

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 13-O-14301-YDR
)	(13-O-14527; 13-O-14590;
LORENE LYNN MIES,)	13-O-15639;13-O-16523;
)	13-O-16604;13-O-16873)
Member No. 110954,)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
)	ENROLLMENT
)	
)	

Lorene Lynn Mies (“Respondent”) was charged in 45 counts with violations of the Rules of Professional Conduct and the Business and Professions Code,¹ stemming from seven client matters. She failed to file a response to the notice of disciplinary charges (NDC), and her default was entered. The Office of the Chief Trial Counsel (“State Bar”) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney’s default is entered for failing to respond to the NDC and the attorney fails to have

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as Respondent’s default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 12, 1983, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On March 19, 2014, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested at her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The return receipt was received by the State Bar, bearing the name and signature "Lorene Mies," and the date of delivery was noted as "March 22, 2013."

In addition, reasonable due diligence was used to notify Respondent of the proceeding. On April 15, 2014, the deputy trial counsel (DTC) assigned to this case by the State Bar mailed a letter via regular first class mail to Respondent at her membership records address, providing notice of the State Bar's intention to file a motion for entry of default unless it received Respondent's response to the NDC by April 23, 2014. The April 15th letter was not returned to the State Bar. The State Bar also emailed to Respondent's membership records email address its notice of intention to file a motion for entry of default unless it received Respondent's response to the NDC by April 23rd. The email did not "bounce back." Additionally, the DTC attempted

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

to reach Respondent at a private number previously provided by Respondent. On April 15, 2014, the DTC left a message at that number, in which she provided the same information as was set forth in the April 15th letter and email, which had been sent to Respondent. In the message to Respondent, the DTC left her direct number and asked Respondent for a call back at that number. Respondent did not respond to the message.

Respondent failed to file a response to the NDC. On April 29, 2014, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested at Respondent's membership records address. The motion complied with the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent (Rule 5.80.) The default motion also notified Respondent that if she did not timely move to set aside her default, the court would recommend her disbarment. (Rule 5.80.) Respondent did not file a response to the motion, and her default was entered on May 23, 2014. The order entering the default was properly served on Respondent at her membership records address by certified mail, return receipt requested.⁴ The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar pursuant to section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On December 1, 2014, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with Respondent since the default was entered; (2) there are two

⁴ The return receipt card was received by the State Bar stamped "Return to Sender Not Deliverable as Addressed Unable to Forward." Additionally, the word "REFUSED" was printed in ink on the envelope.

disciplinary investigations pending against Respondent; (3) Respondent has no prior records of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on January 6, 2015.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable of the rule and statutory violations as charged, except in those counts where otherwise noted, and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

1. Case Number 13-O-14301 (Mahtesian Matter)

Count One – the court does not find Respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.⁵ Accordingly, Count One is dismissed with prejudice.

Count Two – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she constructively terminated her employment on June 28, 2013, by closing her business and failing to take any further action on the client's behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the client.

⁵ The State Bar merely alleged that Respondent failed to perform the legal services for which she was employed "by performing no legal services of value on behalf of the client." This allegation is vague and arbitrary. It does not establish, by clear and convincing evidence, that Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.

Count Three – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit into a trust account advanced filing fees in the amount of \$612,⁶ which fees Respondent received between June 20, 2012 and May 9, 2013, for the benefit of the client.

Count Four – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$3,000 in unearned fees upon her termination of employment on July 2, 2013.

Count Five – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in her possession, despite the client’s request for a full refund, which funds the client was entitled to receive.

Count Six – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account) by failing to provide her client with any accounting for the \$3,000 in advanced fees paid by the client for legal services.

Count Seven – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$612 between June 20, 2012 and July 2, 2013.

2. Case Number 13-O-14527 (Kaczor Matter)

Count Eight – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit \$281 for filing fees received for the benefit of the clients into a trust account.

⁶ The first reference to the amount of the filing fees advanced by the client to Respondent is “\$602.” However, all further references to the filing fees in Count Three, as well as in other counts in case number 13-O-14301, refer to the filing fees as being \$612. The court finds the reference to filing fees in the amount of \$602 to be a clerical error.

Count Nine – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$1,781, in unearned fees upon her termination of employment on July 2, 2013

Count Ten – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in Respondent’s possession, despite the clients’ request for a full refund, which funds the clients were entitled to receive.

Count Eleven – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account), following the termination of her employment on July 2, 2013, by, thereafter, failing to provide an accounting of the advanced fees, which she had received from the clients between March 18, 2013 and April 1, 2013, for legal services to be performed.

