

THE STATE BAR
OF CALIFORNIA

OFFICE OF THE
CHIEF
TRIAL COUNSEL
ENFORCEMENT

06-297091



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October 12, 2006

PERSONAL AND CONFIDENTIAL

Detective Joe Sledge
Sacramento Police Department
Financial Crimes Unit
5770 Freeport Boulevard, Suite 100
Sacramento, CA 95822

RE: Respondent: Daniel Patrick Whaley
 State Bar Number: 99577
 State Bar Case Numbers: 06-0-10730 and 06-0-11245

Dear Detective Sledge:

This office is investigating complaints against attorney Daniel Patrick Whaley alleging misconduct that may subject him to criminal charges in your jurisdiction. Accordingly, the following information is provided in compliance with Business and Professions Code section 6044.5.

Daniel Patrick Whaley's State Bar membership records address and telephone number are as follows:

PO Box 128
Hood CA 95639
916-775-1470 916-775-1473
FAX whaley500@att.net
Email

Mr. Whaley's date of birth is June 17,1956.

Mr. Whaley previously had all office located at:

2600 H Street
Sacramento CA 95816

This office is investigating Mr. Whaley for allegedly misappropriating insurance settlement proceeds from his clients. In addition to being an attorney, Mr. Whaley has told his clients that he is a hip-hop music/video producer. DazDiva Corporation and Seventy-Five - the Film, LLC are two businesses registered with the California Secretary of State that list Mr. Whaley as their registered agent (Attachments 5 and 6).

3

Detective Joe Sledge October 12, 2006 Page 2

The information received by this office indicates the alleged misconduct began in approximately April 0[2005.

In about January of2005, Salvador Ortiz, Sr., hired Mr. Whaley to represent him and his two children, Christy "Lizette" Ortiz and Salvador Ortiz, Jr., in a civil matter resulting from the death of his wife Guadalupe Ortiz. An undated Retainer Agreement for Claim for Personal Injury/Wrongful Death was signed by Salvador Ortiz, Sr.,and Lizette Ortiz (Salvador Ortiz, Jr., was a minor in January of 2005) (Attachment 2). The Ortiz' filed complaints with the State Bar in February and March of2006 (Attachments 1, 2 and 3).

In April of 2005, Mr. Whaley received the first of several settlement proceeds from insurance claims he made to Globe Life and Accident Insurance Company ("Globe Life") (Attachment 7) and The Hartford (Attachment 8) on behalf of his clients, the Ortiz'. This office subpoenaed Mr. Whaley's trust account records for the period of December 24,2004 through June 30, 2006 (Attachments 9 and 10). During that time, Mr. Whaley deposited the proceeds from The Hartford and Globe Life into his trust account. Although Mr. Whaley distributed the portion owed to Lizette Ortiz and Salvador Ortiz, Jr., it has been alleged that the attorney's fees Mr. Whaley deducted from their settlement proceeds was inflated from 15% to 20%. Lizette and her brother allege Mr. Whaley owes each of them \$1,250 (Attachment 4). Mr. Whaley allegedly failed to distribute proceeds from two settlement checks (\$117,645.45 from Globe Life and \$50,000 from The Hartford) owed to Salvador Ortiz, Sr. Mr. Ortiz has repeatedly requested that those funds be paid to him. Mr. Whaley's trust account should hold approximately \$167,645.45 (not accounting for Mr. Whaley's attorney's fees) in the Ortiz' matter but according to the bank records that amount has not been held in trust by Mr. Whaley.

On April 18,2006, in an unrelated matter, Mr. Whaley was suspended from the practice oflaw for two (2) years and until he proves rehabilitation. The suspension was stayed and Mr. Whaley was placed on three years probation with conditions and eighteen (18) months actual suspension. (Attachment 11) In that case, Mr. Whaley agreed that he allowed funds in his trust account to fall below an amount owed to a client. Mr. Whaley and Mr. Whaley's employee, John Ibarra, were both deposed in that matter (Attachments 12 and 13, respectively).

