

PUBLIC MATTER

FILED

JUL 19 2017

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

In the Matter of	)	Case No. 14-O-03661-LMA
	)	
CATHERINE IRENE DENEVI,	)	DECISION
	)	
A Member of the State Bar, No. 222539.	)	
_____	)	

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

In this contested disciplinary proceeding, respondent Catherine Irene Denevi (Respondent) is charged with two counts of misconduct in a single client matter. Respondent is charged with withdrawing disputed client funds from her client trust account and the misappropriation of those funds.

This court finds, by clear and convincing evidence, that Respondent is culpable of both counts. In view of the unique facts and circumstances surrounding the misconduct, as well as the evidence in mitigation and lack of aggravation, the court recommends, among other things, that Respondent be suspended from the practice of law for 90 days.

**Significant Procedural History**

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on September 3, 2015. Respondent filed a response to the NDC on October 20, 2015.

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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.

On December 30, 2015, Respondent filed a notice of appeal in the underlying civil case that gave rise to this matter. On January 11, 2016, the State Bar Court abated this matter pending resolution of the civil appeal.

On September 12, 2016, this matter was re-assigned to the undersigned judge. On December 5, 2016, this matter was unabated for lack of prosecution of the civil appeal.

A one-day hearing was held on May 15, 2017. Senior Trial Counsel Murray B. Greenberg and Deputy Trial Counsel Stacia L. Johns represented the State Bar. Attorney Helane A. Simon served as co-counsel with Respondent.

On May 15, 2017, the parties filed a stipulation as to facts and admission of documents. That same day, the court also granted the State Bar's motion to conform the NDC to proof, and this matter was submitted following closing arguments.

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

Respondent was admitted to the practice of law in California on December 4, 2002, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

Beginning in 2004, Respondent and her partner, Helane Simon, represented Jesse Lee Feagin (Feagin) in civil and criminal matters and in a complicated divorce. After several years of representing Feagin, Respondent withdrew from representation due to outstanding attorney fees. According to Respondent, Feagin owed her approximately \$25,000 in past due fees for her legal work on his divorce.

In 2013, Feagin asked Respondent for additional assistance with the divorce—specifically involving the distribution of the sale proceeds from a house (sale proceeds). Respondent agreed to represent Feagin but required that he sign a new fee agreement and pay her \$2,500 from the sale proceeds toward the past due attorney fees. Feagin agreed.

On September 26, 2013, the sale proceeds, in the amount of \$134,125.31, were deposited into Respondent's client trust account (CTA). That same day, Respondent disbursed \$2,500 to herself from the sales proceeds in accordance with her agreement with Feagin.

On October 17, 2013, Feagin signed the new fee agreement with Respondent. At that time, Feagin still owed Respondent for past due legal fees, and Feagin again agreed to pay his past due fees.<sup>2</sup> Respondent then worked on finalizing the divorce and on the final distribution of the sale proceeds.

Respondent filed a motion in the divorce proceeding seeking an order requiring Feagin's ex-wife to pay \$32,537.50<sup>3</sup> of Feagin's attorney fees, and seeking sanctions against the ex-wife. On December 5, 2013, the court denied the request for attorney fees but granted \$30,000 in sanctions against Feagin's ex-wife pursuant to Family Code section 271.<sup>4</sup> The court ordered that the ex-wife was therefore entitled to only \$2,500 of the sale proceeds.

Feagin misconstrued the sanction order to mean that no additional attorney fees were owed to Respondent. Consequently, a fee dispute arose between Respondent and Feagin.

In or about December 2013, Respondent contacted the California State Bar's Ethics Hotline (Ethics Hotline) on two occasions to seek advice on the fee dispute. Respondent was advised by the Ethics Hotline to retain the disputed funds in her CTA, and to seek a judicial determination of the fee dispute.

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<sup>2</sup> The parties stipulated that the fee agreement authorized Respondent to withdraw funds from her CTA to pay her legal fees; however, the ambiguous wording of the fee agreement is not definitive on this point. (See Exh. 3.)

<sup>3</sup> Respondent initially sought \$27,637.50, but filed an amended declaration increasing that amount to \$32,537.50. (Exh. 4 & 5.)

<sup>4</sup> Family Code section 271 states, in part, that "the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction."

