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STATE BAR COURT

HEARING DEPARTMENT – LOS ANGELES

In the Matter of: MYAVA R. ESCAMILLA No. 268834 A Member of the State Bar,	CASE NO.: 13-O-10421; 13-O-11565 ANSWER TO NOTICE OF DISCIPLINARY CHARGES

JURISDICTION

1. Respondent confirms jurisdictional facts in paragraph 1.

COUNT ONE

2. Respondent denies and provides explanation by way of the following answer.

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3. I agree that Mr. Richard Nuno and Mrs. Martha Fanning ("the clients") employed me on or about January 26, 2012 for representation in a Ch. 7 bankruptcy proceeding. I disagree that the amount was for $1,000.00 and disagree that the clients paid promptly.

   a. My retainer indicates that the amount was a flat fee of $1,600.00. The Clients were provided a copy at the time of signing. At this time, the Ch. 7 filing fee was $306.00, which was to be included in this flat fee. This comports with my memory of an initial meeting with the clients in which I was present.

   b. On or about January of 26, 2012, the clients deposited $200.00 cash with a remaining balance of $1,400.00.

   c. In the initial meeting, the clients did not disclose that they had multiple properties but represented that the husband was unemployed and the family was concerned about pending garnishments and lawsuits. It seemed that they were indeed experiencing financial distress and there did not appear to be an income issue which would exclude a Ch. 7, especially given the number of children in the family which was four.

   d. The clients received a list of documents on or about January 26, 2012 including such documents as tax returns, mortgages, auto statements and a questionnaire. The clients returned the bankruptcy questionnaire on or about February 1, 2012.

   e. I recall reviewing this specific questionnaire shortly after February 1, 2012 and recall my interest rising because the clients disclosed multiple properties, several automobiles and issues related to their current income. We potentially had exemption issues with possible unprotected equity in the properties and/or other property. I was concerned with how they presented their income and rentals from the property would more than likely required a Profit and Loss. It was clear that more documentation was going to be needed to accurately complete and obtain a discharge for these clients.

   f. I recall requesting all the documentation from the clients before filing and met personally with them at least two additional times. In discussion with the clients, it because apparent that they had leveraged property against another, qualifying when

mortgages did not have income documentation requirements. The documentation on the regularly collected rents on the 5 properties was sparse and a P&L would need to be prepared.

g. It was initially unclear which property may have equity in it. I recall speaking with the clients, discussing in detail that the Trustee can "take" a property from a Debtor when there is no exemption because filing bankruptcy creates an estate, essentially an irrevocable estate once the bankruptcy is filed. The clients discussed in detail with me in regards to each property and the information that they felt should be most pertinent to the Trustee should that Trustee believe there was equity in any particular property, such as kitchen dilapidation in the Arrory Seco property and a roof problem in another property. We discussed the homestead exemption and other tangible property issues.

h. I stated in at least one discussion that, per the retainer, should other issues arise, we could discuss an additional retainer. The clients were indeed concerned and unhappy as to why their initial bankruptcies were dismissed. They were not especially happy with the prospect of paying more, especially in light of the prior dismissals. However, we seemed to have a clear understanding about what could potentially happen in their bankruptcy given their particular circumstances and the limit of my scope of services.

4. I agree that I filed the clients' third and final bankruptcy was filed on April 9, 2012. I disagree that the clients worked directly with the Trustee to complete required statements and schedules.

a. I filed a Ch. 7 for the clients first on February 7, 2012 as an "Emergency Petition" when the clients came into the office in a panic. I recall that there was either a repossession issue or a garnishment issue. Ford Motor Credit was attempting to collect on a judgment and CashCall was also in collection proceedings. I believe the reason for the Emergency Filing was to stop a Notice of Levy by Cash Call.

b. This first case was dismissed on or about February 13, 2012 for failure to file the electronic documents aside from the Emergency Petition, namely the electronic filing declaration and the social security statement. I do not recall whether the clients were not

told by me that they needed to come in and provide signatures or that I told them and they failed to provide them. I know that I discussed with the clients needing additional information from them, as an Emergency Petition will be dismissed in 14 days without completion of the substantive documents. I recall being concerned about their substantive documents and knew that the Trustee would take a close look at a Ch. 7 with 5 properties, aside from income and income tax issues.

c. The clients Emergency Petition was dismissed on or about February 13, 2012 because the electronic declaration and the social security declaration was not filed. (**See docket report**.)

d. I recall squaring away some issues and problems with the clients between the next filing and re-filed their Emergency Petition for them on or about February 22, 2012 with the appropriate electronic declarations; however, they still needed time to procure mortgage statements, taxes and other hard documents.

