

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 13-O-10978-LMA
	)	
<b>GEORGE DARRELL BERGLUND,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 133677,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**<sup>1</sup>

Respondent George Darrell Berglund (respondent) is charged here with seven counts of misconduct, including failing to maintain confidential client statements (two counts), breaching the common law fiduciary duty of loyalty owed to a client (two counts), moral turpitude involving misrepresentation (two counts), and failing to promptly release a client’s file. The court finds culpability on six of the seven counts. Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, in conjunction with meeting the goals of public protection, the court recommends that respondent be disbarred.

**Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 28, 2013. On

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

January 13, 2014, respondent filed an amended response to the NDC.<sup>2</sup> The amended response was 110 pages long and included, among other things, a demurrer, motion for judgment on the pleadings, anti-SLAPP motion to strike, motion for terminating sanctions, motion to dismiss on res judicata/related equitable grounds, motion to dismiss for fraud in the inducement, request for statements of decision, and request for ADA disability accommodations. With the exception of respondent's ADA request, the motions contained in his amended response were denied.

On March 14, 2014, respondent filed a document entitled Separately Stated Answer Excerpt and Addendum from First Amended Response/Answer of Respondent to Bar Complaint.

On April 23, 2014, respondent filed a motion to dismiss, alleging illegal and unlawful prosecution. This motion was denied on May 19, 2014. On May 29, 2014, respondent filed an interlocutory appeal regarding the court's order denying respondent's motion to dismiss.

Respondent's interlocutory appeal included a request for an emergency stay, which was denied by the Review Department on May 30, 2014.

Trial in this matter commenced on June 3, 2014. The State Bar was represented by Heather Abelson. Respondent represented himself. Respondent failed to appear on the second day of trial and the court issued an order entering his default and enrolling him inactive pursuant to rule 5.81 of the Rules of Procedure.

On June 6, 2014, the Review Department issued an order denying respondent's May 29, 2014 interlocutory appeal. On July 8, 2014, respondent filed a motion to vacate his default. On July 30, 2014, the court issued an order vacating the default, terminating respondent's inactive enrollment, and setting future trial dates commencing September 8, 2014.

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<sup>2</sup> Following a motion from the State Bar, respondent's original response to the NDC was struck for failing to provide specific admissions or denials of the allegations in the NDC.

Four days prior to the resumption of trial, respondent filed a motion to, in part, disqualify the undersigned. On September 8, 2014, the court issued an order striking respondent's September 4, 2014 motion to disqualify, as groundless and untimely.

Trial resumed on September 8, 2014. The trial lasted approximately ten days. On September 15, 2014, respondent filed a motion to recall witness Caitlin Burgess for further cross-examination. Respondent had already cross examined this witness over a three-day period. On September 17, 2014, respondent's motion to recall was denied.

After the conclusion of testimony, the parties were permitted to file closing briefs. On October 3, 2014, respondent and the State Bar filed closing briefs. Respondent's closing brief was 285 pages long, while the State Bar's was 26 pages. This matter was submitted for decision on October 6, 2014.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on June 16, 1988, and has been a member of the State Bar at all relevant times. The following findings of fact are based on respondent's responses to the NDC and the documentary and testimonial evidence admitted at trial. Respondent's testimony in this proceeding was protracted; eccentric; and, at times, bizarre. The court did not find respondent's testimony credible. Further, the court found the testimony of respondent's witness, Adil Hiranamek, also lacked credibility.<sup>3</sup>

#### **Case No. 13-O-10978 – The Burgess Matter**

##### **Facts**

In May 2012, attorney Caitlin Burgess (Burgess) hired respondent to represent her in a pending family law divorce matter and a civil matter. Respondent prepared a detailed and unique attorney-client fee agreement. The attorney-client fee agreement stated:

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<sup>3</sup> Hiranamek has been deemed a vexatious litigant and was admonished by the Sixth Appellate District for filing documents that violated Caitlin Burgess's privacy.