On December 16, 2013, Respondent sent a check to Feagin for \$92,000 and an accounting showing that she was keeping \$24,165.31 as payment for her past due legal fees.<sup>5</sup> The \$92,000 check had a notation stating “uncontested balance of sales proceeds.” This note implied that the remaining balance of the sale proceeds was contested.

Along with the \$92,000 check and accounting, Respondent sent a “Notice of Client’s Right to Arbitrate” to Feagin. In this notice, Respondent stated that Feagin had a \$28,000 outstanding balance of fees and/or costs. (Exh. 10.) Pursuant to the notice, Feagin had the right to request mandatory fee arbitration within 30 days. If Feagin did not timely request fee arbitration, he would lose his right to fee arbitration and Respondent could file a lawsuit against him.

On January 7, 2014, Respondent sent a letter to Feagin offering to settle their attorney fee disagreement. In this letter, Respondent informed Feagin that if he did not settle she would file a lawsuit to obtain a judicial determination on the fee dispute. Respondent offered to settle the fee dispute for \$20,000.<sup>6</sup> Also in this letter, Respondent informed Feagin that she contacted the Ethics Hotline and verified that she was “entitled to retain the disputed amount of fees in [her] trust account as long as [she sends Feagin] what is not contested.” (Exh. 11, p. 1.)

Feagin negotiated the \$92,000 check and did not request fee arbitration within 30 days. During this same time period, Respondent was experiencing substantial emotional and financial difficulties. Her father was in poor health and died in January 2014. Along with the emotional toll this took, Respondent expended considerable amounts of time and resources traveling back and forth to her father’s home in Oregon.

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<sup>5</sup> The total amount of disputed funds was actually \$24,855.31. (Stipulation, p. 3.)

<sup>6</sup> Respondent noted that Feagin had previously paid her a total of \$8,500.

Despite knowing she had to retain disputed funds in her CTA, Respondent began removing those funds from her CTA in January 2014. At the time, she was frustrated with Feagin because he was not communicating with her, despite her repeated attempts. The only communication Respondent had with Feagin during this time period came through his new wife—who was not her client. Respondent described Feagin's new wife as threatening and hostile.<sup>7</sup>

On January 31, 2014, Respondent's CTA balance dropped to \$22,365.31. (Exh. 13, p. 17.) Over the next few months, her CTA balance continued to decline. Between January 31 and March 10, 2014, Respondent removed the Feagin disputed funds from her CTA.

On February 5, 2014, Respondent filed a civil lawsuit against Feagin in Los Angeles Superior Court, case No. 14K01891, *Denevi v. Feagin*. The purpose of this lawsuit was to obtain a judicial determination on the issue of the disputed funds.

Respondent filed a motion for default judgment in *Denevi v. Feagin*. Unbeknownst to Respondent, Feagin had filed a cross-complaint against her and had also filed for a default judgment against Respondent.<sup>8</sup> Respondent discovered these filings in April or May 2014.

As of June 4, 2015, Respondent had re-deposited the disputed funds into her CTA. *Denevi v. Feagin* went to trial on August 19, 2015. In its decision, the court determined that Feagin was entitled to \$13,414.28 of the disputed funds. Respondent was entitled to the remainder of those funds.

On September 3, 2015, the State Bar filed the NDC in this matter. At that point, however, *Denevi v. Feagin* was still ongoing. After a motion for a new trial was granted, a

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<sup>7</sup> Respondent's description of Feagin's new wife was mirrored by Feagin's subsequent attorney, Edward J. O'Reilly, who described Feagin's new wife as very angry, interfering, and threatening. (Exh. 1001, pp. 2 & 4-5.) Feagin's new wife did not testify in this proceeding.

<sup>8</sup> Respondent asserts that neither of these documents was served on her.

revised decision was issued in *Denevi v. Feagin* on November 30, 2015. In its revised decision, the court determined that \$34,866.80 was withheld by Respondent and that she was owed \$21,452.52 for her fees. The revised decision stated that Respondent owed Feagin \$11,252.75.<sup>9</sup> (Exh. 20, p. 9.)

On December 30, 2015, Respondent filed a notice of appeal in *Denevi v. Feagin*. After filing the notice of appeal, Respondent took no further action. Approximately 15 months later, Respondent sent Feagin a \$13,414.28 check dated March 20, 2017.

