PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of K.D. HUGHES-CIONE, A Member of the State Bar, No. 210662.	)	Case Nos. 15-O-14170-CV (16-O-13242; 16-O-13391; 16-O-17541; 16-O-17724) DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Introduction[1]

In this contested disciplinary proceeding, respondent K.D. Hughes-Cione (Respondent) is charged with 13 counts of misconduct in five client matters.[2] The alleged misconduct includes acquiring interest adverse to a client; entering into an unfair business transaction with a client; committing acts of moral turpitude; seeking to mislead the court; and charging an unconscionable fee. This court finds, by clear and convincing evidence, that Respondent is culpable of 12 counts of misconduct. In view of her serious misconduct, as well as the evidence in aggravation and mitigation, the court recommends disbarment and other requirements.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 19, 2017. On

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct that were operative until October 31, 2018. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

[2] The parties stipulated to dismissal of count two.

January 2, 2018, the OCTC filed an Amended NDC. On January 31, 2018, Respondent filed her answer to the NDC. On June 8, 2018, the OCTC filed a Second Amended NDC. On May 3, and June 8, 2018, Respondent filed her second amended answer.

On July 6, 2018, the parties filed a stipulation to facts and conclusions of law. Respondent stipulated to culpability on three counts of misconduct in violation of rule 3-300. And the parties stipulated to dismissing count 2 in the Berg matter.

A five-day hearing was held before this court on July 23-24, July 30, August 2, and August 15, 2018. This matter was submitted for decision on August 15, 2018. The OCTC filed its closing brief on August 29, 2018.[3]

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 5, 2000, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on Respondent's Second Amended Answer, the stipulation as to facts and conclusions of law, and the testimony and evidence admitted at trial, involving five clients: Mary Stever, Carl Berg, Alfonso Rojas, Debbra DeMarco, and Margaret Staley.

Facts

1. Case No. 15-O-14170 (Stever)

On April 8, 2013, Mary Stever retained Respondent for representation in a civil case. Stever and Respondent entered into an hourly fee agreement that was signed by Stever on June 20, 2013. The fee agreement contained a lien provision which stated: "The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain."

[3] Respondent did not file a closing brief due to a medical reason.

Before entering into the agreement, Respondent did not disclose in writing to Stever that she may seek the advice of an independent lawyer of the client's choice regarding the agreement and give the client a reasonable opportunity to do so. Respondent did not obtain a written consent from Stever.

Conclusions of Law

Count 1 - (Rule 3-300 [Avoiding Interests Adverse to a Client])

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and the client thereafter consents in writing to the terms of the transaction/acquisition.

Rule 3-300 is intended to apply where the attorney wishes to obtain an interest in client's property in order to secure the amount of the attorney's past due or future fees.

Respondent admitted that she willfully violated rule 3-300 by entering into an hourly fee agreement with Stever, which included a lien provision that conferred on Respondent ownership, possessory, security, or other pecuniary interest adverse to Stever.

Accordingly, the court finds that there is clear and convincing evidence that by entering into an attorney/client agreement with Stever, Respondent acquired an ownership, possessory, security, or other pecuniary interest adverse to the client, without written disclosure and consent, in willful violation of rule 3-300.

2. Case No. 16-O-13242 (Berg)

On April 13, 2012, Carl Berg contacted Respondent to assist him in his employment discrimination case against the United States Army. Respondent expressed her concerns regarding exhaustion of his administrative remedies through the EEO (Equal Employment Opportunity) process, and suggested Berg consider hiring an attorney who was closer to Berg's residence, rather than her, as a cost savings measure. Respondent informed Berg that she required $5,000 in advanced costs. Berg was not in a financial position to pay Respondent $5,000, so he represented himself for a time.

In 2015, Berg returned to Respondent seeking representation in his ongoing case. Because he remained in a precarious financial situation, he proposed to Respondent payment on a contingency basis and offered four parcels of land in Florida as collateral to secure her fees. The land was worth approximately $4,500-$10,000 per parcel at the time of the agreement.

At trial, Respondent falsely claimed that Berg signed an hourly fee agreement in late August 2012. It is clear that an hourly agreement never existed based upon several facts that manifested at trial. First, in a March 2016 email from Berg to Respondent, Berg stated, "You were going to take my case with the land as collateral and the rest contingent on the case." Respondent replied by email, stating, "This is true but, what has that got to do with anything."

Second, the fee agreement proffered by Respondent bears the date "7/14," and also purports to bear Berg's signature with no corresponding date. Berg credibly testified that he never signed the retainer agreement, and that the signature is forged as it lacks a distinctive feature, namely, "the 2nd," which he always includes, as his proper name is "Carl Max Berg the 2nd."

