

SUPREME COURT
FILED

AUG 11 2021

Jorge Navarrete Clerk

S269074

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of ERIC VOLK Against an Attorney.

The petition is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix A



**The State Bar
of California**

180 Howard Street, San Francisco, CA 94105

415-538-2575

OFFICE OF GENERAL COUNSEL

Personal and Confidential

Complaint Review Unit

March 30, 2021

Eric Volk
8809 Glistening Pond St
Las Vegas NV 89131

RE: Case No.: 19-O-16617
Respondent(s): Wendy Lynne Brown

Dear Mr. Volk:

The Complaint Review Unit received your correspondence on December 23, 2020, requesting reconsideration of the decision to close your complaint. An attorney reviewed all the information provided and has determined that there is not a sufficient basis to recommend reopening your complaint.

The Complaint Review Unit will recommend reopening a complaint when there is significant new evidence or when we determine there is good cause to recommend that the matter be reopened. The State Bar Court is authorized to impose or recommend disciplinary sanctions only if there is clear and convincing evidence to establish that the attorney has committed a violation of the Rules of Professional Conduct or the State Bar Act. Therefore, the Complaint Review Unit will not recommend that a matter be reopened unless there is a reasonable possibility that a disciplinary violation can be proven by clear and convincing evidence.

You have alleged that attorney Wendy Lynne Brown committed professional misconduct while representing you in a WCAB claim and an SSA application after a work-related accident, and that as a result of that misconduct, your WCAB claim was denied, and the Administrative Law Judge in your SSA matter found that you were "not disabled." With respect to the WCAB matter, you allege that the petition was unsuccessful due to Ms. Brown's failure to depose medical witnesses and call a key witness to testify. In the SSA matter, you state that Ms. Brown submitted incomplete and inaccurate medical reports and arrived late for a scheduled hearing. You also reported that Ms. Brown had a conflict of interest because she also represented your coworker in a workers' compensation claim. Finally, you questioned why Ms. Brown did not file a 132(a) claim on your behalf with respect to your contention that your employer had discriminated against you after filing a WCAB claim.

Appendix B

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

The Office of Chief Trial Counsel ("OCTC") opened an investigation into your claims, during which it requested and reviewed a response from Ms. Brown and reviewed additional documentation. At the conclusion of its investigation, OCTC explained to you by letter dated October 16, 2020, that it was closing your complaint because it determined that the State Bar would not be able to prevail in a disciplinary proceeding against Ms. Brown based on your allegations. Specifically, OCTC noted that the available documentation provided no clear and convincing evidence that Ms. Brown willfully violated either the Rules of Professional Conduct or the State Bar Act. Rather, OCTC noted that the documentation and response from Ms. Brown either contradicted your claims or indicated that the issues you raise with Ms. Brown's conduct were primarily related to her exercise of discretion in representing you, rather than amounting to misconduct that the State Bar could successfully prosecute. OCTC also noted that there is no evidence that Ms. Brown committed misconduct merely by representing your coworker.

In your request for request for review, you state: (1) that OCTC should not have "take[n] Ms. Brown at her word" that not deposing Dr. Marie King was a strategic choice; (2) that Ms. Brown "refused" to depose Dr. Glaser for a second time after a panel ruling; (3) that Mr. Ranaweera was a "key witness" in your case and Ms. Brown told you he would be testifying, but then refused to let him do so; (4) that while Ms. Brown did file a petition for reconsideration on October 2, 2017, she had not done so by 2pm that day when you checked with the clerk; (5) that Ms. Brown was negligent in telling you that she would depose doctors after reconsideration was granted but failing to do so before she asked to be relieved as your counsel; (6) that Ms. Brown was "totally silent" at your first SSA hearing and the ALJ was confused by the documentation that she failed to clarify; (7) that Ms. Brown failed to submit or clarify certain reports resulting in them not being "given weight;" (8) that Ms. Brown's statement that the SSA decision was not based on the hearing resetting or problems with medical reports was incorrect; and (9) that Ms. Brown filed your 132(a) claim before dismissing you as a client.

The Complaint Review Unit has carefully reviewed your initial complaint, OCTC's full investigatory file, and your request for review, and we affirm the decision of OCTC to close your complaint. In order to prove a disciplinary violation by an attorney, the State Bar must establish by clear and convincing evidence that a violation of the Rules of Professional Conduct or State Bar Act occurred. In order to meet the "clear and convincing" standard, the State Bar must prove that the facts underlying a possible a disciplinary violation are substantially more likely than not to be true. In circumstances where there are conflicting versions of events between a complaining witness and an attorney, all reasonable doubts must be resolved in the attorney's favor and the State Bar needs independent corroborating evidence demonstrating ethical violations.