### **Conclusions**

#### ***Count One – Rule 4-100(A)(2) [Withdrawal of Disputed Funds]***

Rule 4-100(A)(2) provides, in part, that when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn from a trust account until the dispute is finally resolved. In the present case, Respondent knew the \$24,855.31 in her CTA represented disputed funds. Her knowledge of this fact was demonstrated by: (1) the notation on the \$92,000 check to Feagin identifying the \$92,000 as the “uncontested balance of sales proceeds;” (2) her contacting the State Bar Ethics Hot Line on two occasions to discuss how to handle the disputed funds (see Exh. 11, p. 1); (3) her January 7, 2014 letter attempting to compromise the “disagreement on attorney fees;” and (4) her statement in her January 7, 2014 letter that she is “entitled to retain the disputed amount of fees in [her] trust account as long as [she sends Feagin] what is not contested.” (Exh. 11, p. 1.)

By withdrawing from her CTA the \$24,855.31 in disputed funds between January 31 and March 10, 2014, Respondent removed disputed funds from her CTA at a time she knew those funds were in dispute, in willful violation of rule 4-100(A)(2). However, the court assigns no

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<sup>9</sup> Execution of this judgment was initially stayed.

weight to this charge since, as discussed below, the same facts support the section 6106 violation in Count Two. (*In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 127 [no additional weight given to rule 4-100(A) charges dealing with same misconduct addressed by section 6106 charges].)

***Count Two – Section 6106 [Moral Turpitude – Misappropriation]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Misappropriation is defined as “[t]he application of another’s property or money dishonestly to one’s own use.” (Black’s Law Dict. (8th ed. 2004) p. 1019, col. 1.) “[A]n attorney’s failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]” (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.) Further, as held in *Most v. State Bar* (1967) 67 Cal.2d 589, 597, “[a]n attorney may not unilaterally determine his own fee and withdraw funds held in trust for his client in order to satisfy it, without the knowledge or consent of the client.”

Here, Respondent misappropriated funds by intentionally and unilaterally withdrawing disputed funds from her CTA before the dispute was properly resolved. By intentionally misappropriating \$24,855.31 in disputed funds, Respondent committed an act involving moral turpitude and dishonesty, in willful violation of section 6106.

**Aggravation<sup>10</sup>**

The State Bar did not present any evidence in aggravation and no other aggravating factors were established by clear and convincing evidence.

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<sup>10</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.

## **Mitigation**

### **No Prior Record of Discipline (Std. 1.6(a).)**

Respondent was admitted to practice law in California in December 2002 and has no prior record of discipline. Her eleven years of discipline-free conduct prior to the present misconduct warrants significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

### **Good Character (Std. 1.6(f).)**

Respondent provided character evidence from nine individuals. Of these nine individuals, only one—her co-counsel, Helane A. Simon—testified before the court. Respondent's eight remaining character witnesses wrote letters on her behalf.<sup>11</sup> Most of Respondent's character letters were written by her past or present clients. Respondent's character witnesses praised her hard work, honesty, and good character. That said, only one of Respondent's character letters demonstrated an understanding of the present misconduct, and that witness—Arthur J. Marin—assumed that the charges against Respondent were “unnecessary and very untrue.” (Exh. 1002.) Since the vast majority of the character witnesses demonstrated no awareness of the underlying misconduct, Respondent's good character evidence warrants nominal consideration in mitigation.

### **Volunteer and Pro Bono Work**

Several of Respondent's present and former clients noted in their character letters that she represented them pro bono or at a greatly reduced fee. Respondent's propensity for providing pro bono and significantly discounted work for her low income clients warrants moderate consideration in mitigation.

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<sup>11</sup> Ms. Simon also wrote a letter on Respondent's behalf.



### **Extreme Emotional and Financial Difficulties (Std. 1.6(d).)**

In 2013 and 2014, Respondent faced considerable turmoil in her personal life. During this time period, her father, who lived in Oregon, was ill and ultimately passed away. While it has not been established by expert testimony that Respondent's emotional and financial difficulties were directly responsible, the present misconduct occurred during the same time period as her father's failing health. Respondent credibly testified regarding the significant impact her father's illness and passing had on her. Accordingly, the court assigns moderate weight in mitigation for the extreme emotional and financial difficulties Respondent was facing at the time of the misconduct.