Darrell will represent Caitlin, including be the attorney of record, in a civil suit against an evaluator, a Dr. Kerner, in her divorce case. [¶] The case centers around his false accusing her of threatening to kill him. [¶] ... [¶] Darrell will also represent Caitlin, including be [sic] the attorney of record, in her divorce case. [Exh. 19, p. 2.]

The attorney-client fee agreement paid particular attention to the attorney-client privilege.

At one point it stated:

Caitlin will not discuss any litigation with any other person or entity, so that the attorney client privilege is not lost or threatened. This includes ex-boyfriends, boyfriends, and neighbors standing over barbecue pits. (Know-nothing know it alls just love to dispense advice – and third-parties can have agenda [sic] of their own!) [Exh. 19, p. 5.]

The attorney-client fee agreement went on to state:

This paragraph is extremely important! It is human nature to discuss a worrisome matter – such as a lawsuit with others. However, doing so can jeopardize the attorney-client privilege (it is lost if you discuss the case with an outsider), jeopardize the attorney-client relationship (by undermining mutual trust), and, ironically, even increase, rather than decrease, a client's worry. Further, other human beings may have hidden agendas – the neighbor or relative wanting to feel important by “rendering an opinion,” another attorney desiring to “snake” the case away (“Your attorney didn't do THAT?!”), a secret troublemaker interested in sabotage. [sic] a spy, etc.. [sic] The better course of action is for you to take pride in your closed-mouth, CIA demonstrated capability – and to ask questions of your attorney and even look up things yourself – and I do encourage you to do these! [Exh. 19, pp. 9-10.]

Later, the attorney-client fee agreement further stated:

The attorney-client privilege runs between us (and, potentially, agents of ours – ask me). Do not lose it by discussing this case with any others (see above). Most important in this respect, never discuss with another what you have told me or I have told you – as such communications are what the privilege tries to protect (- but it exacts that price of our being tight-lipped). (“Loose lips sink ships” prominently appeared in a famous World War II poster.) (Moreover, a friend of today could turn against you and claim that you blabbed.) [Exh. 19, p. 12.]

As an attorney herself, it was agreed that Burgess would serve as co-counsel and help respondent by drafting motions. That said, respondent was attorney of record in the matters and the attorney-client fee agreement provided that Burgess would not send anything out, “even an e-mail,” without respondent's prior consent. [Exh. 19, p. 6.]

The attorney-client fee agreement also stated that “Caitlin will leave no originals with [respondent], and there will be no file to return to Caitlin, should this attorney-client representation no longer be in effect.” [Exh. 19, p. 5.] Burgess’s address was used as the “address of record” in all correspondence and pleadings in these matters.

On January 4, 2013, Burgess terminated respondent by email as her attorney of record in both the family law and civil matters. In the email, Burgess notified respondent that they would have to resolve their fee issues through arbitration. She also requested her client file.

***The Amended Reply of January 7, 2013***

On January 7, 2013, after he had been terminated, respondent filed an amended reply as Burgess’s “former attorney,” in *Bradley J. Berezna v. Caitlin R. Burgess*, Santa Clara County Superior Court. In this amended reply, respondent disclosed confidential communications between Burgess and respondent including that:

- Burgess told respondent that she and her ex-husband had discussed settlement, and that her ex-husband had told her that he desperately wanted to settle the case;
- Burgess told respondent that she was going to file additional declarations in support of a motion for fees;
- Burgess lamented to respondent that attorney’s fees were going to the attorneys, rather than to the children; and
- Burgess told respondent that she wished her ex-husband’s misconduct would be referred to the district attorney.

In addition, respondent made false statements about Burgess in the amended reply, including that:

- Burgess committed fraud;
- Burgess colluded with her ex-husband to defraud respondent;
- Burgess told respondent that she would do anything to get respondent his fees; and

- Burgess helped her ex-husband hide assets in a prior divorce action.