Third, Respondent's own email to Berg dated September 15, 2015, disproves her testimony at trial. In the email, Respondent stated, "I was looking through your file and noticed

that the retainer agreement has not been signed." In his November 2015 reply email to Respondent, Berg stated, "I was never sent the retainer, can you please send it." Finally, Berg credibly testified that he would not have signed an hourly fee agreement because he knew he lacked the cash flow to pay counsel on that basis.

Throughout the representation, Berg pressed Respondent for clarification regarding the terms of her representation. His requests were often triggered by Respondent's repeated demands for advanced costs. Respondent never provided any substantive response to Berg regarding the terms of her representation. However, during mediation of the case, Respondent notified Berg that he owed her approximately $100,000 based on an hourly agreement that never existed and evidenced by invoices that he was never provided. In panic and frustration, Berg drafted and sent an email to the mediator who guided the mediation and a letter to the federal judge presiding over the matter outlining his concerns with Respondent's failure to document in a fee agreement, explain, and account for her fees and her threats to abandon him if her fees were not paid.

Berg then turned over his land – that was supposed to have been collateral – to Respondent in response to her threat to sue him over fees. On April 18, 2016, Respondent accepted quit claim deeds to Berg's four parcels of unimproved land in Florida, which he made on March 1, 2016. Respondent did not have the properties appraised in order to ascertain whether or not the deal was fair and reasonable to Berg, nor was Berg provided a conflict waiver.

Respondent ultimately negotiated a settlement of Berg's suit in the amount of $35,000. Respondent took $25,000 in addition to keeping the land that was meant only as collateral. Berg received $10,000. This amounted to taking a contingency fee exceeding 70% of the settlement and keeping the land that was meant to serve only as collateral.

Ostensibly, in an effort to justify her fees, Respondent claimed that Berg did not pay costs, and that she carried the costs of his litigation. Respondent offered emails to evidence Berg's failure to pay costs. In one email to Berg, Respondent claimed, "You have not paid me a dime of costs." However, it is clear from the record that Berg paid $1,000 for filing costs and $600 for travel costs for Respondent to take depositions in San Francisco.

Conclusions of Law

Count 2 - (Rule 3-300 [Avoiding Interests Adverse to a Client])

The parties stipulated that count 2 is dismissed. Accordingly, count 2 is hereby dismissed with prejudice.

Count 3 - (Rule 3-300 [Avoiding Interests Adverse to a Client])

There is clear and convincing evidence that Respondent willfully violated rule 3-300 by entering into a business transaction with Berg on April 18, 2016, when she acquired the deeds to four parcels of Florida real property belonging to Berg as collateral payment of her fees. Berg quitclaimed the deeds in response to her threat to sue him over fees.

Therefore, Respondent failed to comply with the rule 3-300 requirements: she did not fully disclose the terms of the transaction in writing; she did not advise Berg, in writing, of the right to seek advice from an independent attorney of the client's choice; Berg was not given a reasonable opportunity to exercise that right; and the client did not consent in writing to the terms of the transaction.

3. Case No. 16-O-13391 (Rojas)

Alfonso Rojas was a senior fleet representative for the U.S. General Services Administration (GSA) for 35 years. In 2014, he was promoted to sales contracting officer. The promotion was unwanted and the new position was stressful as Rojas felt unqualified for the position. Having witnessed a former colleague be promoted and placed into a new position that

was stressful and soon thereafter suffering a heart attack and died, Rojas sought to return to his former position and sought a condolence letter from GSA to the family of his former colleague. He also sought management training and a change in forcing people into jobs that they did not want. GSA proposed a settlement to Rojas. The settlement contained a non-disclosure agreement, and other things that Rojas did not understand.

On June 6, 2014, Rojas consulted Respondent to answer questions regarding the settlement offer that he had received, and to green light or "bless" his acceptance of the settlement offer. Rojas agreed to pay Respondent $525 for a consultation even though he thought it a steep price. Rojas told Respondent that he had a mediation call scheduled for June 10, during which he would be required to accept or reject the settlement. Respondent knew the mediator and obtained a continuance of the mediation call to June 25.

After the consultation, Rojas expressed his intention to accept the settlement offer and to refrain from pursuing litigation. Nevertheless, Respondent's office manager asked Rojas to write a check for $1,775. Rojas protested and Respondent's office manager explained that the funds would be used to secure Respondent's representation only if he declined to accept the settlement offer, and wanted to pursue litigation. On June 23, 2014, Rojas delivered his EEO file to Respondent's office at the request of her office manager.