If you have any questions regarding this referral, please call me at 415-538-2013. The State Bar will provide you with any additional information from our files to assist in your review.

In the event that criminal charges are filed against Mr. Whaley, please notify this office as required by Business and Professions Code section 6101(b).

Very truly yours,

Crystal , elazco
Investigator

CV/cv

SUBMITTING AGENCY

OFFENSE NUMBER

REPORT

(XX) WARRANT REQUEST

) IN CUSTODY

DDA DON STEED

ORTIZ, ChristY, FH23

(D.A. if known)

DATE/TIME OF OFFENSE 01/01/05-11/01/05 2005 DATE/TIME ARREST

VICTIM'(S) #1 ORTIZ, Salvador, MH57 #2 #3 #4

Table with columns: SUSPECT'(S), AGE, CHARGE, CII NUMBER, ENCLOSED, ORDERED, NONE. Includes entry for #1: HALEY, Daniel Patrick, 50, M06305998.

VEHICLE:

CASE SUMMARY:

(Briefly establish the factual basis of the offense and defendant's guilt, including dates, times and identity o the principal witnesses.)

Davis, CA.

On 12-23-04, Guadalupe Ortiz, was killed in an auto accident on HWY 113 in between Woodland and

In January 2005, Guadalupe's husband, Victim #1 and daughter, Victim #2 hired SUSPECT Daniel P. WHALEY, 2800 H Street, Sacramento, CA to sue one of the responsables for the death of victims wife and mother. On 11-22-05, a settlement check for \$25,000 was sent to the SUSPECT. After repeated phone calls, SUSPECT gave victim #2, \$20,000 from the settlement check. Victim#2, Christy ORTIZ alleges that the agreement was 15% to handle this case and SUSPECT charged her 25%, keeping \$5,000. Victim #2, alleges that the SUSPECT owes her \$1,150.

On 4-5-05, a settlement check from the Hartford Insurance Company, check#1 017015961. dated 4-5-05, payable to Law Office of Daniel P. Whaley and Salvador Ortiz, his client, amount of \$50,000. This check was endorsed by victim Salvador Ortiz and deposited into Daniel P. Whaley, Attorney Client Trust Account, Bank of America, account#16645-09-373.

On 8-15-05, a settlement check from the Globe Life and Accident Insurance Co, check #257873, dated 8-15-05, made out to Salvador Ortiz, amount of \$117,645.45. Check endorsed by Salvador Ortiz and deposited into Daniel P.

Whaley, Attorney Client Trust Account, Bank of America, account #16645-09-373. (Continued on page 2)

Check here if further investigation is pending and describe briefl

COM M ENTS: (Use for description & identification of al/ suspects for warrant requests & for additional victim's and/or defendants.)

WARRANT REQUEST FOR: WHALEY, Daniel Patrick, MW50, 06/17/1956, 6-3/240, Red/Brn, X-1522087, OLN N2374277, SSN .-4606 Address: PO Box128, Hood, CA 95639.

9.

Submitting Officer:

Det. Joseph H. Sledge

Reviewing Supervisor:

433-0581

10/19/2006

Form with fields: Detail, Financial Crimes, Phone:, Date:

Handwritten circled number 1

10.

DA SUPPLEMENT CONTINUED

SAC PD CASE NO. 06-294091

Victims over the past year have made several attempts to contact SUSPECT registered mail and phone calls. SUSPECT kept delaying payment to Salvador Ortiz and finally admitted that he invested the \$166,000.00 into his movie company venture. SUSPECT promised to repay victim with interest on 10-15-06.

In January 2006, Christy Ortiz filed a complaint with the California State Bar Association and investigator Crystal Velazco was assigned investigate the complaint.