Respondent also made disparaging statements about Burgess in the amended reply, including that:

- Burgess is “clearly out of her mind”;
- Burgess is a narcissist;
- Burgess is a liar;
- Burgess is guilty of perfidy and wickedness; and
- Burgess put Devil’s horns on Judge Clark.

### ***The Board of Psychology Complaints***

On January 8, 2013, respondent filed a complaint against Burgess with the Board of Psychology. In this complaint, respondent disclosed confidential communications between Burgess and respondent, including that:

- Burgess complained to respondent about her father, stating that he was an insurance agent who did not make much money;
- Burgess told respondent that her ex-husband was sexually obsessed with her;
- Burgess told respondent that her ex-husband wanted to settle the custody battle;
- Burgess lamented to respondent that attorney’s fees had to go to attorneys rather than to her children;
- Burgess told respondent that her youngest child announced that he wanted to kill her; and
- Burgess told respondent that her son knocked her down, pulled out his penis, and peed on her.

Respondent also made false statements about Burgess in the Board of Psychology complaint, including that:

- Burgess was practicing psychology while an intern;

- Burgess had stalked a judge; and
- Burgess told respondent that she had scant or no supervision in her internship.

Respondent also made disparaging statements about Burgess in the Board of Psychology complaint, including that:

- Children are at risk from Burgess;
- Burgess does not possess “the normal psychology to appreciate that fraud is an unacceptable, sociopathic, non-emphatic, narcissistic, predatory, and just plain wrong component of the practice of psychology”;
- Burgess is histrionic;
- Burgess lacks acumen, street smarts, and common sense;
- Burgess is a full blown narcissist;
- Burgess is a bit wacko; and
- Burgess is malevolent towards others, perhaps because she is less successful than she had hoped to be in her mid-40s.

In the present proceedings, respondent testified that he reported Burgess to the Board of Psychology based on his fear for his safety and the safety of others. This testimony conflicts with the evidence before the court and is not credible. Reading respondent’s complaint, it is clear that his primary motivating factor was retribution. At the end of respondent’s Board of Psychology complaint he wrote:

Ms. Burgess: Note well the Board prohibition against retaliatory conduct, and further note well that a retaliatory report to a Bar is a crime (B&P C). “Thanks” for your sudden fraud (was it worth it to you?), and have a nice day. Fraud and other bad acts have consequences. So does a sociopathic lack of empathy toward others. Rather than inflicting yourself on others as a psychologist counselor (wow!), my I recommend some other career choice? [Exh. 8, p. 7.]

If respondent truly feared for his safety, he would not be going out of his way to insult and antagonize Burgess.

Respondent's actual motivation for the complaint is further evidenced by the timing of his complaint. Respondent made his complaint four days after Burgess fired him. There is no credible evidence that he was concerned about the safety of himself and others prior to his termination.

On January 12, 2013, respondent filed another complaint against Burgess with the Board of Psychology (second Board of Psychology complaint). In this complaint, respondent disclosed confidential communications between Burgess and respondent, including that:

- Burgess told respondent that Jay Flens was a psychologist and that she would assert their communications as privileged if challenged; and
- Burgess told respondent that she had decided to not go after her ex-husband for property.

Respondent also made false statements about Burgess in the second Board of Psychology complaint, including that:

- Burgess was practicing therapy without a license while scantily supervised; and
- Burgess had stalked a judge.

Respondent also made disparaging statements about Burgess in the second Board of Psychology complaint, including that:

- Children are at risk from Burgess;
- Burgess does not possess the normal psychology to appreciate that fraud is an unacceptable, sociopathic, non-emphatic, narcissistic, predatory, and just plain wrong component of the practice of psychology; and
- Burgess is a narcissist.

## **Conclusions**

### ***Count One – Section 6068, Subd. (e) [Failure to Maintain Confidentiality]***

Section 6068, subdivision (e), provides that an attorney has a duty to maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.