Count Twelve – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$281 on July 2, 2013.

3. Case Number 13-O-14590 (Ornelas Matter)

Count Thirteen⁷ – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she constructively terminated her employment on July 26, 2013, by closing her business and failing to take any further action on

⁷ The NDC indicates that the designated case number for Count Thirteen, which involves the *Ornelas* matter, is case number 13-O-14301. Case number 13-O-14301, however, is the case number assigned to the *Mahtesian* matter. (See Counts One through Seven.) The designated case number assigned to the *Ornelas* matter is 13-O-14590. (See, e.g., Counts Fourteen through Nineteen of the NDC.) As the substance of the text of Count Thirteen relates to the *Ornelas* matter and as case number 13-O-14590 is the case number for the *Ornelas* matter, the court finds the designation of case number 13-O-14301 to Count Thirteen to be a clerical error.

the client's behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the client.

Count Fourteen – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit funds in the amount of \$306, which she received for the benefit of the client, into a trust account, .

Count Fifteen – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$1,500 in unearned fees, upon her termination of employment on June 18, 2013.

Count Sixteen – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in Respondent's possession, despite the client's request for a full refund, which funds the client was entitled to receive.

Count Seventeen – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to render accounts of client funds), following the termination of her employment on June 28, 2013, by, thereafter, failing to provide any accounting of the \$1,500 fee, which she had received from the client as an advanced legal fee.

Count Eighteen – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$306⁸ on June 28, 2013.

⁸ In Count Sixteen, the NDC alleges that the costs advanced between March 11 and April 11, 2013, by client Oscar Ornelas to Respondent, amounted to \$306. However, in Count Eighteen the NDC alleges that the advanced costs advanced by Ornelas to Respondent between March 11 and April 11, 2013, amounted to \$308. As both counts refer to the same funds, Respondent will be given the benefit of the doubt. Thus, the court finds that the advanced costs misappropriated by Respondent amount to \$306.

4. Case Number 13-O-15639 (DeCroce Matter)

Count Nineteen – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she terminated her employment on May 22, 2013, by closing her business and, thereafter, failed to take any further action on the client’s behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the client.

Count Twenty – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit \$306 in funds, which she received for the benefit of the client, into a trust account.

Count Twenty- One – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$1,800 in unearned fees upon her termination of her employment on May 22, 2013.

Count Twenty-Two – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in her possession, despite the client’s request for a full refund, which funds the client was entitled to receive.

Count Twenty-Three – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$306 between April 4, 2013 and May 22, 2013.

Count Twenty-Four – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar’s letters requesting a response to the allegations of misconduct being investigated in case No. 13-O-15639.

5. Case Number 13-O-16523 (Lewis Matter)

Count Twenty-Five – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she constructively terminated her employment on September 25, 2013, by closing her business and failing to take any further action on the client’s behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the client.

Count Twenty-Six – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit \$281 in funds, which she received for the benefit of the client, into a trust account.

Count Twenty- Seven – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$2,281 in unearned advanced fees upon her termination of employment on September 25, 2013.

Count Twenty-Eight – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in her possession, despite the client’s request for a full refund, which funds the client was entitled to receive.

Count Twenty-Nine⁹ – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account), following the termination of her employment in

⁹ The NDC indicates that the designated case number for Count Twenty-Nine, which involves the *Lewis* matter, is case number 13-O-14590. Case number 13-O-14590, however, is the case number assigned to the *Ornelas* matter, *ante*. The designated case number assigned to the *Lewis* matter is case number 13-O-16523. (*See, e.g.*, Counts Twenty-five through Twenty-Eight and Counts Thirty through Thirty-One.) As it is clear from the substance of the text of Count Twenty-Nine that it relates to the *Lewis* matter and as case number 13-O-16523 is the case number assigned to the *Lewis* matter, the designation of case number 13-O-14590 in Count Twenty-Nine is clearly a clerical error.

September 2013, by, thereafter, failing to provide an accounting of the \$2,281 in fees, which she had received from the client as an advanced legal fee.

Count Thirty – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purpose client funds amounting to \$281, between January 23, 2013 and September 25, 2013.

Count Thirty-One – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar’s letters requesting a response to the allegations of misconduct being investigated in case No. 13-O-6523.

6. Case Number 13-O-16604 (Kemp Matter)

Count Thirty-Two – the court does not find Respondent culpable of willfully violating Rules of Professional Conduct, rule 3-110(A) (failure to perform) as there is no clear and convincing evidence that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.¹⁰ Accordingly, Count Thirty-Two is dismissed with prejudice.

