

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED

APR 30 2013

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:)	Case No. 12-O-15300
CYNTHIA BRIGGS PRESTON,)	NOTICE OF DISCIPLINARY CHARGES
No. 123264,)	
)	
A Member of the State Bar)	

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:

- (1) YOUR DEFAULT WILL BE ENTERED;
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- (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;
- (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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. CYNTHIA BRIGGS PRESTON ("Respondent") was admitted to the practice of law
4 in the State of California on June 10, 1986, was a member at all times pertinent to these charges,
5 and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 12-O-15300
8 Business and Professions Code, section 6103
[Failure to Obey a Court Order]

9 2. Respondent wilfully violated Business and Professions Code, section 6103, by
10 wilfully disobeying or violating an order of the court requiring her to do or forbear an act
11 connected with or in the course of Respondent's profession which she ought in good faith to do
12 or forbear, as follows:

13 3. On or about December 6, 2005, Respondent represented Bruce O. Marsh in the
14 Dissolution Settlement between Bruce O. Marsh and Darrah L. Marsh in the Superior Court of
15 the State of California for the County of Orange in the matter entitled *In Re the Marriage of*
16 *Petitioner Darrah L. Marsh and Respondent Bruce D. Marsh*, case number 04 D 010 572.

17 4. On or about December 6, 2005, the court issued a Stipulation and Order which
18 provided that the Marshes' home would be immediately sold and that the proceeds from the sale
19 of the home was to be divided between the Marshes' except for sum of \$3,000 to pay for the
20 Marshes' Qualified Domestic Retirement Order ("QDRO"). Respondent signed the Stipulation and
21 Order. Respondent agreed to hold the \$3,000 in her Client Trust Account (CTA) as provided in
22 the Stipulation and Order. Respondent was properly served with the Stipulation and Order and
23 received a copy of the Stipulation and Order. The Order was adopted by the court and signed by
24 the assigned Commissioner. The Order is final. Respondent did not appeal or otherwise seek
25 relief from the requirements of the Stipulation and Order.

26 5. On August 3, 2006, the court issued another Order appointing Jennifer R. Posey
27 (Posey) as a Special Master to Divide the Parties' interest in their pension plan. The Order
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1 provided that Posey prepare, draft and file the QDRO. Respondent paid Posey \$2,000 of the
2 \$3,000 she was holding in her CTA as an advance to start the QDRO.

3 6. On June 4, 2008, Posey completed the QDRO and submitted a bill to Respondent for
4 the amount of \$3,584.18 for services regarding the QDRO. Posey applied the \$2,000 advanced
5 payment to the outstanding balance and requested that Respondent pay Posey the \$1,000 being
6 held by Respondent.

7 7. On or about September 28, 2011, Posey sent a letter to Respondent requesting that
8 Respondent distribute the \$1,000 being maintained in her client trust account as provided in the
9 Court Order.

10 8. Respondent failed to respond to the letter dated September 28, 2011, pay Posey, or
11 distribute any of the \$1,000 to the parties. At that time, Respondent did not comply with the
12 Settlement and Order. Respondent did not seek to change, modify or appeal the Settlement and
13 Order.

14 9. By not paying Posey the \$1,000 for the QDRO preparation as required in the
15 December 6, 2005 Stipulation and Order, Respondent wilfully disobeyed or violated an order of
16 the court requiring her to do or forbear an act connected with or in the course of Respondent's
17 profession which she ought in good faith to do or forbear.

18 COUNT TWO

19 Case No. 12-O-15300
20 Rules of Professional Conduct, rule 4-100(A)
[Failure to Maintain Client Funds in Trust Account]

21 10. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(A), by failing
22 to maintain the balance of funds received for the benefit of a client and deposited in a bank
23 account labeled "Trust Account," "Client's Funds Account" or words of similar import, as
24 follows:

25 11. The allegations of Counts One and Two are incorporated by reference.

26 12. On or about February 17, 2006, Respondent received and deposited the \$3,000 check
27 received on behalf of the Marshes into Respondent's CTA number 1-534-5418-6112 at U.S.
28 Bank.

1 13. On or about March 20, 2006, Respondent paid Posey the \$2,000 advanced fees for the
2 preparation of the QDRO.

3 14. After subtracting the \$2,000 paid in advanced fees for the preparation of the QDRO,
4 Respondent was required to maintain \$1,000 in her CTA.

5 15. On or about January 16, 2007, Respondent's CTA balanced fell below the required
6 \$1,000. On or about November 17, 2010, Respondent's CTA balance fell to zero.

7 16. By not maintaining the \$1,000 in Respondent's CTA that was received on behalf of
8 the Marshs to pay for the preparation of the QDRO, Respondent willfully failed to maintain
9 client funds in a trust account.

10 COUNT THREE

11 Case No. 12-O-15300
12 Business and Professions Code, section 6106
13 [Moral Turpitude]

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

16 18. The allegations of Counts One, Two and Three are incorporated by reference.

17 19. On or about September 28, 2011, Posey wrote to Respondent and requested that
18 payment be made on behalf of the Marshes for the preparation of the QDRO.

19 20. Respondent dishonestly or with gross negligence misappropriated the \$1,000
20 designated for payment to prepare the QDRO from the Marshes.

21 21. By misappropriating the \$1,000 which was ordered by the court to be used to pay for
22 the preparation of the Marshes' QDRO, Respondent committed an act involving moral turpitude,
23 dishonesty or corruption.

24 COUNT FOUR

25 Case No. 12-O-15300
26 Business and Professions Code, section 6068(i)
27 [Failure to Cooperate in State Bar Investigation]

28 22. Respondent wilfully violated Business and Professions Code, section 6068(i), by
failing to cooperate and participate in a disciplinary investigation pending against Respondent, as
follows:

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ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

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

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: April 30, 2013

By: *Adriana M. Burger*
ADRIANA M. BURGER
Deputy Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 12-O-15300

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))

- 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 Los Angeles.

By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ("UPS").

By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 71969008911164112891 at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: (see below)

Person Served

Business-Residential Address

Fax Number

Courtesy Copy to:

Cynthia Briggs Preston

Law Office of Cynthia B Preston
30382 Anamonte
Laguna Niguel, CA 92677

Electronic Address

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

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, and overnight delivery by the United Parcel Service ("UPS"). 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, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the 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.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: April 30, 2013

SIGNED:

Juli Finnila

JULI FINNILA
Declarant