On June 25, 2014, Rojas appeared at Respondent's office for the mediation call. The mediation never took place that day because the mediator failed to join the call within 15 minutes of the scheduled time. Respondent actively pressured Rojas to pursue litigation under the Family Medical Leave Act. Respondent and her office manager attempted to get him to sign a retainer agreement. Rojas refused to sign a retainer agreement, but was desperate to leave Respondent's office and acceded to Respondent's office manager's insistence that he leave a blank check that would be like "escrow" and would be returned if not used. Rojas never intended the check to be

cashed nor to be represented by Respondent. He simply wanted to exit an uncomfortable situation where he felt pressured by the double-teaming of Respondent and her office manager.

Indeed, the next day, he called Respondent's office and left a voice mail message stating that he did not want to proceed with litigation, and asked Respondent to rip up his blank check. He then called the bank and explained the situation to the bank and requested a stop payment on the check. The bank granted the request and advised Rojas not to contact Respondent's office. Rojas nonetheless did contact Respondent's office because he wanted a refund of $1,250 ($1,775 - $525), which Respondent owed him.

Respondent did not tear up the blank check. Instead, on July 16, 2014, Respondent filled in the blank for an amount of $1,524.95 with a notation: "For Legal Services re: EEOC 573." The check was then sent to Wells Fargo Bank for negotiation, without the client's knowledge or consent. The bank stopped payment, pursuant to Rojas's previous instruction in June.

Thereafter, Respondent continued to progress Rojas' case without his knowledge, authorization, or consent. After futile efforts to get a refund of $1,250, Rojas sued Respondent in small claims court on June 2, 2015. On September 3, 2015, when the matter was heard in small claims court, Respondent presented a retainer/fee agreement purportedly signed by Rojas to the small claims court judge in support of her fees. Rojas told the small claims court judge that the signature on the agreement was not his, and offered to pay for a handwriting expert to prove that to the judge. The judge ruled against Rojas and ordered him to pay Respondent $1,599. Rojas dutifully made the payments to Respondent as ordered by the court.

On November 17, 2016, Respondent provided the same document with Rojas' forged signature to the OCTC investigator during the investigation of this matter.

During trial, an examiner of questioned documents testified with near certainty that the signature of Rojas on the retainer agreement was copied and pasted from another legal document

in his EEO file. Moreover, Respondent herself admitted, shortly before the handwriting expert testified, that she had just learned over the weekend that the signature was in fact forged.

Conclusions of Law

Count 4 - (§ 6106 [Moral Turpitude – Misrepresentation])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Respondent is charged with intentionally misrepresenting to the small claims judge on September 3, 2015, when she presented as evidence a fee agreement that contained a forged signature of Rojas. At the time, she told the judge that the signature was a true and accurate signature of Rojas. At this trial, Respondent admitted that the signature was forged.

Therefore, there is clear and convincing evidence that Respondent willfully committed an act of dishonesty in willful violation of section 6106 by misrepresenting to the small claims court judge that the fee agreement contained a true and accurate signature of Rojas when in fact his signature was forged.

Count 5 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

The State Bar alleges and the court so finds that Respondent made false and misleading statements to the small claims judge on September 3, 2015, by claiming that the fee agreement contained a true and accurate signature of Rojas when in fact his signature was forged.

However, because these facts also support the misrepresentation culpability finding in count 4, the court dismisses count 5 with prejudice as a duplicative allegation of the section 6106

charge. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [Little, if any, purpose is served by duplicate allegations of misconduct].)

Count 6 - (Rule 4-200(A) [Unconscionable Fee])

Rule 4-200(A) provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee. One of the factors to be considered in determining the conscionability of a fee is the informed consent of the client to the fee. (Rules Proc. of State Bar, rule 4-200(B)(11).)

The OCTC alleges that Respondent charged an unconscionable fee of $1,524.95 from Rojas because: (1) Rojas did not consent to the fee; (2) Rojas terminated Respondent's employment before the purported services were billed; and (3) Rojas's signature was forged on the fee agreement.

On July 14, 2014, Respondent charged a fee of $1,524.95 from Rojas by filling in the amount on the blank check that Rojas was pressured to give on June 25, 2014. Without the client's informed consent, she billed the client for services that occurred after Rojas terminated her employment on June 26. And, the client's signature was forged on the fee agreement. Unbeknownst to the small claims court that the fee agreement was obtained by fraud, Rojas was ordered to pay $1,599 in September 2015; and Rojas did so.