e. I did not charge the clients the filing fee of $306.00 for refilling and took responsibility for the first dismissal. I actually thought it better for the clients as debtors. The garnishment was stopped and they had not revealed all their issues to the bankruptcy court before having the documentation in hand, prepared to answer inquiries. The clients maintained ardently that they needed this bankruptcy and did indeed have significant unsecured debt was actively into collections.

f. The second bankruptcy was to be "cured" and all schedules filed by March 7, 2012. I filed all remaining schedules on March 6, 2012.

g. On March 13, 2012, the bankruptcy court dismissed the matter maintaining that the social security statement was not filed. This, in fact, was not correct. The social security statement was indeed filed, as shown on the docket.

h. In hindsight, I could have discussed filing a motion to reinstate the bankruptcy with the clients.

i. However, I also noted that the bankruptcy court had not property assigned the original Ch. 7 Trustee to this case and that we were going to experience delay. There is not the kind of prejudice for a matter in bankruptcy that exists in civil matters. A former dismissed case will not affect the dischargeability of a debt. In addition, I specifically recall still wanting more information from the client about their auto loan statements, and suggested that they may need to have appraisals on the real property, rather than going from online statements which are generally a bit inflated.

j. I decided to re-file for the clients once they had satisfactorily provided the documentation. I did not request additional funds from the clients to pay for a third and final filing fee of $306.00 in an effort to make this process, which had been rockier than I would have liked, easier for them. Even if I questioned their income and income sources, they did indeed have a large family and I did not believe that their properties were earning a substantial amount of money for them.

k. I felt that I had indeed responded to their needs in an impending financial emergency although they had not necessarily held up their "end of the bargain" by providing necessary information expediently. I indeed wanted to conclude the matter successfully for the clients.

l. I filed the third and final bankruptcy on April 9, 2012 and all schedules were complete. This bankruptcy Ch. 7 was discharged successfully by the bankruptcy court on February 2, 2013. I attended the initial Meeting of Creditors, at least one additional meeting and even provided for special appearance attorney coverage on or about June 7, 2012 and paid $75 for the appearance.

m. There were seven (7) meetings of creditors and appearances – an unusually high number and all of which did not require appearances since the Trustee was examining the properties to ascertain whether there was equity in any of them. The Trustee eventually made an application to the bankruptcy court to hire an appraiser. That motion was unopposed and granted. The appraiser made reports and the Trustee requested

additional information from the debtors, which I prepared and provided to the Trustee on at least one occasion formally. These extra hours were not charged to the clients and I diligently organized the debtors records for them and with them.

n. I informed the clients when their appearance was not necessary at all continued meeting of creditors; however, I recall the clients being desirous of attending each meeting despite required appearance. Their testimony was taken at the initial meeting of creditors and I did not believe appearance was necessary at the January 31, 2013 meeting when the Trustee had determined values of properties to his satisfaction. This was confirmed by the Trustee's office themselves.

o. *I believe the clients are complaining of having to work directly with the Trustee not on issues relating to the completion of the bankruptcy; rather they are referring to addressing the investigation of the Trustee into whether any of their 5 properties had equity* - although I did provided substantial additional information to the Trustee before he made his decision to hire an appraiser.

p. My retainer specifically excludes motion, reaffirmation, lien negotiation, relief from stay actions – essentially anything beyond preparation and filing of the Ch. 7 and obtaining their discharge. Many complex motions can happen in a bankruptcy and the clients and I discussed that possibility several times by way of discussion about the potential actions that the Trustee could take. In addition, I recall reviewing the retainer agreement with the clients in person and discussing what each clause meant. They initialed each paragraph.

q. I went over the retainer agreement with the clients, obtained their initials next to the relevant paragraphs, provided emergency services when they were not paid in full, corrected deficiencies which were my responsibility and presented the best and most accurate information from the clients to the Trustee in a manner whose objective was to obtain the discharge that they needed.

r. In addition, I explained in discussions with the clients that I was not retained for any and all services. The clients did not offer at any point to retain me for additional services. They did not inquire about continuing representation in the matter in regards to negotiating a settlement with the Trustee when he took an interest in a particular property.

s. In the course of the bankruptcy, the meeting of creditors was continued 7 times. This is unusual. I attended at least two personally and paid for representation at one. It was apparent that appearances were not necessary, I confirmed this multiple times with the Trustee, and I informed the clients of such. It was concluded when the Trustee completed their property analysis, but the identification and testimony of the Debtors were taken at the initial meeting.

t. It is true that the clients worked with the Trustee to reach a settlement in regards to one property. I was aware that they were working with the Trustee and the clients never offered or brought up the subject of retaining me to resolve additional issues with the Trustee.

u. The clients paid approximately $8,400.00 by way of a settlement to retain all their properties, the Trustee finding equity in one. In this bankruptcy, the clients kept several automobiles and other tangible properties which the Trustee abandoned, retained 5 pieces of real estate, discharged considerable unsecured debt and received the services for which they retained me for a very reasonable amount and received emergency assistance.

v. I believe that the compromise of $8,400.00 as an agreed upon amount of unprotected equity is very favorable for the clients and very fair. The Trustee was very fair with the clients. I was not asked for additional assistance and, at one point, the clients even requested a refund from me for the work that was performed.

w. For these reason, I believe that I did indeed render legal services with competence.