The Complaint Review Unit will only recommend reopening a complaint when a request for review provides significant new evidence or otherwise demonstrates good cause. Here, we agree with OCTC that the evidence available in this case does not provide clear and convincing

evidence of misconduct by Ms. Brown. It is misconduct for an attorney to intentionally, recklessly, or repeatedly fail to perform legal services with competence. However, it is not misconduct for an attorney to exercise bad judgment, or even necessarily to behave negligently. While you are clearly not satisfied with Ms. Brown's performance as your attorney, nothing in your request for review provides new evidence or good cause to conclude that Ms. Brown acted with the requisite intent or recklessness to meet this high standard.

Accordingly, we find that your complaint was properly closed.

If you disagree with this decision, you may file an accusation against the attorney with the California Supreme Court. A copy of the applicable rule is enclosed. (See Rule 9.13, subsections (d) through (f), California Rules of Court.) If you choose to file an accusation, you must do so **within 60 days of the date of the mailing of this letter**. Together with your accusation, you should provide the Supreme Court (1) a copy of this letter and (2) a copy of the original closing letter from the Office of Chief Trial Counsel.

The State Bar cannot give you legal advice or representation. If you have not already done so, you may wish to consult with an attorney for advice regarding any other remedies which may be available to you. Attorneys can be located by contacting a lawyer referral service certified by the State Bar in your area. You may obtain a list of State Bar certified lawyer referral services by calling the State Bar at 866-442-2529 or by visiting the State Bar website at:

<http://www.calbar.ca.gov/Public/Need-Legal-Help/Lawyer-Referral-Service>

Sincerely,
Complaint Review Unit
Enclosure

Rule 9.13. Review of State Bar Court decisions

(a) Review of recommendation of disbarment or suspension

A petition to the Supreme Court by a member to review a decision of the State Bar Court recommending his or her disbarment or suspension from practice must be filed within 60 days after a certified copy of the decision complained of is filed with the Clerk of the Supreme Court. The State Bar may serve and file an answer to the petition within 15 days of service of the petition. Within 5 days after service of the answer, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar must serve and file a supplemental brief within 45 days after the order is filed. Within 15 days of service of the supplemental brief, the petitioner may serve and file a reply brief.

(Subd (a) amended effective January 1, 2007; previously relettered and amended effective October 1, 1973; previously amended effective July 1, 1968, and December 1, 1990.)

(b) Review of State Bar recommendation to set aside stay of suspension or modify probation

A petition to the Supreme Court by a member to review a recommendation of the State Bar Court that a stay of an order of suspension be set aside or that the duration or conditions of probation be modified on account of a violation of probation must be filed within 15 days after a certified copy of the recommendation complained of is filed with the Clerk of the Supreme Court. Within 15 days after service of the petition, the State Bar may serve and file an answer. Within 5 days after service of the answer, the petitioner may serve and file a reply.

(Subd (b) amended effective January 1, 2007; adopted effective October 1, 1973; previously amended effective December 1, 1990.)

(c) Review of interim decisions

A petition to the Supreme Court by a member to review a decision of the State Bar Court regarding interim suspension, the exercise of powers delegated by rule 9.10(b)-(e), or another interlocutory matter must be filed within 15 days after written notice of the adverse decision of the State Bar Court is mailed by the State Bar to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after service of the petition, the State Bar may serve and file an answer. Within 5 days after service of the answer, the petitioner may serve and file a reply.

(Subd (c) amended effective January 1, 2007; adopted effective December 1, 1990.)

(d) Review of other decisions

A petition to the Supreme Court to review any other decision of the State Bar Court or action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination under the provisions of the State Bar Act, or of the chief executive officer of the State Bar or the designee of the chief executive officer authorized to make a determination under article 10 of the State Bar Act or these rules of court, must be filed within 60 days after written notice of the action complained of is mailed to the petitioner and to his or her counsel of record, if any, at their respective addresses under section 6002.1. Within 15 days after service of the petition, the State Bar may serve and file an answer and brief. Within 5 days after service of the answer and brief, the petitioner may serve and file a reply. If review is ordered by the Supreme Court, the State Bar, within 45 days after filing of the order, may serve and file a supplemental brief. Within 15 days after service of the supplemental brief, the petitioner may file a reply brief,

(Subd (d) amended effective January 1, 2007, previously amended effective July 1, 1968, May 1, 1986, and April 2, 1987; previously relettered and amended effective October 1, 1973, and December 1, 1990.)



