

ate Bar Court of the State Bar of Cali: ia
Hearing Department: Los Angeles San Francisco
PILOT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES

Counsel for the State Bar Cydney Batchelor, #114637 State Bar of California 180 Howard St., 7th Fl. San Francisco, CA 94105 Tele: 415/538-2204	Case Number(s) 00-0-14306-PEM 00-0-14901 01-0-03211 01-0-05254 02-0-12170 02-0-13758 03-0-00038 FILED JUL 19 2007 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO	(for Court use) CONFIDENTIAL LODGED JAN 18 2005 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel for Respondent Cheryl J. Van Clark, #158357 P.O. Box 2333 Gilroy, CA 95021-2333	Submitted to Pilot Program Judge Stricker STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED kwiktag® 031 977 011 	
In the Matter of CHERYL J. VAN CLARK Bar # 158357 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted 6/8/92
(Date)

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." This stipulation consists of 11 pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts".
see attachment

(5) Conclusions of law, drawn from and specifically referring to the facts, are also included under "Conclusions of Law."
see attachment

(6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component (attachment) of this stipulation under: specific headings, i.e., "Facts", "Dismissals", "Conclusions of Law."

B. Aggravating Circumstances (Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b).) Facts supporting aggravating circumstances are required.

- (1) Prior Record of Discipline [see standard 1.2(f)]
 - (a) State Bar Court Case # of prior case _____
 - (b) Date prior discipline effective _____
 - (c) Rules of Professional Conduct/State Bar Action violations _____

 - (d) Degree of prior discipline _____
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline"
- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) Trust violation: Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ~~XXX~~ Harm: Respondent's misconduct harmed significantly a client, the public or the administration of justice. **see attachment**
- (5) Indifference: Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) Lack of Cooperation: Respondent displayed a lack of candor and cooperation to the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) ~~XXX~~ Multiple/Pattern of Misconduct: Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct. **see attachment**
- (8) No aggravating circumstances are involved.

Additional aggravating circumstances:

none

C. Mitigating Circumstances [standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) No Prior Discipline: Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
see attachment
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct.
- (3) Candor/Cooperation: Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
see attachment
- (4) Remorse: Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing; which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) Restitution: Respondent paid \$ _____ on _____ in restitution to _____ without the threat of force of disciplinary, civil or criminal proceedings.
- (6) Delay: These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) Good Faith: Respondent acted in good faith.
- (8) Emotional/Physical Difficulties: At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) Severe Financial Stress: At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) Family Problems: At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) Good Character: Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) Rehabilitation: Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) No mitigating circumstances are involved.

Additional mitigating circumstances:
see attachment

Respondent enters into this stipulation as a condition of his/her participation in the Pilot Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Pilot Program Contract.

If the Respondent is not accepted into the Pilot Program or does not sign the Pilot Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Pilot Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

11/15/04
Date


Respondent's Signature

CHERYL J. VAN CLARK
Print Name

N/A
Date

N/A
Respondent's Counsel Signature

N/A
Print Name

11/15/05
Date


Deputy Trial Counsel's Signature

CYDNEY BATCHELOR
Print Name

ATTACHMENT TO
STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: CHERYL J. VAN CLARK

CASE NUMBER(S): 00-O-14306-PEM, et al.

DISMISSALS.

Case No. 01-O-05254 (Matt Newton). Upon the execution of the pilot program contract by the Respondent and the State Bar Court, the State Bar respectfully requests the Court to dismiss case number 01-O-05254, in the interests of justice, without prejudice. This case involves a short-term failure to render an accounting, after which Respondent participated in fee arbitration and paid the arbitrator's award promptly.

Case No. 02-O-12170 (The Cornells). Upon the execution of the pilot program contract by the Respondent and the State Bar Court, the State Bar respectfully requests the Court to dismiss case number 02-O-12170, in the interests of justice, without prejudice. This case involves a 3-month failure to perform, and Respondent fully refunded the Cornells' advanced attorney fees.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of the following violations of the State Bar Act and/or Rules of Professional Conduct:

Case No. 00-O-14306 (Timothy Birchmier)

Facts: In August 1999, Timothy Birchmier employed Respondent to obtain a reduction of child support. Later that month, Respondent filed the motion for modification. However, calendaring issues subsequently arose, and Respondent failed to reschedule the matter. Finally, in June 2000, Mr. Birchmier terminated Respondent's employment and employed other counsel to pursue the child support reduction motion, who was able to have the support reduced.

Conclusions of Law: By recklessly failing to recalendar Mr. Birchmier's motion for reduction of child support obligations in a timely manner, Respondent failed to perform competently the legal services for which she was employed, in violation of Rule of Professional Conduct 3-110(A).