The duty of an attorney to maintain client secrets is absolute and broad in scope. (*People v. Singh* (1932) 123 Cal.App. 365, 370.) It is not limited to information protected by the attorney-client privilege. (*Goldstein v. Lees* (1979) 46 Cal.App.3d 614, 621.) The duty applies to all clients or even to some potential clients where no client-lawyer relationship ensues. (Cal. State Bar Form. Opn. 1984-84; See also Evidence Code section 951, noting that “client” means a person who consults a lawyer *for the purpose of retaining the lawyer. Emphasis added.*) Moreover, the duty of confidentiality survives the termination of attorney representation. (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 846.)

Client secrets may also include matters of public record. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 189 [prior felony conviction, while public, albeit not easily discovered, may not be disclosed by attorney to a coworker of client].) And only the client can release the attorney of the obligation to maintain such confidential matters. (*Commercial Standard Title Co., Inc. v. Superior Court of San Diego County* (4 Dist. 1979) 92 Cal.App.3d 934, 945.)

By revealing statements his client made to him in confidence in the amended reply, without his client’s authorization or consent, respondent failed to maintain inviolate the confidence and preserve the secrets of respondent’s client, in willful violation of section 6068, subdivision (e).

***Count Two – Section 6068, Subd. (a) [Breach of Common Law Duty of Loyalty]***

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Attorneys owe a high duty of loyalty to their clients. “An attorney violates the duty of loyalty to the client by assuming a position adverse or antagonistic to the client.” (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4<sup>th</sup> 294, 301.) By attacking and repeatedly disparaging his client in the amended

reply, respondent breached his common law duty of loyalty to his client, in willful violation of section 6068, subdivision (a).

***Count Three – Section 6068, Subd. (e) [Failure to Maintain Confidentiality]***

By revealing statements his client made to him in confidence without his client's authorization or consent in the two complaints to the California Board of Psychology, respondent failed to maintain inviolate the confidence and preserve the secrets of respondent's client, in willful violation of section 6068, subdivision (e).

***Count Four – Section 6068, Subd. (a) [Breach of Common Law Duty of Loyalty]***

By filing two complaints to the California Board of Psychology containing repeated disparaging statements about his client, respondent breached his common law duty of loyalty to his client, in willful violation of section 6068, subdivision (a).

***Count Five – § 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. On January 8, 2013, respondent falsely represented to the California Board of Psychology that Burgess had told him that she was practicing psychology while an intern, had stalked a judge, and was scantily supervised in her internship. At the time respondent made these statements, he knew, or was grossly negligent in not knowing, they were false. By making these misrepresentations, respondent committed an act involving dishonesty and moral turpitude, in willful violation of section 6106.

***Count Six – § 6106 [Moral Turpitude – Misrepresentation]***

On January 12, 2013, respondent falsely represented to the California Board of Psychology that Burgess had told him that she had stalked a judge and was practicing therapy without a license while scantily supervised. At the time respondent made these statements, he

knew, or was grossly negligent in not knowing, they were false, in willful violation of section 6106.

***Count Seven – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]***

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. The State Bar alleged that respondent violated rule 3-700(D)(1) by failing to release all of Burgess's papers and property following his termination on January 4, 2013. The court finds, however, that this allegation has not been established by clear and convincing evidence. Accordingly, Count Seven is dismissed with prejudice.

**Aggravation<sup>4</sup>**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

**Prior Record of Discipline**

Respondent has one prior record of discipline. (Std. 1.5(a).) Effective October 1, 1999, respondent was publicly reprovved with conditions in State Bar Court case No. 98-C-01777. This matter came as a result of respondent's 1998 criminal conviction for petty theft. In mitigation, respondent demonstrated remorse, had no prior record of discipline, and attributed his lack of judgment to emotional and physical problems he was experiencing at the time of the misconduct. No aggravating factors were involved.

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

### **Multiple Acts of Misconduct**

Respondent's multiple acts of misconduct constitute an aggravating factor. (Std. 1.5(b).)

