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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of)
ERIC L. HOLT,)
Member No. 176153,)
A Member of the State Bar.)

Case Nos. 03-O-04330-PEM;
04-H-10326 (Cons.)

DECISION

I. INTRODUCTION

In this default matter, Respondent **ERIC L. HOLT** is found culpable, by clear and convincing evidence, of failing to comply with certain conditions attached to a private reproof and of misconduct in a single client matter, involving failure to perform services competently, failure to communicate with a client and failure to cooperate with the State Bar.

The court recommends, among other things, that Respondent be suspended from the practice of law for two years, that execution of said suspension be stayed, and that Respondent be actually suspended from the practice of law for six months and until he makes restitution to a former client and until the State Bar Court grants a motion to terminate Respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

II. PERTINENT PROCEDURAL HISTORY

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent at his official membership records address in case No. 03-O-04330 on March 3, 2004, and in case No. 04-H-10326 on March 23, 2004. (Rules Proc. of State Bar, rule 60.) The mailings were returned as unclaimed. Respondent did not file a response to either NDC. (Rules Proc. of State Bar, rule 103.)

1 In May 2004, the State Bar attempted to telephone Respondent, leaving messages at his
2 home, cellular phone, and his wife's office. Respondent did not respond to any of the messages.

3 On motion of the State Bar, Respondent's default was entered on June 1, 2004. Respondent
4 was enrolled as an inactive member under Business and Professions Code section 6007(e)¹ on June
5 4, 2004.

6 Respondent did not participate in the disciplinary proceedings. On September 8, 2004, the
7 court vacated the original submission date of June 21, 2004, and ordered the State Bar to file
8 Respondent's prior record of discipline.

9 After the State Bar filed Respondent's prior record of discipline, the court took this matter
10 under submission on September 17, 2004.

11 III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12 All factual allegations of the NDC are deemed admitted upon entry of Respondent's default
13 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
14 200(d)(1)(A).)

15 A. Jurisdiction

16 Respondent was admitted to the practice of law in California on February 8, 1995, and has
17 since been a member of the State Bar of California.

18 B. The Warren Matter (Case No. 03-O-04330)

19 On June 16, 1999, David Warren hired Respondent to represent him in a fraud action against
20 the sellers in a real estate transaction. By June 9, 1999, Warren had learned that his damages were
21 in excess of \$8,500.

22 Respondent did not prepare a fee agreement, but represented to Warren that he would recover
23 his fees from the sellers. Respondent did not specify what his fee would be.

24 On September 7, 1999, Respondent wrote to the sellers on behalf of Warren, demanding
25 \$8,500 in damages. The sellers did not respond to the demand. Thereafter, Respondent took no
26 further action to protect Warren's interests.

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28 ¹References to section are to the Business and Professions Code, unless otherwise noted.

1 In the next three years, Warren requested Respondent for a status report on December 19,
2 2000, April 20, 2002 and March 23, 2003. Respondent did not reply to any of the requests.

3 Warren's action against the sellers expired on June 9, 2002, by operation of the statute of
4 limitations (Code Civ. Proc., § 338(d) [three years for fraud].) Respondent did not preserve
5 Warren's cause of action or advise him of the deadline so that he could have obtained other counsel.

6 On October 29 and November 17, 2003, a State Bar investigator wrote to Respondent
7 regarding the Warren matter and requested a written reply. The letters were properly sent to
8 Respondent at his official address. They were not returned as undeliverable or for any other reason.
9 Respondent did not respond to the letters.

10 ***Count 1: Failure to Perform (Rule 3-110(A) of the Rules of Professional Conduct)***²

11 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail
12 to perform legal services with competence.

13 Other than writing a demand letter in September 1999, Respondent did not perform any
14 further legal services in the Warren matter. As a result, the statute of limitations on Warren's cause
15 of action expired in 2002. Therefore, Respondent recklessly failed to competently perform services
16 in wilful violation of rule 3-110(A).

17 However, Respondent's failure to enter a written fee agreement with his client or disclose
18 a fee estimate is not a violation of rule 3-110(A). Although section 6148 mandates that an attorney
19 must provide a written contract for services and that the contract must contain any basis of
20 compensation if the total expense to a client will exceed \$1,000, there is no evidence that Warren's
21 expense would have exceeded \$1,000.

22 ***Count 2: Failure to Communicate (Business and Professions Code Section 6068(m))***

23 Section 6068, subdivision (m), requires an attorney to respond promptly to reasonable status
24 inquiries of clients and to keep clients reasonably informed of significant developments in matters
25 with regard to which the attorney has agreed to provide legal services.

27 ²References to rule are to the current Rules of Professional Conduct, unless otherwise
28 noted.

1 By failing to reply to Warren's letters from December 2000 through March 2003, Respondent
2 failed to respond to Warren's reasonable status inquiries in wilful violation of section 6068,
3 subdivision (m).