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017

213-765-1282

October 16, 2020

PERSONAL AND CONFIDENTIAL

Erik Volk
8809 Glistening Pond Street
Las Vegas, CA 89131

RE: Case No.: 19 O 16617
Respondent: Wendy Brown

Dear Mr. Volk:

The State Bar has decided to close your complaint against Wendy Brown.

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.

In your complaint you alleged that as a result of a work related accident, you employed the services of Wendy Brown. Ms. Brown subsequently filed a WCAB claim and a Social Security Administration ("SSA") application. You further alleged that as a result of Ms. Brown's conduct, your WCAB claim for future medical treatment was denied and an Administrative Law Judge in the SSA matter found that you were "not disabled."

You also stated that the WCAB petition was unsuccessful due to Ms. Brown's failure to depose medical witnesses and call a key witness (Mr. Ranaweera) to testify.

APPENDIX C

As for the SSA matter, you insisted that the Administrative Law Judge's unfavorable decision was influenced by incomplete and inaccurate medical reports as well as Ms. Brown's late arrival at a scheduled hearing.

Finally, you questioned why Ms. Brown did not file a 132(a) claim on your behalf with respect to your contention that your employer had discriminated against you after filing a WCAB claim.

As a result of these allegations, Ms. Brown was contacted in order to allow her an opportunity to address your concerns. In her reply she offered the following:

- 1) Ms. Brown stated that she did not depose Dr. Marie King, whose favorable report, could have been scrutinized by the defense;
- 2) As for Dr. Glaser, Ms. Brown stated that contrary to your allegations, Dr. Glaser was deposed;
- 3) With respect to your witness (Mr. Ranaweera), Ms. Brown never intended to call Mr. Ranaweera as a witness, as his testimony was deemed to be unnecessary;
- 4) Ms. Brown further stated she filed an October 2, 2017, Petition for Reconsideration (a copy was provided to this office);
- 5) On November 29, 2017, the decision to deny future medical considerations was rescinded and returned to the trial level "...for further proceedings."
- 6) As for the SSA matter, Ms. Brown stated that her tardiness was due to a number of hearings scheduled at the same location (Long Beach facility) and ran late, leading the court to re-set your hearing;
- 7) Ms. Brown further stated that the Administrative Law Judge's decision had nothing to do with either the re-setting of your scheduled hearing or inadequacies with the medical reports;
- 8) Ms. Brown informed this office that nowhere in the Judge's SSA decision was there mention of the hearing re-setting and/or problems with the medical reports;
- 9) With respect to the decision not to represent your interests in connection with a 132(a) claim, Ms. Brown stated that based on the available facts, you were unable to support a claim of wrongful termination.

Erik Volk

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During the course of this investigation I reviewed Ms. Brown's October 2, 2017, Petition for Reconsideration as well as your October 2, 2017, Petition for Reconsideration. I also reviewed the WCAB Order granting the Petition for Reconsideration as well as the SSA's Notice of Decision. After reviewing these items I could not find evidence establishing, by clear and convincing evidence, that Ms. Brown willfully violated either the Rules of Professional Conduct or the State Bar Act.

Additionally, you reported that Ms. Brown represented your co-worker in a workers' compensation claim. You explained that you worked in a lead capacity over your co-worker. You reported that the representation constituted a conflict of interest. The determination has been made that your working relationship alone is insufficient to prove by a clear and convincing standard that your interests potentially conflicted. There is no evidence that while representing you, Ms. Brown accepted the representation of a person in separate matter with interests directly adverse to yours or that the Ms. Brown's actions on behalf of either client would materially limit her effectiveness in representing either client.

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

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 for me at 213-765-1282. 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. I 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:

Erik Volk

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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>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Stowe', with a stylized flourish at the end.

Lisa Stowe
Investigator



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL

845 S. Figueroa Street, Los Angeles, CA 90017

213-765-1288

Sherell.McFarlane@calbar.ca.gov

December 23, 2019

PERSONAL AND CONFIDENTIAL

Eric Volk
6673 Maverick St
Las Vegas NV 89131

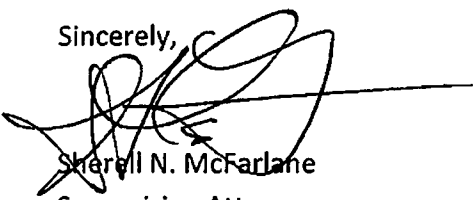
Re: Respondent: Wendy Lynne Brown
Case Number: 19-O-16617

Dear Mr. Volk:

This letter is to advise you that your complaint against attorney Wendy Lynne Brown has been reassigned to Investigator Lisa Stowe, who may be reached at 213-765-1282 (lisa.stowe@calbar.ca.gov). Deputy Trial Counsel Lori Flowers will continue as the legal advisor on this case, may be reached at 213-765-1267 (lori.flowers@calbar.ca.gov).