Thus, by charging $1,524.95 in fees for purported services rendered after her employment had already been terminated, by charging a fee on a blank check without the client's informed consent, and by charging such an amount based on a forged fee agreement, Respondent charged an unconscionable fee in willful violation of rule 4-200(A).

Count 7 - (§ 6106 [Moral Turpitude])

By knowingly providing the fee agreement with Rojas' forged signature to the OCTC investigator during the investigation of this matter in November 2016, Respondent committed an act involving moral turpitude and dishonesty in willful violation of section 6106.

4. Case No. 16-O-17541 (DeMarco)

On September 23, 2014, Debbra DeMarco retained Respondent to represent DeMarco in her discrimination and workplace harassment case in *DeMarco v. Newport Mesa Unified School District* (District I case), Orange County Superior Court, case No. 30-2013-00673244. DeMarco and Respondent signed an hourly fee agreement containing a lien provision which stated: "The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain." Such a provision conferred on Respondent ownership, possessory, security, or other pecuniary interest adverse to DeMarco.

Before entering into the agreement, Respondent did not disclose in writing to DeMarco that she may seek the advice of an independent lawyer of the client's choice or give the client a reasonable opportunity to do so.

In September 2015, Respondent moved to have the case dismissed. She then refiled the same causes of action, save three, in a new lawsuit against the same defendant in *DeMarco v. Newport Mesa Unified School District* (District II case), Orange County Superior Court, case No. 30-2015-00810181. Respondent then converted the hourly fee agreement between Respondent and DeMarco to a contingency fee agreement, which also contained a lien provision which conferred on Respondent an ownership, possessory, security, or other pecuniary interest adverse to DeMarco – the provision calculated Respondent's lien based on an hourly rate of $450 rather than a contingent fee. The lien section stated: "[T]his contract creates a lien against the client's claims and case, and any proceeds thereof whether through settlement, judgment or otherwise."

On August 6, 2016, after the relationship between DeMarco and Respondent broke down, Respondent abruptly withdrew from the representation and instructed DeMarco to find another lawyer. Respondent told her then office manager that although she withdrew from employment, she intended to claim that she was fired by DeMarco in order to keep her lien interest viable. At trial, Respondent testified unconvincingly, that DeMarco effectively terminated her and that she could not continue to represent DeMarco since DeMarco made it clear that she would have no further contact with Respondent after the heated argument. Respondent's testimony is rejected.

On August 23, 2016, Respondent filed identical liens, Notice of Contractual and Equitable Lien for Legal Services Rendered and Costs Incurred in the Amount of $156,018, in Orange County Superior Court in two matters: (1) *DeMarco v. Baruch*, case No. 30-2015-00822319; and (2) the District II case. According to the Notice of Right to Arbitration Respondent provided to DeMarco, Respondent calculated the lien amount as a combination of hourly fees in the sum of $96,018 charged in the District I case, $35,000 as a contingent fee in the District II case, and $25,000 as a contingent fee in *DeMarco v. Baruch.*

At some point after Respondent terminated the attorney-client relationship with DeMarco, she threw DeMarco's files in an outdoor trash bin. Her then office manager found the boxes in the bin the next day and retrieved them for the client and arranged for DeMarco's husband to pick them up.

DeMarco was effectively left to litigate the case on her own after Respondent withdrew from representation. Because Respondent filed the unlawful and inflated liens in DeMarco's pending cases, she was unable to obtain substitute counsel. Prospective attorneys would not take her case since Respondent's right to a portion of the settlement funds would precede their right and subsequently, there may be insufficient funds remaining to pay the prospective attorneys.

In late August 2016, DeMarco retained a lawyer for the limited purpose of helping her to resolve the fee/lien issue between her and Respondent. The arbitrator offered a reasonable settlement, but Respondent ignored it and subsequently sued DeMarco for her fees in a civil suit.

Courtney Hylton was opposing counsel in DeMarco's two lawsuits against the school district. She was involved in the case from the beginning and dealt with DeMarco's initial counsel (Baruch), then DeMarco in pro per, then Respondent, and finally DeMarco in pro per again. In late summer 2016, Hylton had a phone conversation with Respondent regarding settlement. However, she ultimately resolved the case directly with DeMarco.

Hylton was aware that Respondent had a pending lien, and included it in the settlement agreement. The agreement provided that the settlement check would be a two-party check issued to DeMarco and Respondent. Respondent told Hylton that this was unacceptable to her. Respondent wanted only her name on the check. Hylton thought this odd because this was at a time when Respondent was no longer representing DeMarco. Hylton told Respondent that that would not be appropriate, and that she was uncomfortable issuing the check that way because Hylton was aware of the bad blood between Respondent and DeMarco. Respondent threatened to sue Hylton personally, her school district client, and her firm if Hylton issued the two-party check. Hylton was intimidated by Respondent as she had never received that type of threat in any previous litigation. In reaction to Respondent's threat, Hylton has not issued the check or released the settlement funds. As a result, DeMarco has yet to collect the settlement funds for over two years.