### **Lack of Insight**

Respondent has demonstrated a persistent lack of insight. Respondent repeatedly argued that an attorney can reveal confidential client information any time the client discloses these confidences to a friend. Respondent's position is unsupported and misguided. Consequently, his lack of understanding of the nature of his wrongdoing and failure to comprehend the consequences of his actions warrant significant consideration in aggravation.

### **Contempt for Disciplinary Proceedings**

Respondent's conduct during the course of this proceeding demonstrated his contempt for these proceedings and further calls into question his fitness to practice law. (*Weber v. State Bar* (1988) 47 Cal.3d 492, 507 ["an attorney's contemptuous attitude toward the disciplinary proceedings is relevant to the determination of an appropriate sanction"].)

During the proceedings, respondent was hostile and unprofessional with the court and opposing counsel. And in his closing brief, respondent expounded upon numerous irrelevant and improper issues, including questioning the sexual orientation of opposing counsel. His disregard and disrespect for this disciplinary proceeding is a significant aggravating factor.

### **Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

### **Good Character**

Respondent presented testimony from five character witnesses attesting to his good character and competency as an attorney. Some of these witnesses also testified to respondent's

willingness to take their cases when other attorneys would not. Several of these witnesses, however, did not demonstrate an understanding of the full extent of the present misconduct. Consequently, respondent's positive character evidence warrants nominal consideration in mitigation.

### 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. 1.1.)

In determining the 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). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction ranging from actual suspension to disbarment. (Standards 2.7 and 2.8(a).) The most severe sanction is found at standard 2.7 which provides that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(a) for guidance. Standard 1.8(a) states that when an attorney has a single prior record of discipline, the

sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar requested that respondent be disbarred. Respondent, on the other hand, argued that no discipline is warranted. In support of its disbarment recommendation, the State Bar cited *Ainsworth v. State Bar* (1988) 46 Cal.3d 1218.

In *Ainsworth*, the attorney was found to have – among other things – disobeyed a court order, delayed a lawsuit for his own gain, prosecuted an appeal solely for purposes of delay, entered into a fee-splitting agreement with a non-attorney, failed to preserve the confidences of his former clients, committed acts of deceit with intent to mislead his former client, sought to deceive two courts, practiced law while suspended, issued checks with insufficient funds, failed to maintain legal and just actions, and acquired an adverse interest in his client’s property without advising his client to seek the advice of independent counsel. The attorney’s misconduct involved eight matters and spanned a period of five years. In aggravation, the attorney lacked candor, failed to cooperate with the State Bar investigation, and demonstrated animosity and hostility toward one of the witnesses. In mitigation, the attorney was experiencing health problems at the time of the misconduct, had no prior record of discipline, presented limited good

character evidence, and issued apologies and refunds to several of his former clients.<sup>5</sup> Finding that the attorney's actions constituted "blatant and serious violations of [his] oath and duties as an attorney," the Supreme Court ordered that he be disbarred.

While respondent's misconduct is significantly less extensive, the present case involves more aggravation and less mitigation than *Ainsworth*. Most notably, the court is greatly concerned by respondent's unwillingness or inability to comprehend the present misconduct.

Respondent evidenced a lack of appreciation for two of the most fundamental attorney duties – confidentiality and loyalty. And his demeanor and actions throughout this proceeding indicate that, left unchecked, respondent will continue to commit similar misconduct. Accordingly, the court finds that the interests of public protection mandate a recommendation of disbarment.

### **Recommendations**

It is recommended that respondent **George Darrell Berglund**, State Bar Number 133677, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 in this proceeding.

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<sup>5</sup> The court noted that while the attorney expressed remorse, he lacked appreciation for the seriousness of his misconduct and the harm he had caused.

**Costs**

It is 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.

**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: January \_\_\_\_\_, 2015

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LUCY ARMENDARIZ  
Judge of the State Bar Court