the Defendant. Since the terms in our
26 retainer agreement requires that the first money received is to be used to pay the expenses,
27
28

1 the money is mine on receipt and I am not required to put my money in the trust account
2 only to immediately take it out and put it into the operations account.
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4 RESPECTFULLY SUBMITTED,

5 LAW OFFICES OF DAVID C. HOLLINGSWORTH

6 DATED: NOVEMBER 23 2013

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8 DAVID C. HOLLINGSWORTH
9 Member
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David C. Hollingsworth SBN 203887 516 W. Shaw Ave., Suite 200 Fresno, California 93704 TELEPHONE NO.: 559-221-2560 FAX NO. (Optional): 559-221-4955 E-MAIL ADDRESS (Optional): dhplus12@yahoo.com ATTORNEY FOR (Name): David Curtis Hollingsworth	FOR COURT USE ONLY CASE NUMBER: 12-O-10185 JUDGE: DEPT.:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF State Bar Court STREET ADDRESS: 180 Howard Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, 94105-1639 BRANCH NAME:	
PLAINTIFF/PETITIONER: The State Bar of California DEFENDANT/RESPONDENT: David Curtis Hollingsworth	
PROOF OF SERVICE—CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input type="checkbox"/> By Electronic Service	

(Do not use this proof of service to show service of a Summons and complaint.)

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
516 W. Shaw Ave., Suite 200, Fresno, CA 93704
- ☐ The fax number or electronic service address from which I served the documents is (complete if service was by fax or electronic service):
- On (date): **11-25-13** I served the following documents (specify): **First Amended Answer**

☐ The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).

5. I served the documents on the person or persons below, as follows:

- Name of person served: **State Bar Court**
- ☒ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)

Business or residential address where person was served:

180 Howard Street, San Francisco, Ca 94105-1639

- ☐ (Complete if service was by fax or electronic service.)

(1) Fax number or electronic service address where person was served:

(2) Time of service:

- ☒ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).

6. The documents were served by the following means (specify):

- ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

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6. b. ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state): Fresno, California

c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)

e. ☐ **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 in item 5. 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.

f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 11/25/13

Melissa Mooradian

(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.


At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (date):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

 _____
(SIGNATURE OF DECLARANT)

SHORT TITLE: In the Matter of: David Curtis Hollingsworth

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ATTACHMENT TO PROOF OF PERSONAL SERVICE—CIVIL (PERSONS SERVED)*(This Attachment is for use with form POS-020)*

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>	<u>Date and Time of Service</u>
The State Bar Court	180 Howard Street San Francisco, California 94105-1639	Date: 11/25/2013 Time: 2:11pm
		Date: _____ Time: _____
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		Date: _____ Time: _____
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