### **Cooperation with the State Bar (Std. 1.6(e).)**

Respondent entered into an extensive stipulation regarding facts and the admissibility of evidence. Respondent's cooperation preserved court time and resources and warrants moderate mitigation credit.

### **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.)

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 1.1 provides that the primary purposes of disciplinary proceedings are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards; and the preservation of public confidence in the legal profession. This standard also provides that rehabilitation can “be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline.”

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.

Standards 2.1(a) and 2.2(b) apply in this matter. The most severe sanction is found at standard 2.1(a) which recommends disbarment for intentional or dishonest misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or the most compelling mitigating circumstances clearly predominate.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickel* (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 a 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.)

In this matter, the State Bar did not seek disbarment and instead argued that Respondent should be actually suspended for 90 days. Respondent, on the other hand, asserted that the matter should be dismissed. In determining the appropriate level of discipline, the court also looks to the case law for guidance.

The Supreme Court has not disbarred attorneys who have intentionally misappropriated client funds for circumstances deemed sufficient to warrant a lesser discipline. (*Edwards v. State*

*Bar* (1990) 52 Cal.3d 28, 37.) “In some cases, the attorney has presented evidence of compelling mitigating circumstances relating to the attorney’s background or character . . . which tended to prove that the misconduct was aberrational and hence unlikely to recur.” (*Id.* at pp. 37-38.)

In *Edwards v. State Bar*, *supra*, 52 Cal.3d 28, the attorney was actually suspended for one year for willfully misappropriating \$3,000 in client funds for his own benefit. In mitigation, the Supreme Court found that the attorney had no prior record of discipline, made full repayment within three months of the misappropriation, was candid with the client and the State Bar, and took voluntary steps to improve his handling of entrusted funds. In aggravation, the attorney committed uncharged misconduct relating to his practice of commingling personal funds into his trust account, failing to keep proper records, and misusing trust account funds to prevent his own foreclosure and for other purposes.

The present case is less egregious than *Edwards*. Here, Respondent, while embroiled in a contentious attorney fee dispute, did almost everything right. She advised her client upon receipt of the funds, she promptly released to her client all of the funds that were not in dispute, she sought assistance from the Ethics Hotline on at least two occasions, she sent a right-to-arbitrate letter to her client, she held the disputed funds in trust until after her client did not seek to arbitrate, and she initiated a lawsuit to resolve the fee dispute. The record also indicates that Respondent provided competent and valuable legal services to her client for many years, and, as determined by the Los Angeles Superior Court, she had a legitimate claim to thousands of dollars in unpaid attorney fees.

Based on the unusual circumstances involved in this case, the court agrees with the State Bar that a significant deviation from standard 2.1(a) is warranted. After objectively analyzing all of the factors surrounding the present misconduct, this court concludes that it is aberrational and unlikely to reoccur.

Accordingly, the court recommends, among other things, that Respondent be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that she be placed on probation for three years, including a 90-day period of actual suspension.

### **Recommendations**

It is recommended that respondent Catherine Irene Denevi, State Bar Number 222539, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>12</sup> for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 90 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
6. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and of the State Bar's Client Trust Accounting School and

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<sup>12</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent shall not receive MCLE credit for attending Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

7. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

### **Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.


### **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. Failure to do so may result in disbarment or suspension.

### **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.

Dated: July 19, 2017

  
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LUCY ARMENDARIZ  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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, 2017, I deposited a true copy of the following document(s):

### DECISION

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

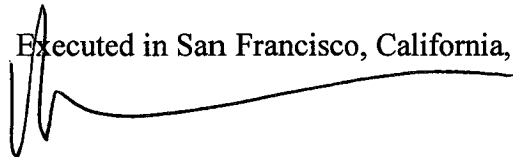
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

HELANE A. SIMON  
HELANE SIMON, ATTORNEY AT LAW  
1351 ROCKY POINT DR  
OCEANSIDE, CA 92056 - 5864

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

Murray B. Greenberg, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 19, 2017.



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Vincent Au  
Case Administrator  
State Bar Court