4 ***Count 3: Failure to Cooperate With the State Bar (Section 6068(i))***

5 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
6 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
7 October and November 2003 letters or participate in the investigation of the Warren matter,
8 Respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

9 **C. Violation of Probation Conditions (Case No. 04-H-010326)**

10 In October 2003, Respondent and the State Bar entered into a stipulation regarding facts and
11 disposition in State Bar Court case No. 03-H-00826. On November 25, 2003, the State Bar Court
12 approved the stipulation and imposed upon Respondent discipline consisting of a private reproof
13 with attached conditions (order) for a period of two years.

14 On November 25, 2003, the order was properly served on Respondent at his official
15 membership records address. The order was not returned as undeliverable; it became effective on
16 December 16, 2003.

17 The order required Respondent to comply, among other things, with these conditions:

- 18 1. Respondent must pay restitution to Sandra Plascope or the Client Security Fund, if
19 it has paid, in the amount of \$7,913.32 plus interest at the rate of 10% from October
20 20, 2000, until paid in full, as follows:
 - 21 a. Within 30 days from the effective date of discipline in this matter,
22 Respondent must pay \$2,000 and furnish satisfactory evidence of such
23 restitution to the Probation Unit;
 - 24 b. Thereafter, Respondent must make monthly payments to Sandra Plascope
25 in the amount of at least \$300 for each of the next 16 months; and
 - 26 c. At the end of 18 months, Respondent must complete restitution in full
27 including interest at the rate of 10% per annum from October 20, 2000.
- 28 2. Respondent must include in each quarterly report satisfactory evidence of all

1 restitution payments made by him during that reporting period.

2 On December 3, 2003, the Probation Unit wrote to Respondent, reminding him of the terms
3 and conditions of his private reproof. Enclosed with the letter were also copies of the State Bar
4 Court November 25, 2003, order, a Quarterly Report Instructions sheet, and a Quarterly Report form
5 specially tailored for Respondent to use in submitting his quarterly reports. The letter was mailed
6 to Respondent's official membership records address and was not returned as undeliverable.

7 Respondent did not pay restitution in the amount of \$2,000 to Sandra Plascope, which was
8 due on or before January 15, 2004.

9 On January 20, 2004, the Probation Unit wrote another letter to Respondent, advising him
10 that Sandra Plascope had informed the Probation Unit that she had not received payment from
11 Respondent.

12 Beginning February 2004, Respondent had also failed to make the monthly payment of \$300
13 to Sandra Plascope.

14 Therefore, Respondent has not complied with conditions of the private reproof imposed by
15 the order.

16 ***Rule 1-110 of the Rules of Professional Conduct and Business and Professions Code Section 6103***

17 The State Bar alleges that Respondent violated rule 1-110 and § 6103.

18 Rule 1-110 requires State Bar members to comply with conditions attached to reproofs.

19 The State Bar has proved by clear and convincing evidence that Respondent wilfully violated
20 rule 1-110 by failing to pay Sandra Plascope \$2,000 by January 15, 2004, and the monthly payment
21 of \$300 beginning February 2004.

22 Section 6103 provides that "[a] wilful disobedience or violation of an order of the court
23 requiring [Respondent] to do or forbear an act connected with or in the course of his profession ...
24 constitute causes for disbarment or suspension."

25 But because the § 6103 charge was based on the identical facts relied on in finding a violation
26 of rule 1-110, the § 6103 charge is therefore dismissed with prejudice. (*In the Matter of Stansbury*
27 (*Review Dept. 2000*) 4 Cal. State Bar Ct. Rptr. 103, 108.)

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1 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

2 **A. Mitigation**

3 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
4 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)³

5 **B. Aggravation**

6 There are several aggravating factors. (Std. 1.2(b).)

7 Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

8 1. Respondent was privately reprovved for failure to perform services competently in one
9 client matter (State Bar Court case No. 00-O-12924, effective January 18, 2002.)

10 2. Respondent was again privately reprovved with two years probation for violating his
11 probation condition to make restitution to Sandra Plascope (State Bar Court case
12 No. 03-H-00826, effective December 16, 2003.)

13 Respondent committed multiple acts of wrongdoing. (Std 1.2(b)(ii).) He failed to pay
14 restitution and abandoned his client.

15 Respondent harmed his former client by depriving her of her funds and harmed the
16 administration of justice as his failure to comply with the conditions of his reproval made it more
17 difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the
18 public and the courts. Also, Respondent's improper withdrawal from employment caused reasonably
19 foreseeable prejudice to the rights of his client. As a result, the statute of limitations on Warren's
20 cause of action ran out, causing him financial harm. (Std. 1.2(b)(iv).)

21 Respondent's failure to comply with the reproval conditions after being reminded to do so
22 by the Probation Unit demonstrates indifference toward rectification of or atonement for the
23 consequences of his misconduct. (Std. 1.2(b)(v).)

24 Respondent's failure to participate in this disciplinary matter before the entry of his default
25 is also a serious aggravating factor. (Std. 1.2(b)(vi).)

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28 ³All further references to standards are to this source.

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V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved one client matter and failure to comply with probation conditions. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 1.7(b), 2.4(b), 2.6 and 2.9.)