Respondent then filed a state bar complaint against Hylton.

Pamela Thakor was retained by DeMarco to represent DeMarco in the case filed against DeMarco by Respondent. When Thakor filed a cross complaint against Respondent on

March 16, 2017, in Orange County Superior Court, Respondent threatened to file a state bar complaint against Thakor, and subsequently filed a cross-cross-complaint against DeMarco. Thakur felt threatened by Respondent and withdrew from the case.

During the state bar investigation in the DeMarco matter, on April 10, 2017, Respondent provided false invoices and billings to the OCTC investigator. For example, on an invoice dated July 25, 2016, Respondent billed DeMarco 37.95 hours for services performed on September 9, 2014, and 21.50 hours on December 1, 2014. On another invoice dated September 7, 2016, Respondent billed DeMarco 11 hours three times, a total of 33 hours, for the same work and on the same day – preparing a First Amended Complaint on March 7, 2016. Nevertheless, she stated in her letter to the State Bar investigator that the invoices and docket represented "detailed explanations of the services being [provided]" and that "the cost invoices and the docket will provide the detailed accounting of said services." Respondent knew that her statements were false at the time she made them.

Conclusions of Law

Count 8 - (Rule 3-300 [Avoiding Interests Adverse to a Client])

Respondent admitted that in September 2014, she willfully violated rule 3-300 by entering into an hourly fee agreement with DeMarco, which included a lien provision that conferred on Respondent ownership, possessory, security, or other pecuniary interest adverse to DeMarco.

Accordingly, the court finds that there is clear and convincing evidence that Respondent, by entering into an attorney/client agreement with DeMarco, acquired an ownership, possessory, security, or other pecuniary interest adverse to the client, without written disclosure and consent, in willful violation of rule 3-300.

Count 9 - (§ 6106 [Moral Turpitude])

By falsely claiming that she personally worked in excess of 24 hours (37.95 hours on September 9, 2014) on DeMarco's matter in her July 25, 2016 invoice, which is an impossibility, Respondent committed an act involving moral turpitude and dishonesty in willful violation of section 6106.

Count 10 - (§ 6106 [Moral Turpitude])

Similarly, by falsely claiming that she personally worked in excess of 24 hours (33 hours on March 7, 2016, on a First Amended Complaint) in her September 7, 2016 invoice, which is again an impossibility, Respondent committed an act involving moral turpitude and dishonesty in willful violation of section 6106.

Count 11 - (§ 6106 [Moral Turpitude])

On April 10, 2017, Respondent provided false invoices and billing information to OCTC – the July 25, 2016 and September 7, 2016 invoices, both of which included inflated billings. By stating to the OCTC investigator that the invoices represented detailed explanations of the services being provided, which she knew to be false at the time she made the statement, Respondent committed an act involving moral turpitude and dishonesty in willful violation of section 6106.

Counts 12 and 13 - (§ 6068, subd. (d) [Seeking to Mislead a Judge])

On August 23, 2016, when Respondent filed the two identical liens for $156,018 in *DeMarco v. Baruch* and the District II case, she falsely claimed to the Orange County Superior Court that the liens were "based on the contractual agreements entered into between [Respondent] and [DeMarco] on September 15, 2015, as well as all invoices that reflect services performed and costs incurred" by Respondent in her representation of DeMarco.

In fact, the invoices included falsified billing for Respondent's time spent on September 9, 2014 (37.95 hours) and March 7, 2016 (33 hours). The number of hours far exceeded the number of hours in a day.

Moreover, the liens were invalid. The lien provision in the original hourly fee agreement and in the contingency fee agreement was in violation of rule 3-300; its enforcement would be invalid. Finally, because Respondent withdrew from employment, she was not entitled to a lien under any circumstances.

Therefore, Respondent sought to mislead the court by a false statement of fact, in willful violation of section 6068, subdivision (d), in counts 12 and 13, by submitting the two liens with fraudulent invoices and invalid fee agreements to the Orange County Superior Court.

5. Case No. 16-O-17724 (Staley)

On March 22, 2016, Margaret Staley retained Respondent to represent her in an Equal Employment Opportunity Commission (EEOC) complaint. Staley entered into an hourly fee agreement with Respondent, which contained a lien provision, stating: "The lien will be for any sums owing to Attorney at the conclusion of services performed. The lien will attach to any recovery Client may obtain."