Thank you for bringing this matter to our attention. We look forward to your continued assistance.

Sincerely,


Sherell N. McFarlane
Supervising Attorney

SNM/ccb

APPENDIX D

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

Jan 24, 2020 1045 AM
213-765-1282
Jan 21, 2020
213-765-1282 2:49 PM



The State Bar
of California

OFFICE OF CHIEF TRIAL COUNSEL
ENFORCEMENT

845 S. Figueroa Street, Los Angeles, CA 90017

213-765- 1288

sherell.mcfarlane@calbar.ca.gov

July 18, 2019

PERSONAL AND CONFIDENTIAL

Eric Volk
6673 Maverick St
Las Vegas NV 89131

Re: Respondent: Wendy Lynne Brown
Case Number: 19-O-16617

Dear Mr. Volk:

Your complaint against attorney Wendy Lynne Brown has been reviewed and forwarded to the Enforcement Unit for further investigation and prosecution, if warranted.

I have assigned Investigator Fernando Soto and Attorney Lori Flowers to investigate your complaint. To facilitate the investigation, we request your assistance in providing information and documents as set forth below. In responding, please bear in mind that if you are not a client, some of the items may not apply to you and you need not respond to those items. **Also, if you have already provided any of the requested information and documents with your complaint, then we already have that and you need not provide it again.**

1. Please explain how you came to hire this attorney;
2. Please provide a copy of any retainer agreement between you and the attorney. If there was no written agreement, please describe the services that the attorney was hired to perform and the fees and costs that were to be paid;
3. Please describe the amount, type (cash, check, etc.), date and intended purpose of any payments that you made to the attorney;

Appendix E

July 18, 2019

Case No. 19-O-16617

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4. Please provide copies of the front and back of cancelled checks representing payments that you made to the attorney, as well as copies of any receipts that you received for your payments;
5. Please describe what work the attorney actually did for you;
6. Please describe all communications that you had with the attorney and/or his or her office, including the date, form (telephonic, written, in-person, etc.), and substance of each communication;
7. Please provide copies of all correspondence between you and the attorney and/or his or her office;
8. Please provide copies of any notes that you made regarding communications with the attorney and/or his or her office;
9. Please provide copies of telephone bills showing calls made to the attorney and/or his or her office;
10. Please provide the name, address and telephone number of the opposing party and the attorney for the opposing party, if any, in your matter;
11. If an insurance company is involved in this matter, please provide the name, address, and telephone number of the insurance company and the claim number;
12. Please provide the copies of any settlement agreements and/or releases that you signed;
13. Please provide copies of any settlement distribution sheets and/or accountings provided to you by the attorney or by his or her law office;
14. Please provide copies of any attorney or medical liens or any other liens that you signed;

July 18, 2019

Case No. 19-O-16617

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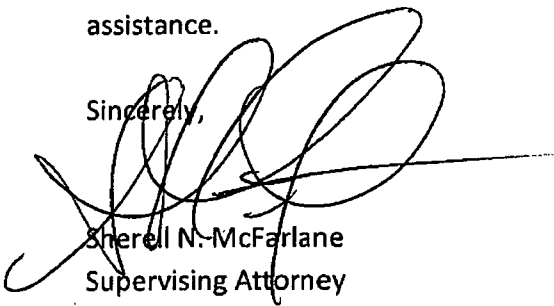
15. If a court case is involved, please provide the case number, the title of the case and the name and address of the court in which the case was filed; and

16. Please provide copies of any court documents in your possession.

Please provide the information and documents requested above to Investigator Fernando Soto within fifteen (15) days of the date of this letter. All documents that you send to the State Bar, whether copies or originals, become State Bar property and are subject to destruction. If you have any questions regarding this request, or if you have a change of address or telephone number, please call Investigator Fernando Soto directly at 213-765-1253.

Thank you for bringing this matter to our attention. We look forward to your continued assistance.

Sincerely,



Sherell N. McFarlane
Supervising Attorney

SNM/ccb

**Additional material
from this filing is
available in the
Clerk's Office.**