Standard 1.7(b) provides that where an attorney has two prior records of discipline, the degree of discipline imposed in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Standard 2.9 recommends suspension for violations of former rule 9-101, the predecessor of rule 1-110.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges two years stayed suspension and nine months actual suspension and until Respondent makes restitution. In support of its recommended discipline, the State Bar cited *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, and *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.

However, these cases are distinguishable in that none involved violation of probation conditions attached to a reproof and the misconduct was more egregious than that of Respondent in this matter. Here, Respondent's prior records of discipline involved only private reprovals and his current misconduct involved one client abandonment and violation of a probation condition

1 attached to a reproof.

2 The court finds the following cases instructive.

3 In *Conroy v. State Bar* (1990) 51 Cal.3d 799, the attorney, who defaulted at the disciplinary
4 hearing, was actually suspended for 60 days for violating his probation condition attached to a
5 private reproof. However, unlike Respondent, the attorney belatedly complied with his condition
6 three months after the deadline and took and passed a Professional Responsibility Examination.

7 In *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, his third
8 disciplinary record, the attorney was actually suspended for 90 days for committing the same
9 misconduct as in his second prior record, which was failure to file quarterly reports and complete
10 MCLE courses. He violated the same probation conditions attached to his first prior record of
11 discipline. Similarly, Respondent failed to make restitution to a former client, the same misconduct
12 that he was found culpable of in his second prior disciplinary matter.

13 In a similar default case, *In the Matter of Stansbury, supra*, 4 Cal. State Bar Ct. Rptr. 103,
14 the attorney was actually suspended for 90 days and until his suspension terminates under rule 205
15 for his failure to attend State Bar Ethics School and to make restitution. He had one prior record of
16 discipline which he also defaulted.

17 In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney
18 who had no prior record of discipline in 12 years of practice was actually suspended for 60 days for
19 misconduct in a single client matter. The attorney failed to communicate with his client and failed
20 to perform competently which caused his client to lose her case. He also improperly held himself
21 out as entitled to practice law by misleading his client into believing he was still working on her case
22 while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary
23 proceedings as well.

24 Like *Johnston*, Respondent abandoned one client and caused him to lose his case. But
25 because Respondent has two prior records of discipline, his discipline should be more than 60 days
26 of actual suspension.

27 Failing to appear and participate in this hearing shows that Respondent comprehends neither
28 the seriousness of the charges against him nor his duty as an officer of the court to participate in

1 disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) Such failure to
2 participate in this proceeding leaves the court without information about the underlying cause of
3 Respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

4 In view of Respondent's misconduct, the case law and the aggravating evidence, placing
5 Respondent on an actual suspension for six months and until he makes restitution would be
6 appropriate to protect the public and to preserve public confidence in the profession.

7 VI. RECOMMENDED DISCIPLINE

8 Accordingly, the court hereby recommends that Respondent **ERIC L. HOLT** be suspended
9 from the practice of law for two years, that said suspension be stayed, and that Respondent be
10 actually suspended from the practice of law for six months and until he makes restitution to Sandra
11 Plascope or the Client Security Fund, if appropriate, in the amount of \$7,913.32, plus 10% interest
12 per annum from October 20, 2000, and provide proof thereof to the Office of the Probation Unit; and
13 until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc.
14 of State Bar, rule 205.)

15 It is also recommended that Respondent be ordered to comply with any probation conditions
16 hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.
17 (Rules Proc. of State Bar, rule 205(g).)

18 It is further recommended that Respondent be ordered to comply with rule 955, California
19 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty
20 (30) and forty (40) days, respectively, from the effective date of the Supreme Court order herein.
21 **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation;**
22 **suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal**
23 **conviction.**

24 It is also recommended that if Respondent is actually suspended for two years or more, he
25 will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his
26 rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard
27 1.4(c)(ii).

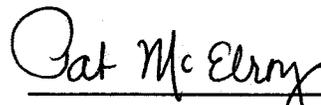
28 It is not recommended that Respondent be ordered to take and pass the Multistate

1 Professional Responsibility Examination as he had previously done so on August 8, 2002, as ordered
2 in case No. 00-O-12924.

3 **VII. COSTS**

4 The court recommends that costs be awarded to the State Bar pursuant to Business and
5 Professions Code section 6086.10, and paid in accordance with section 6140.7.

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10 Dated: September 22, 2004

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13 **PAT McELROY**
14 Judge of the State Bar Court
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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 September 24, 2004, I deposited a true copy of the following document(s):

DECISION

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

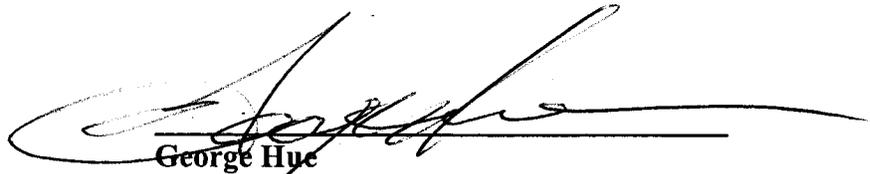
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ERIC L. HOLT
23657 VIA DELICIA
VALENCIA CA 91355

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 24, 2004**.



George Hue
Case Administrator
State Bar Court