



The State Bar of California

OFFICE OF CHIEF TRIAL COUNSEL ENFORCEMENT

845 S. Figueroa Street, Los Angeles, CA 90017

213-765-1205

michelle.king@calbar.ca.gov

August 11, 2020

SENT VIA U.S. MAIL

PERSONAL AND CONFIDENTIAL

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

Re: Respondent: Jessica McElfresh
Case Number: 20-O-02532

Dear Mr. Cotton:

I am writing to inform you that the State Bar has decided to close your complaint against Jessica McElfresh.

Please understand that the State Bar cannot proceed with disciplinary charges unless we can present evidence and testimony in court sufficient to prove by clear and convincing evidence that the attorney has committed a violation of the State Bar Act or the Rules of Professional Conduct. The violation must be serious enough to support both a finding of culpability and the imposition of professional discipline. In some cases, there may be evidence of attorney malfeasance or negligence, but this evidence may be insufficient to justify the commencement of a disciplinary proceeding or to be successful at a disciplinary trial.

After carefully reviewing the information you provided, as well as information from other sources, including Ms. McElfresh, this office has concluded that we would not be able to prevail in a disciplinary proceeding.

You alleged that Ms. McElfresh did not obtain your consent to represent an adverse party after consulting with you about your case.

Ms. McElfresh's response is that she never met you, you were not a client, she never emailed you, and her contact with your litigation investor, Joe Hurtado ("Hurtado"), was because Hurtado was her client and had originally retained her back in 2016. Ms. McElfresh says that Hurtado made no agreement with her on your behalf nor paid for any consultations between you and her. Ms. McElfresh stated that the first time that you ever contacted her was in an email that you sent to over 30 attorneys, San Diego City employees, and assorted individuals on December 24, 2019.

San Francisco Office
180 Howard Street
San Francisco, CA 94105

www.calbar.ca.gov

Los Angeles Office
845 S. Figueroa Street
Los Angeles, CA 90017

Counsel for Ms. McElfresh stated that she did not know that Hurtado was your agent and that the advice that she gave was related to Hurtado's interests.

You confirmed in email to the State Bar that you never met or dealt with Ms. McElfresh directly. The emails that you provided from April 2017 show that there was some communication between Hurtado and Ms. McElfresh about her help, although it is not clear exactly what help other than an "application" and title of the email as "Larry Geraci v. Darryl Cotton - San Diego Superior Court Case No." In this email, Ms. McElfresh does clearly point Hurtado in the direction of other attorneys.

You also provided a copy of an invoice from Ms. McElfresh's office showing that Hurtado was billed \$300 for a consultation with her on May 8, 2017. However, the invoice is not clear as to the purpose of the consultation.

This allegation requires establishing that an attorney-client relationship existed. During your interview with the State Bar, we informed you that we would need additional information in order to gain the information necessary to establish a violation. You were given several weeks to produce information that you believed would help the investigation, but you have failed to do so. We also attempted to obtain this information from Hurtado, who was not willing to cooperate without certain guarantees that we are unable to provide. Therefore, without further proof of an attorney-client relationship, we are unable to prove a violation.

Although we were not able to establish an attorney-client relationship as detailed above, evidence suggests that Ms. McElfresh possibly owed duties to you as a potential client. You stated that during consultations with Ms. McElfresh, she obtained confidential information and documents related to your case.

As stated above, you were given several weeks to produce information that you believed would help the investigation, but you failed to do so, and our attempts to obtain this information from Hurtado did not yield results. Without proof of what confidential information and documents were shared with Ms. McElfresh, we are unable to prove a violation.

If you would like to further discuss this matter or provide additional information or documentation, we request but do not require that you call us or send us the information within ten days of the date of this letter. You may leave a voice mail message with attorney Jessica Jorgensen at (213) 765-1409. In your message, be sure to clearly identify the lawyer complained against, the case number assigned to your complaint, and your name and return telephone number, including area code. The attorney will return your call as soon as possible.

If you have presented all of the information that you wish to have considered, and you disagree with the decision to close your complaint, you may request that the State Bar's Complaint Review Unit review your complaint. The Complaint Review Unit will recommend that your complaint be reopened if it determines that further investigation is warranted. To request review by the Complaint Review Unit, you must submit your request in writing, **post-marked within 90 days of the date of this letter**, to:

The State Bar of California
Complaint Review Unit
Office of General Counsel
180 Howard Street
San Francisco, CA 94105-1617.

If you decide to send new information or documents to this office, the 90-day period will continue to run during the time that this office considers the new material. You may wish to consult with legal counsel for advice regarding any other available remedies. You may contact your local or county bar association to obtain the names of attorneys to assist you in this matter.

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey2>.

Respectfully,

A handwritten signature in black ink, appearing to read 'MK-15' with a large flourish at the end.

Michelle King
Investigator

MK:wss