Before entering into the agreement, Respondent did not disclose in writing to Staley that she may seek the advice of an independent lawyer of the client's choice and give the client a reasonable opportunity to do so. Respondent did not obtain a written consent from Staley.

Conclusions of Law

Count 14 - (Rule 3-300 [Avoiding Interests Adverse to a Client])

Respondent admitted that she willfully violated rule 3-300 by entering into an hourly fee agreement with Staley, which included a lien provision that conferred on Respondent ownership, possessory, security, or other pecuniary interest adverse to Staley.

Accordingly, the court finds that there is clear and convincing evidence that Respondent, by entering into an attorney/client agreement with Staley, acquired an ownership, possessory, security, or other pecuniary interest adverse to the client, without written disclosure and consent, in willful violation of rule 3-300.

Aggravation[4]

The OCTC must establish aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds five aggravating circumstances.

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent's multiple acts of misconduct in five client matters, involving failing to avoid interests adverse to four clients, committing acts of moral turpitude, charging an unconscionable fee, and misleading the court and the State Bar are a significant aggravating factor.

Overreaching (Std. 1.5(g))

Respondent's procedures for dealing with complaining clients constituted overreaching. When clients complained about her billings, she would threaten to sue or file liens against them. "The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed . . . is in a superior position to exert unique influence over the dependent party." (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Respondent exploited her position as an attorney and intimidated her clients. The Supreme Court has long recognized that the right to practice law "is not a license to mulct the unfortunate." (*Recht v. State Bar* (1933) 218 Cal. 352, 355.)

Respondent did just that by filing invalid liens against DeMarco and threatening to sue Berg for $100,000, based on an hourly agreement that never existed. As a result, Berg panicked and was forced to give Respondent four parcels of land. She claimed that Berg did not pay her a

[4] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

dime for costs; when in fact, Berg had paid her $1,000 for filing fees and $600 for travel expenses. Respondent charged Rojas $1,524.95 on a blank check when the client clearly told her to tear up the check and terminated her employment.

In the DeMarco matter, Respondent intimidated opposing counsel Hylton and Thakor with threats of reprisal. Respondent threatened to sue Hylton if Respondent's name was not included on DeMarco's settlement checks. Respondent then filed a state bar complaint against Hylton for not paying her share of DeMarco's settlement funds. And when Respondent threatened to file a state bar complaint against Thakur, she withdrew from the case.

Therefore, the court assigns substantial weight for Respondent's overreaching and multiple acts of abusive behavior.

Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's misconduct significantly harmed her clients and the administration of justice. Her entering into fee agreements that are adverse to the clients' interests without complying with rule 3-300 and overcharging her legal fees harmed her clients.

In the Berg matter, as her legal fees, Respondent took $25,000 of the $35,000 settlement funds, which is more than 70%, and the client's four parcels of land, which were meant to be collateral.

In the Rojas matter, the client agreed to pay $525 as a consultation fee; but instead, Respondent collected from him more than six times the original agreed fee, totaling $3,374: $1,775 (first initial check) + $1,599 (small claims court order). She thus owes him a balance of $2,849 ($3,374 - $525).

In the DeMarco matter, Respondent angrily abandoned DeMarco and withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. Respondent's then office manager had to retrieve her files from an outdoor

trash bin; DeMarco was suddenly left to represent herself in her lawsuits. Also, Respondent's filing of the inflated liens of $156,018 in DeMarco's pending cases prevented DeMarco from obtaining substitute counsel and from collecting her settlement funds for over two years. Moreover, her filings of those liens in the court took judicial resources away from other meritorious cases, harming the administration of justice.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. "The law does not require false penitence. [Citation.] But it does require that the Respondent accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of the serious consequences of her misbehavior. Respondent continues to blame her office staff for the fraudulent invoices and her clients for trying to take advantage of her. She maintains that DeMarco terminated her employment, rather than she herself withdrew from employment. She has yet to refund the overcharged fees of $2,849 to Rojas, return the four parcels of land to Berg, or withdraw the two liens filed against DeMarco. As a result, DeMarco has yet to receive her settlement funds.

Therefore, Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered a significant aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

Lack of Candor (Std. 1.5(l).)

Respondent's testimony before this court is not credible. For example, Respondent claims that her billing was not padded and that if anyone brings errors to her attention, she would fix it immediately. In the DeMarco matter, the fraudulent invoices were dated July 25 and

September 7, 2016. Yet, the following year, Respondent submitted the same "erroneous" invoices to the State Bar investigator on April 10, 2017, without correcting the so-called mistakes. And, she maintained that DeMarco terminated her employment; when in fact, she was the one who suddenly abandoned her client and threw the client files in an outdoor trash bin.