Count Thirty-Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she constructively terminated her employment in June 2013, by closing her business and failing to take any further action on the clients’ behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the clients.

¹⁰ As in Count One, the State Bar has merely alleged that Respondent failed to perform the legal services for which she was employed “by performing no legal services of value on behalf of the client.” As noted, *ante*, this allegation is vague and arbitrary and does not establish, by clear and convincing evidence, that Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count Thirty-Four – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit \$306 in funds, which she received for the benefit of the clients, into a trust account.

Count Thirty-Five – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out \$306 in funds in her possession, despite the clients’ request for a full refund, which funds the clients were entitled to receive.

Count Thirty-Six – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account), following the termination of her employment in June 2013, by, thereafter, failing to provide any accounting of the \$2,806 fee, which she had received from the clients on May 16, 2012, as an advanced fee for legal services to be performed.

Count Thirty-Seven – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$306, between May 16, 2013 and June 2013.

Count Thirty-Eight – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar’s letters requesting a response to the allegations of misconduct being investigated in case No. 13-O-16604.

7. Case Number 13-O-16873 (Westbrook Matter)

Count Thirty-Nine – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal) when she constructively terminated her employment in September 2013, by closing her business and failing to take any further action on the clients’ behalf, including failing to complete the work for which she had been hired without taking reasonable steps to avoid reasonably foreseeable prejudice to the clients.

Count Forty – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failing to deposit client funds in trust) by failing to deposit \$306 in funds, which she received for the benefit of the clients, into a trust account.

Count Forty-One – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to promptly refund any part of the \$1,500 unearned advanced fees, upon her termination of employment in September 2013.

Count Forty-Two – Respondent willfully violated rule 4-100(B)(4) of the Rules of Professional Conduct (failing to promptly pay client funds) by failing to promptly pay out client funds in her possession, despite the clients' request for a full refund, which funds the clients were entitled to receive.

Count Forty-Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failing to account), following the termination of her employment in September 2013, by, thereafter, failing to provide an accounting of the advanced fees, which she had received from the clients on March 4, 2013, for legal services to be performed.

Count Forty-Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misappropriation) by misappropriating for her own purposes client funds in the amount of \$306 between March 4, 2013 and September 2013.

Count Forty-Five – Respondent willfully violated Business and Professions Code section 6068, subdivision (i) (failing to cooperate in a State Bar investigation), by failing to respond to the State Bar's letters requesting a response to the allegations of misconduct being investigated in case No. 13-O-16873

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

(1) the Notice of Disciplinary Charges was properly served on Respondent under rule 5.25;

(2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, as the Notice of Disciplinary Charges was served on Respondent at her official membership records address and the State Bar attempted to reach Respondent by mail, by email, and by telephone;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in certain counts of the Notice of Disciplinary Charges are deemed admitted by the entry of the default and support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent Lorene Lynn Mies be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to the following payees:

- (1) Molly Mahtesian, \$3,000 plus 10 percent interest per year from July 2, 2013;
- (2) Molly Mahtesian, \$ 612 plus 10 percent interest per year from July 2, 2013;
- (3) Dennis and Maria Kaczor, \$1,781 plus 10 percent interest per year from July 2, 2013;
- (4) Dennis and Maria Kaczor, \$ 281 plus 10 percent interest per year from July 2, 2013;

- (5) Oscar Ornelas, \$1,500 plus 10 percent interest per year from June 18, 2013;
- (6) Oscar Ornelas, \$306 plus 10 percent interest per year from June 28, 2013;
- (7) Julieanne DeCroce, \$1,800 plus 10 percent interest per year from May 22, 2013;
- (8) Julieanne DeCroce, \$306 plus 10 percent interest per year from May 22, 2013;
- (9) Damon Lewis, \$2,281 plus 10 percent interest per year from September 25, 2013;
- (10) Damon Lewis, \$281 plus 10 percent interest per year from September 25, 2013;
- (11) Ardis and Brenda Kemp, \$306 plus 10 percent interest per year from June 30, 2013;
- (12) Robert and Karen Westbrook, \$1,500 plus 10 percent interest per year from September 30, 2013;
- (13) Robert and Karen Westbrook, \$306 plus 10 percent interest per year from September 30, 2013;

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

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

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Lorene Lynn Mies, State Bar number 110954, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: April 3, 2015

YVETTE D. ROLAND
Judge of the State Bar Court