Case No. 00-O-14901 (Gilbert Garcia)

Facts: In May 2000, Gilbert Garcia employed Respondent to pursue a modification of his child support duties and visitation rights, paid her \$1000.00 in advanced attorney fees, and entrusted original documents to her. Thereafter, Respondent failed to file a support motion for him, or to respond timely to his numerous telephone messages. In July 2000, Mr. Garcia employed replacement counsel, who contacted Respondent to request the refund of the unearned fees and the return of Mr. Garcia's documents. Respondent failed to comply in a timely manner

Conclusions of Law: By recklessly failing to take steps to pursue Mr. Garcia's legal claims, Respondent failed to perform competently the legal services for which she was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond promptly to Mr. Garcia's telephone messages, Respondent failed to respond promptly to reasonable status inquiries of a client, in violation of Business and Professions code section 6068(m). By willfully failing to return Garcia's papers in a timely manner, Respondent thereby failed to promptly release upon termination of employment client papers upon request, in violation of Rule of Professional Conduct, rule 3-700(D)(1). By failing to refund the unearned fees to Mr. Garcia client in a timely manner, Respondent thereby failed to promptly refund any part of a fee paid in advance that had not been earned, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 01-O-03211 (Shelly Wilson-Hale)

Facts: In October 2000, Shelly Wilson-Hale employed Respondent to represent her late husband's estate, and paid her \$1000.00 as advanced attorney fees. In November 2000, Ms. Wilson-Hale met with Respondent and entrusted original documents, including pension papers to her. Thereafter, Respondent failed to perform legal services. Respondent also failed to respond to the telephone messages. In February 2001, Ms. Wilson-Hale wrote to Respondent to terminate her employment, to request the return of her original documents, and to request a refund of the unearned \$1000.00 attorney fees. Respondent failed to respond or comply. However, within ninety days from the execution of this stipulation, Respondent will voluntarily refund Ms. Wilson-Hale's attorney's fees in full, plus interest.

Conclusions of Law: By recklessly failing to perform legal services for Ms. Wilson-Hale, Respondent failed to perform legal services with competence, in violation of Rule of Professional conduct 3-110(A). By willfully failing to respond to Ms. Wilson-Hale's telephone messages, Respondent failed to respond to her client's reasonable status inquiries, in violation of Business and Professions Code section 6068(m). By willfully failing to return Ms. Wilson-Hale's original estate papers, Respondent failed promptly to release to the client her papers upon termination and demand, in violation of Rule of Professional Conduct 3-700(D)(1). By willfully failing to refund unearned attorney fees to Ms. Wilson-Hale in a timely manner, Respondent failed to refund unearned fees promptly, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 02-O-13758 (Barry L. Bellan)

Facts: In August 2000, Barry L. Bellan employed Respondent to assist him in his mother's probate matter, and paid her \$500.00 in advanced attorney fees from the estate. Mr. Bellan provided Respondent with original estate documents, including one unpaid bill and a one-page list of assets and computations regarding the estate. Respondent agreed to complete the government forms, and to send letters to all creditors of the estate. Thereafter, Respondent performed no legal services. Respondent also failed to respond to voice mail messages that Mr. Bellan left over the course of a year. In January 2003, Mr. Bellan wrote to Respondent and requested the return of his original documents and a refund of the unearned attorney fees. Respondent failed to return the original documents. However, within ninety days from the execution of this stipulation, Respondent will voluntarily refund Mr. Bellan's attorney's fees in full, plus interest.

Conclusions of Law: By recklessly failing to perform legal services for Mr. Bellan's mother's estate, Respondent failed to perform competently the legal services for which she was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to respond promptly to Mr. Bellan's telephone messages, Respondent failed to respond to her client's reasonable status inquiries, in violation of Business and Professions Code section 6068(m). By willfully failing to return the original documents upon demand, promptly or at any other time, Respondent failed to return promptly all the client papers and property to the client, in violation of Rule of Professional Conduct 3-700(D)(1). By willfully failing to refund the unearned attorney fees in a timely manner, Respondent failed promptly to refund any part of a fee paid in advance that had not been earned, in violation of Rule of Professional Conduct 3-700(D)(2).

Case No. 03-O-00038 (Linda L. Schaffer)

Facts: In April 2002, Linda L. Schaffer employed Respondent to represent her in a pending marital dissolution matter, and paid her \$2500.00 as advanced attorney fees. Respondent thereafter immediately filed an amended petition on Ms. Schaffer's behalf, as well as motions to quash, to dismiss and to change venue on the petition that Ms. Schaffer's husband had filed in Contra Costa County. The motion to dismiss was granted after a hearing and venue was transferred to San Benito County. Thereafter, Respondent failed to conclude the case. For a time, Respondent assured Ms. Schaffer that she would complete the work; however, by late 2002, Respondent stopped responding to Ms. Schaffer's telephone messages or her written communication. In January 2003, Ms. Schaffer employed a new attorney, who wrote to Respondent to ask her to sign a substitution of attorney and to provide an accounting. Respondent failed to comply.

Conclusions of Law: By recklessly failing to conclude Ms. Schaffer's legal matter, Respondent failed to perform competently the legal services for which she was employed, in violation of Rule of Professional Conduct 3-110(A). By willfully failing to promptly respond to Ms. Schaffer's messages and correspondence, Respondent failed to respond to her client's reasonable status inquiries promptly, in violation of Business and Professions Code section 6068(m). By willfully failing to provide an accounting upon demand, Respondent failed to provide an accounting of unearned attorney fees, in violation of Rule of Professional Conduct 4-100(B)(3).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 11, 2004.

