

PUBLIC MATTER

1 STATE BAR OF CALIFORNIA
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FILED

DEC 17 2014

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

8
9 STATE BAR COURT

10 HEARING DEPARTMENT - SAN FRANCISCO

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12 In the Matter of:) Case No. 14-O-02467
13 HOLLY S. BURGESS,) NOTICE OF DISCIPLINARY CHARGES
No. 104757,)
14)
15 A Member of the State Bar)

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17 **NOTICE - FAILURE TO RESPOND!**

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

- 20 (1) YOUR DEFAULT WILL BE ENTERED;
21 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;
22 (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;
23 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
24 OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
25 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. Holly S. Burgess ("respondent") was admitted to the practice of law in the State of
4 California on December 3, 1982, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 14-O-02467
8 Rules of Professional Conduct, rule 4-100(A)
9 [Failure to Maintain Client Funds in Trust Account]

10 2. On or about January 23, 2013, respondent received on behalf of respondent's clients,
11 Clyde and Sharon Horrock, a settlement check from Bank of America Corp. made payable to
12 respondent in the sum of \$95,000. On or about February 4, 2013, respondent deposited the
13 \$95,000 into respondent's client trust account at Bank of the West, account number xxxxx0314,
14 on behalf of the client. Of this sum, the client was entitled to \$65,000. Respondent failed to
15 maintain a balance of \$65,000 on behalf of the client in respondent's client trust account, in
16 willful violation of Rules of Professional Conduct, rule 4-100(A).

17 COUNT TWO

18 Case No. 14-O-02467
19 Business and Professions Code, section 6106
20 [Moral Turpitude - Misappropriation]

21 3. On or about January 23, 2013, respondent received on behalf of respondent's clients,
22 Clyde and Sharon Horrock, a settlement check from Bank of America Corp. made payable to
23 respondent in the sum of \$95,000. On or about February 3, 2013, respondent deposited the
24 \$95,000 into Respondent's client trust account at Bank of the West, account number xxxxx0314.
25 On or about February 5, 2013 and May 23, 2013, respondent dishonestly or grossly negligently
26 misappropriated for respondent's own purposes the \$65,000 that respondent was required to
27 maintain on behalf of the client, and thereby committed an act involving moral turpitude,
28 dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

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COUNT THREE

Case No. 14-O-02467
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

4. On or about March 25, 2013, respondent stated in writing to Clyde Horrock, Sharon Horrock, and Pamela Lewis that respondent would hold the disputed amount of \$65,000 in trust pending the result of binding fee arbitration when Respondent knew or was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

COUNT FOUR

Case No. 14-O-02467
Business and Professions Code, section 6106
[Moral Turpitude - Misrepresentation]

5. On or about October 4, 2013, respondent stated during binding fee arbitration that she continued to hold in her trust account the amount of \$65,000 when respondent knew or was grossly negligent in not knowing the statement was false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE 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.

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Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: December 17, 2014

By: Jonathan Cesena
Jonathan Cesena
Deputy Trial Counsel

DECLARATION OF SERVICE

by
U.S. CERTIFIED MAIL and U.S. FIRST-CLASS MAIL

CASE NUMBER(s): **14-O-02467**

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, 180 Howard Street, San Francisco, California 94105, 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 San Francisco.
- 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 San Francisco, addressed to: *(see below)*
- (for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: **9414 7266 9904 2011 9754 19** at San Francisco, 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:
Vicki Hui-Wen Young, Counsel for Respondent	Vicki Hui-Wen Young 240 Stockton St # 400 San Francisco, CA 94108	Electronic Address	

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

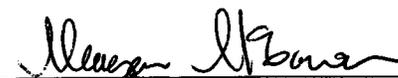
N/A

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 San Francisco, California, on the date shown below.

DATED: December 17, 2014

SIGNED: 
 Meagan McGowan
 Declarant