COUNT TWO

5. I cannot recall specifically when the clients telephoned me during the pendency of the bankruptcy above. They are incorrect in certain important details about their complaint and I recall specifically meeting with them and talking with them several times regarding their bankruptcy in an effort to best protect their interests in a Ch. 7 that was a bit more complicated than many. I recall responding when they had a perceived emergency and preventing collection actions.
6. Given their allegations, they do not seem to understand exactly what was happening in their bankruptcy despite my conversations and communications with them. Unlike in most areas of practice, the Trustee in bankruptcy is permitted and it is not unusual for a Trustee to contact a debtor directly. Although I recall explaining this to the client, this in and of itself can be intimidating for a client and stressful.
7. Despite having a straightforward and simple retainer agreement, several meeting and telephone calls in which I explained what may happen given the client's rather unique situation, it was not enough in this case and the client was confused and dissatisfied.
8. Although the clients negotiated a fair settlement and retained all property and received the services for which they paid, they were not clear about the process and came away feeling abused by this process rather than satisfied. I can only account for this by way of a gap in communication. However, I am not certain as to whether this amounts to a willful violation of Business and Professions Code section 6068(m).

COUNT THREE

9. I believe that, given the alarming level that this Complaint has reached, I have failed to expeditiously cooperate and fully participate in a disciplinary investigation. Having done so, I believe that I appear to be unwilling to cooperate and participate, although this could not be further from the truth. I believe that, had I fully explained the facts surrounding this issue, this would not have reached the present point.

10. The practice of law is by far the most important aspect of my life, encompasses nearly all my lifelong goals and was certainly an earned and hard-fought for privilege. I have contributed hours of pro-bono work in my first three years of practice especially in the area of family law specifically with domestic violence survivors and have contributed positively to many clients' lives. I have always been more than fair with clients when it comes to retainers and worked with many clients who could not otherwise afford any legal representation. If the State Bar Court requests such documentation, or any other documentation, that can certainly be provided.

11. None of this constitutes an excuse for failure to cooperate and participate. In hindsight, it would have behooved me 100 percent to address the concerns directly rather than be governed by fear and terror of being banned from the very profession that not only defines my life but fulfills it personally, spiritually and financially. The magnitude of being perceived as unprofessional and problematic by the State Bar weighed heavily on my mind each and every day. In fact, had I treated this as a client's matter, I would have been able to respond quickly and fully. The fact that it concerned my own license, although a terrifying prospect, is not or was not a legitimate reason for failure to respond.

COUNT FOUR

12. I was counsel for the Plaintiff in a matter titled *Pineda v. Berzack* in the referenced Orange County Superior Court matter. I did arrange for a special appearance attorney for the initial

status conference. The special appearance attorney had a conflict or emergency and was not able to attend. I did receive notice of the OSC and intended on attending. I recall that I called the department the day prior to the OSC. I was not able to attend due to a medical issue and, being unable to have appearance counsel, the court issued sanctions in the amount of $1,000.00. I do not intend to bring a motion to modify or vacate and would resolve the matter by paying the sanction. I am contacting the court to see if interest is applicable and will promptly pay the sanction.

13. I came aboard this case after Mr. Pineda had been bounced between at least three attorneys. He was influenced by a paralegal, or at least an individual who held herself out as a paralegal, Noemi Sanchez, who was "attorney hopping" and "capping" cases among various attorneys. This was an automobile accident and the "paralegal" convinced Mr. Pineda to "attorney hop" several times.

14. Consequently, at the time of the running of the statute of limitations, at least two attorneys who believed they still may be representing Mr. Pineda filed lawsuits on his behalf. Out of an abundance of caution, both attorneys filed Judicial Council Form Personal Injury Complaints to preserve the running of his statute of limitations. One attorney, Mr. Hunter, eventually dismissed his complaint. However, when Mrs. Blackman dispatched the courier service to serve the Complaint, they inadvertently picked up the dismissed complaint and served it.

15. The two complaints are found in Orange County Superior Court Case No: 30-2011-00524015-CU-PA-CJC and Case No: 30-2011-00523125-CU-PA-CJC. Mr. Hunter filed a Motion to Reinstate however that motion was denied pending testimony from Mr. Pineda himself and, I believe, supplemental briefing.