In the Berg matter, she falsely testified that the client signed an hourly fee agreement, when in fact, they had a contingency agreement and the signature on the hourly fee agreement was forged. Respondent agreed to take Berg's case "with the land as collateral and the rest contingent on the case." Yet, she forced Berg to quitclaim four parcels of land and convey his interest to her.

Thus, Respondent's lack of candor is a significant aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) Minimal weight is given to Respondent's lack of a prior disciplinary record, cooperation with the State Bar, and good character. But the court finds no mitigation for her emotional difficulties.

No Prior Record (Std. 1. 6(a).)

A mitigating circumstance may include "absence of any prior record of discipline over many years of practice coupled with present misconduct, which is not deemed serious." (Std. 1.6(a).) Here, Respondent practiced law for nearly 14 years before she engaged in acts of misconduct, but they are serious.

Where the misconduct is serious, the lack of a prior discipline record is most relevant if the misconduct is aberrational and unlikely to recur. (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029; *In the Matter of Reiss* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 206, 218.) Respondent has shown a lack of insight into her wrongdoing. "Consequently, [the court is] not

persuaded by [her lengthy] record of discipline-free practice that [she] will avoid future misconduct." (*In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273, 279.) Thus, the court assigns only minimal mitigating credit for her discipline-free record.

Extreme Emotional/Physical/Mental Disabilities (Std. 1.6(d).)

Respondent's therapist, Margarita Calzadilla-Kishimoto, has been treating Respondent for major depression and post-traumatic stress disorder since March 2017. Her symptoms were lack of sleep, irritability, trouble managing emotions, and difficulty tracking conversations. Respondent also reported feeling stress and anxiety as a result of the OCTC investigation. The therapist recommended that Respondent consult a medical doctor. The therapist concluded that Respondent is much improved.

Mitigation is available for "extreme emotional difficulties or physical or mental disabilities" if (1) the attorney suffered from them at the time of the misconduct; (2) they are established by expert testimony as being directly responsible for the misconduct; and (3) they no longer pose a risk that the attorney will commit future misconduct. (Std. 1.6(d).)

Respondent did not prove that her emotional problems were directly responsible for her failure to avoid adverse interest to clients, acts of moral turpitude, or misrepresentations to the court. While she need not necessarily prove this nexus through expert testimony (see *In re Brown* (1995) 12 Cal.4th 205, 222 [some mitigation afforded to evidence of attorney's illness despite lack of expert testimony]), she failed to provide clear and convincing evidence establishing that her problems caused her misconduct.

Also, Respondent did not prove she suffered from her problems at the time of her misconduct. Finally, Respondent did not provide clear and convincing evidence that her emotional difficulties no longer pose a risk of future misconduct. As such, the court finds no mitigation. (*In the Matter of Elkins* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, 168 [no

mitigative credit where attorney failed to establish causal nexus between emotional difficulties and misconduct].)

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

Respondent's stipulation as to a limited number of facts and to culpability on three counts is given limited weight in mitigation because they were easily proven. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [stipulation to easily provable facts is mitigating if relevant and assisted prosecution of case].)

Good Character (Std. 1.6(f).)

Respondent presented nine letters of good character from friends, clients, and two attorneys. Although not declared under penalty of perjury, they wrote that Respondent was honest, dedicated to her clients, and practiced law with integrity and conviction. However, because the letters were written in March while the Second Amended NDC was filed in April, the witnesses were not aware of the full extent of the charges against Respondent, specifically the moral turpitude and unconscionable fee charges in the Rojas matter. Therefore, the letters are entitled to minimal weight. (See *In the Matter of Song* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 273 [limited weight assigned to good character evidence where the attorney failed to establish that his witnesses knew the full extent of his misconduct].).

Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.7(a).)

In this matter, standards 2.4, 2.11, and 2.12(a) apply.

Standard 2.4 states, "Suspension is the presumed sanction for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproval is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable to the client, then disbarment or actual suspension is appropriate."

Standard 2.11 provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Finally, standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a), (b), (d), (e), (f), or (h) is actual suspension or disbarment.

Respondent maintains that she did not falsify any agreement or billings and argues that if found culpable, a stayed suspension of 180 days with one year's probation would be the appropriate level of discipline.

