

ORIGINAL

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8 Respondent *In Propria Persona*

FILED

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STATE BAR COURT  
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LOS ANGELES

*Accepted for filing  
at the STC*

STATE BAR COURT  
HEARING DEPARTMENT - LOS ANGELES

In the Matter Of:

Case No. 15-0-13669

FREDDIE FLETCHER,  
No. 134734

RESPONSE TO NOTICE OF  
DISCIPLINARY CHARGES.

[Rule 5.43]

A Member of the State Bar.

Assigned to: Hon. Yvette D. Roland  
(Case Administrator: Ms. Angela Carpenter)

Respondent, Freddie Fletcher, whose address for service in these proceedings is stated in the caption hereinabove, responds to the notice of disciplinary charges filed herein as follows:

1.

Admits that he was admitted to the practice of law in the State of California on June 14, 1988, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

2.

Admits that he deposited two \$87,500 settlement checks in his client trust account ("CTA") on May 22, 2015.

3.

Denies that his client was "Rosslyn Diamond," and alleges his client was initially



1 "Rosslyn Diamond, Guardian ad litem for Retha Mae Green," and, thereafter, "Rosslyn  
2 Diamond, special administrator of the Estate of Retha Mae Green." Alleges that  
3 Rosslyn Diamond defrauded respondent and the court by concealing that her authority  
4 as the special administrator of the estate of Retha Mae Green terminated in 2011.

5 4.

6 Denies that he deposited the two settlement checks into his CTA on behalf of Rosslyn  
7 Diamond, and alleges the deposit was made on behalf the heirs of Linda Sue Brown  
8 and the heirs of the estate of Retha Mae Green.

9 5.

10 Denies that his attorney's fees "became fixed at \$75,000 on or about May 22, 2015,"  
11 denies the implication that merely depositing settlement checks in a CTA "fixes" an  
12 attorney's interest in trust funds; and alleges his attorney's fees were arguably "fixed"  
13 at \$75,000 during some periods of time, "fixed" at a different amount during other  
14 periods of time, and "fixed" with respect to different portions of the trust fund during  
15 other periods of time based on the fraudulent conduct of his client and depending on  
16 the meaning given the term "fixed."

17 6.

18 Admits he did not withdraw \$75,000 from his CTA, and denies that he "thereby failed  
19 to withdraw funds ... at the earliest reasonable time after Respondent's interest in the  
20 funds became fixed."

21 7.

22 Admits that he did not withdraw \$75,000 from his CTA; and alleges that the manifest  
23 purpose of rule 4-100 to protect against the possibility of a loss of a client's money  
24 required him to not withdraw \$75,000.

25 **AFFIRMATIVE DEFENSES**

26 8.

27 Respondent acted wholly consistent with the manifest purpose of rule 4-100 in the  
28 manner, timing, and amounts of attorney's fees he did and did not withdraw from his

1 CTA under the facts and circumstances confronting him, given his client's fraudulent  
2 and extortionate course of conduct which caused uncertainty regarding how much and  
3 what portion of his attorney's fees were fixed.

4 Respondent did not withdraw \$75,000 from his CTA to protect against the  
5 possibility of a loss of the client's money in the event it was later determined  
6 respondent's interest was not fixed to the extent of \$75,000. Respondent withdrew  
7 only that amount which he was certain was not disputed and only made a withdrawal  
8 when absolutely necessary and only in an amount he absolutely needed while  
9 uncertainty existed; and did so in order to preserve as much as possible in the CTA  
10 to be available for his client in the event it was later determined respondent was not  
11 entitled to an amount withdrawn.

12 9.

13 Rule 4-100 does not override an attorney's agreement with his client or impose  
14 different terms of agreement. Respondent's agreement with his client contemplated  
15 that respondent would withdraw his fee during the period of time required to settle the  
16 claims of expert witnesses and pay costs, whereupon the remaining balance would be  
17 deposited with the probate court for distribution to the heirs of Linda Sue Brown. This  
18 fact is relevant in determining whether respondent withdrew its portion at the earliest  
19 reasonable time, but the State Bar ignores it by interpreting rule to exclude the term  
20 "reasonable" from its text.

21 10.

22 A disciplinary rule must "give the person of ordinary intelligence a reasonable  
23 opportunity to know what is prohibited." This State Bar prosecution is premised on an  
24 interpretation of Rules of Professional Conduct, rule 4-100(A)(2) of which the rule,  
25 itself, gives no notice.

26 10.1. Rule 4-100 does not define the term "fixed." The State Bar  
27 interprets the term to mean respondent's interest was fixed at \$75,000 based on an  
28 oral and written agreement between respondent and his client, notwithstanding that the

1 client fraudulently concealed her lack of legal authority to make the agreement,  
2 rendering it void; notwithstanding that the client repudiated the agreement; and  
3 notwithstanding that the client has presently pending before the probate court a motion  
4 for the court to determine respondent's attorney's fees.

5 10.2. Rule 4-100 gives no notice regarding a required manner of  
6 withdrawal. Nothing stated in the rule requires the member's portion to be withdrawn  
7 in a single transaction for the entire amount; and nothing forbids multiple withdrawals  
8 in fractional amounts of the portion belonging to the member. The State Bar interprets  
9 the rule, however, to require the member to withdraw its entire portion in a single  
10 transaction and to forbid multiple withdrawals of fractional amounts.

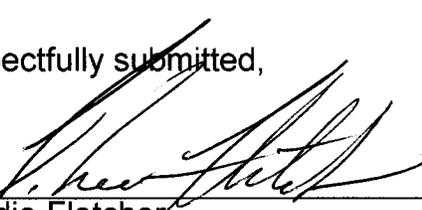
11 10.3. Rule 4-100 gives no notice that the member is required to withdraw  
12 its portion of trust funds at the "earliest time." The rule expressly requires withdrawal  
13 at the "earliest reasonable time." The drafter's use of the term "reasonable" in the rule  
14 means all the facts and surrounding circumstances are relevant in determining when  
15 withdrawal is required. The State Bar interprets the rule to require withdrawal at the  
16 earliest time, and to exclude the term "reasonable" from the text of the rule.

17 11.

18 **WHEREFORE**, respondent prays that the Hearing Panel find that the act of not  
19 withdrawing the entire \$75,000 from respondent's client trust account did not constitute  
20 professional misconduct, but served the manifest purpose of rule 4-100 to protect  
21 against the possibility of loss of the client's money.

22 Dated: April 18, 2016

23  
24 Respectfully submitted,

25  
26   
27 Freddie Fletcher  
Respondent