AGGRAVATING CIRCUMSTANCES.

Facts Supporting Aggravating Circumstances:

Multiple Acts of Misconduct: The facts and conclusions set forth above involve multiple acts of misconduct.

Significant Harm: Mr. Bellan and Ms. Wilson-Hale have been deprived of original documents relating to their respective cases, which Respondent received and never returned. Mr. Birchmier was not able to obtain his reduction in child support in a timely manner due to Respondent's inaction.

MITIGATING CIRCUMSTANCES.

Facts supporting mitigating circumstances:

No prior record: Respondent has no prior record of discipline, since being admitted to practice in 1992, 12 years ago.

Candor/Cooperation: Respondent has been completely candid and cooperative with the undersigned deputy trial counsel in resolving these cases.

Extreme Emotional and Physical Difficulties: If called as a witness, Respondent would testify that beginning in 1999, she started to experience a number of traumatic events, including: the onset of menopause; gall bladder surgery; her husband's two serious strokes, diabetes and cardiac surgery; her brother-in-law's death of lung and brain cancer; the year-long illness and death of her secretary; and her father's stroke and death two years later. None of these events was the product of any illegal conduct by the Respondent, and with the exception of her husband's on-going cardiac issues, Respondent no longer suffers from these difficulties.

Additional Mitigating Circumstance:

Participation in Lawyer's Assistance Program: In March 2004, Respondent voluntarily signed a pre-enrollment assessment agreement with the State Bar's Lawyer Assistance Program (LAP). Respondent was then assessed and monitored for a period of time by the LAP. At the conclusion of the LAP evaluation, Respondent met with its Evaluation Committee, and was accepted into the program. On August 26, 2004, Respondent signed a participation agreement with LAP which memorialized her 5 year commitment. She has remained in full compliance with LAP ever since her first contact.

Refund of attorney fees: Although she did not do so until after the intervention of the State Bar, Respondent voluntarily refunded all advanced attorney fees to the Cornells, complied with the fee arbitration awards in favor of her client Matt Newton, voluntarily agreed to refund all advanced attorney fees to client Barry Bellan and Shelly Wilson-Hale within ninety days from the date of this stipulation, and to initiate fee arbitration upon the request of client Linda Schaffer.

RESTITUTION.

Respondent waives any objection to immediate payment by the State Bar Client Security Fund upon a claim or claims for the principal amounts of restitution set forth below.

In accordance with the timetable set forth in the in the "Pilot Program Contract" to be executed between the State Bar Court and Respondent on the captioned cases, Respondent must make restitution as follows:

Barry L. Bellan, or the Client Security Fund, if it has paid, in the principal amount of \$500.00, plus interest at the rate of 10% per annum from September 1, 2000, within ninety (90) days from the date Respondent signs this stipulation.

Shelly Wilson-Hale, or the Client or the Client Security Fund, if it has paid, in the principal amount of \$ 1000.00, plus interest at the rate of 10% per annum from February 9, 2001, within ninety (90) days from the date Respondent signs this stipulation.

ADDITIONAL RESTITUTION CONDITION.

Fee arbitration in Linda L. Schaffer matter: In addition to the fixed restitution set forth above, Respondent hereby agrees to write to Ms. Schaffer, within ninety (90) days from the date she signs this stipulation, and therein offer to initiate and participate in fee arbitration upon Ms. Schaffer's request regarding their outstanding dispute with her about \$2500.00 in advanced fees. Respondent further agrees to initiate and participate in fee arbitration upon Ms. Schaffer's request, and to abide by the final order if any there be. Respondent understands and agrees that his failure to write the letter, or to initiate or participate in fee arbitration upon Ms. Schaffer's request, or to abide by the final order, if any there be, may constitute a violation of this stipulation.

ORDER

Finding this stipulation to be fair to the parties, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulation as to facts and conclusions of law is APPROVED.

- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Pilot Program or does not sign the Pilot Program Contract. (See rules 135(b) and 802(b), Rules of Procedure.)

The effective date of the disposition is the effective date of the Supreme Court order herein, normally 30 days after the file date of the Supreme Court Order. (See rule 953(a), California Rules of Court.)

Date Jan 18, 2004

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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 San Francisco, on July 19, 2007, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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

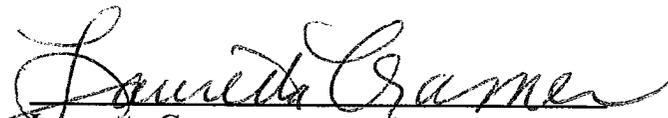
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**CHERYL J. VAN CLARK
VAN CLARK LAW OFFICE
8010 WAYLAND LANE, SUITE 2A
PO BOX 2333
GILROY, CA 95021**

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

CYDNEY BATCHELOR, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 19, 2007**.


Laretta Cramer
Case Administrator
State Bar Court