The OCTC urges that Respondent should be disbarred for her multiple acts of dishonesty and moral turpitude, inability or unwillingness to tell the truth, and the significant harm caused to her clients and the administration of justice, citing *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725 in support of its recommendation. Moreover, OCTC contends that Respondent should also be ordered to withdraw the liens that she filed in the DeMarco matters, return to Berg the deeds to his Florida real estate, and refund to Rojas all fees paid in excess of $525.

In *Berg*, the attorney overbilled an insurance company for more than $282,000 over 10 months. He was disbarred for charging or collecting an illegal or unconscionable fee by extensive fraudulent billing, withdrawing disputed trust funds, and failing to make prompt payment of funds to the client. In aggravation, the attorney had a prior record of discipline, a pattern of misconduct, and a lack of insight into the wrongfulness of his actions. Minimal mitigating credit was given to his pro bono work. The court found that the attorney's fraudulent billing, involving moral turpitude, is a matter from which the public deserves substantial protection. "When this misconduct is combined with the misconduct . . . of not promptly paying over proceeds to a client and not retaining disputed funds in a trust account, and respondent's inability or unwillingness to accept the judicial process, it places the public, the courts, and the profession at risk."

Similarly, Respondent's multiple acts of moral turpitude in the Rojas and DeMarco matters and her denial of the wrongfulness of her actions prompt this court to conclude that the public deserves substantial protection. Respondent's use of specious and unsupported arguments in an attempt to evade culpability in her disciplinary matter revealed her lack of appreciation both for her misconduct and for her obligations as an attorney. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631.) She filed false invoices to the court, but

trivialized it, claiming that she simply made a mistake. Yet, she still submitted the same false invoices to the State Bar investigator. "The filing of a false verification by an attorney not only undermines the ability of the courts to rely on the accuracy of sworn declarations, it also diminishes the public's confidence in the integrity of the legal profession." (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157.)

Respondent's false liens and forged fee agreement violate the fundamental rules of ethics – "common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Tatlow v. State Bar* (1936) 5 Cal.2d 520, 524.) Such practice of deceit is inimical to the high ethical standards of honesty and integrity required of members of the legal profession and to the promotion of confidence in the trustworthiness of members of the profession. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73.)

Respondent is dishonest and abusive towards her clients, opposing counsel, and others. Indeed, Respondent engaged in multiple acts of deception for personal gain. Her "lack of insight makes [her] an ongoing danger to the public." (*In the Matter of Song, supra,* 5 Cal. State Bar Ct. Rptr. 273, 279.) She has no recognition of her wrongdoing and has flagrantly breached her fiduciary duties. Her extreme dishonesty to this court and to her clients raises concerns as to whether her misconduct may recur and is particularly troubling to this court.

It is clear that strong steps must be taken to protect the public from future professional misconduct on her part. Accordingly, the court finds the OCTC's disbarment recommendation is appropriate and within standard 2.11. In view of Respondent's five counts of violations of moral turpitude, the case law, lack of compelling mitigation, and the serious aggravating factors of multiple acts, overreaching, significant harm surrounding her misconduct, indifference, and lack of candor, the court recommends that Respondent be disbarred to protect the public and the courts and to maintain the integrity of the legal profession.

RECOMMENDATIONS

Discipline - Disbarment

It is recommended that K.D. Hughes-Cione, State Bar Number 210662, be disbarred from the practice of law in California and that her name be stricken from the roll of attorneys.

Additional Requirements

It is further recommended that K.D. Hughes-Cione be ordered to comply with the following additional requirements within 60 days, after the effective date of the Supreme Court order imposing discipline in this matter:

1. K.D. Hughes-Cione must make restitution to Alfonso Rojas in the amount of $2,849 plus 10 percent interest per year from September 3, 2015;

2. K.D. Hughes-Cione must return to Carl Berg the four parcels of land in Florida that he made quit claim deeds to K.D. Hughes-Cione on March 1, 2016; and

3. K.D. Hughes-Cione must withdraw the two liens[5] she filed in the DeMarco matters on August 23, 2016: (a) *DeMarco v. Newport Mesa Unified School District*, Orange County Superior Court, case No. 30-2015-00810181, and (b) *DeMarco v. Baruch*, Orange County Superior Court, case No. 30-2015-00822319.

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

It is further recommended 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 imposing discipline in this matter.[6]

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[5] Notice of Contractual and Equitable Lien for Legal Services Rendered and Costs Incurred in the Amount of $156,018.

[6] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: November 12, 2018

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

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has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 13, 2018, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

K D HUGHES-CIONE
HUGHES-CIONE, APLC
738 SANTIAGO ST
SANTA ANA, CA 92701

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TIMOTHY G. BYER, Enforcement Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 13, 2018.

Paul Songco
Court Specialist
State Bar Court