16. I came into the matter after Mr. Pineda received treatment and was essentially discharged, after the Motion to Reinstate one complaint was denied and while the defense had a pending Motion to Dismiss the second complaint based on lack of timely service and other issues rending the second complaint moot. The entire complaint was potentially in jeopardy and Mr. Pineda was

advised in open court that he may have only one remedy, which was a malpractice action against the attorneys.

17. In addition, I came into the matter after treatment had been provided for the past few years. It was unfathomable to commence treatment again after no long term issues had been diagnosed. The damages were what they were at that point and treatment should have been resolved years prior.

18. It was an unfortunate situation, given that Mr. Pineda had been lied to and negatively influenced by the paralegal. She was actively taking files from Mrs. Blackman's office falsely representing information to clients and putting their cases in jeopardy by confusing matters and leaving them without representation at the time Mr. Pineda's matter was potentially going to be dismissed. This same paralegal lied to and entwined at least three other attorneys into various cases in an effort to "cap" the cases.

19. The defense filed a Motion to Dismiss and Mr. Pineda's entire Complaint was in jeopardy.

20. However, I also did appear at least one other status conference. I recall the night before the status conference; the paralegal contacted Mr. Pineda and had him meet yet another attorney who, I was informed, was going to substitute me out the next day. I signed a substitution of attorney per the client's request yet still appeared the next day at the status conference out of an abundance of caution. The new attorney, ascertaining that there was little value to be added to the case, that there was a pending motion to dismiss and that other attorneys had liens, *abandoned the client at the court house that day.*

21. I agreed to continue to assist the client, feeling extremely badly for the client who had been the victim of an unscrupulous paralegal, who did not care about the damages done to each case as she attorney shopped and misrepresented facts to both the clients and subsequent attorneys.

22. Subsequent to that status conference, I did indeed miss the next status conference and was not able to attend the subsequent OSC re: dismissal due to a medical issue. I was then given the $1,000.00 sanction.

23. I attended the trial and responded to discovery. On the day of trial, I negotiated maximum policy limits plus additional funds for property damage for the client. Trial was approximately one day and we negotiated the settlement over the course of the morning and afternoon session.

24. This settlement for maximum policy limits was fair for the client given the amount of actual damages and given the precarious state of his Complaint, primarily due to being influenced by the "paralegal" that caused him to bounce between several attorneys for no good reason other than her own personal interests. Although the client felt that he was entitled to more, he understood both the legalities and practicalities o the situation. He went on record and accepted policy limits and I set to negotiate down claims in order to secure the client the best settlement.

COUNT FIVE

25. I agree that I did not inform the State Bar of the imposition of the sanction. I was aware that the court had given notice and mistakenly believed this was sufficient and the notice required. I understand that this was incorrect and do not believe that ignorance is an excuse for failure to abide by the regulation.

26. I recognize that this is unacceptable. I have registered to voluntarily retake the MPRE exam on November 2, 2013 as well as the State Bar Ethics class both in an effort to address this unacceptable oversight.

COUNT SIX

27. As referenced above, I believe that, given the alarming level that this Complaint has reached, I have failed to expeditiously cooperate and fully participate in a disciplinary investigation. Having done so, I believe that I appear to be unwilling to cooperate and participate, although

this could not be further from the truth. I believe that, had I fully explained the facts surrounding this issue, this would not have reached the present point.

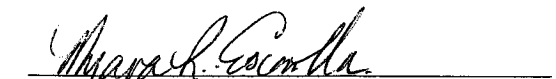
28. The practice of law is by far the most important aspect of my life, encompasses nearly all my lifelong goals and was certainly an earned and hard-fought for privilege. I have contributed hours of pro-bono work in my first three years of practice especially in the area of family law specifically with domestic violence survivors and have contributed positively to many clients' lives. I have always been more than fair with clients when it comes to retainers and worked with many clients who could not otherwise afford any legal representation. If the State Bar Court requests such documentation, or any other documentation, that can certainly be provided.

29. None of this constitutes an excuse for failure to cooperate and participate. In hindsight, it would have behooved me 100 percent to address the concerns directly rather than be governed by fear and terror of being banned from the very profession that not only defines my life but fulfills it personally, spiritually and financially.

30. I also recognize that the failure to communicate with the State Bar and with the above referenced client has caused irreparable damage. Already, pending the disposition and resolution of this matter, damage to my reputation has permanently been done due to my own conduct. Several interns have declined externships or even interviews, all potential future clients shall see the allegations and several current clients have telephoned to inquire about this issue. I am only three years into the practice and this shall be with me until the end of my career.

31. As discussed, I have registered for the MPRE and all day Ethics Class conducted by the State Bar. I am certainly more than willing to comply with whatever the State Bar orders by way of remedial or punitive measures in order to fully address the issues raised in the charges.

DATE:09/02/2013



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