On August 21, 2006, Victims filed a complaint with the Sacramento Police Department and on August 31, 2006, Det. Sledge met with victims and showed them a color DMV photo of a person named Daniel Patrick WHALEY, Driver License #N2374277 and both victims, Salvador and Christy Ortiz identified the person in this photo as the attorney that they hired to represent them. Both victims signed their name and dated the color DMV photo. Victims had met with SUSPECT at least 3-5 times to confer with him regarding their case.

On August 30, 2006, I contacted Crystal Velazco and she provided xerox copies of victim's checks and deposit slips indicating deposit of said checks into the Attorney Client Account belonging to Daniel P. Whaley, account #16645-09-373. Velasco stated that she had obtained these checks and other information pertaining to Daniel P. Whaley through an administration subpoena served on Bank America by the State Bar of California.

I have made several attempts to contact SUSPECT WHALEY, left phone messages on his answering machine for him to call me regarding this matter. Todate, 10-19-06, I haven't received any type of communication from the SUSPECT.

Request that an arrest warrant be issued for SUSPECT Daniel P. Whaley charging him with 3 counts of 487(a)PC.

②

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE & TIME: 10/16/2008 1:30 PM
JUDGE GARY RANSOM
REPORTER D. PURRINGTON

BAILIFF: C. SHEEHAN

COUNSEL:
R. CLANCEY, DDA

PEOPLE OF THE STATE OF CALIFORNIA

vs

M. CHASTAIN, RET

DANIEL PATRICK WHALEY, DEFENDANT
DEPT 08
CLERK G. HARANK

XREF: 1522087 DOB: 06/17/1956 CASE NO. 06F09493

MINUTE ORDER & ORDER OF PROBATION

Defendant and counsel above named were present. Defendant was convicted as follows:

09/18/2008 CT 1

PC 487(A) FEL

~~PC 487(A) FEL~~
Nolo contendere

The court having read and considered the presentence probation report, ordered it filed.

It is ordered that imposition of judgment and sentence be suspended and the defendant placed on formal probation for a period of 5 years from the date of this order on the following general and specific terms and conditions:

The defendant shall serve 120 days in the Sacramento County Jail. The Court recommends Work Furlough. Defendant to qualify or surrender at the Rio Cosumnes Correctional Center. While in confinement, the defendant will comply with all rules and regulations of the County Jail and conduct himself in a proper manner. Stay sign-up Work Furlough to 10/20/08.

Said term is stayed until 11/26/2008, 2:00 PM at which time defendant shall report to surrender at the "Rio" Cosumnes Correctional Center.

Defendant shall receive credit for time served 0E-2 day.

Defendant shall submit his person, property and automobile and any object

BOOK: 08
PAGE:
DATE: 10/16/2008
CASE NO.: 06F09493
CASE TITLE: WHALEY
DISTRIB:

JICR0220/CR30 (12/1991)

under defendant's control to search and seizure in or out of the presence of the defendant, by any law enforcement officer and/or Probation officer, at any time of the day or night, with or without his consent, with or without a warrant. Defendant being advised of his constitutional rights in this regard, and having accepted probation, is deemed to have waived same.

Defendant satisfy the requirement of 296 of the Penal Code regarding the submission of blood and saliva samples along with a right thumbprint and full impression of each hand and pursuant to Section 296.1 of the penal code if defendant is not in custody at the time of sentencing, the Court order the subject to report within five calendar days to a county jail facility to be identified by the Probation Department for the collection of specimens and processing of prints.

Defendant shall not use, handle or have in his/her possession marijuana, narcotics, dangerous drugs or controlled substances of any kind unless lawfully prescribed for defendant by a licensed physician.

Defendant shall not associate with known or reputed users of marijuana, dangerous drugs or narcotics nor be in places where narcotics and/or dangerous drugs are present.

Defendant shall have no contact whatsoever with the victim or the victim's family without prior permission of the probation officer.

Defendant shall pay a \$200.00 restitution-fine pursuant to Penal Code Section 1202.4.

Pursuant to Penal Code Section 1202.44, the Court is imposing an additional % restitution fine in the same amount just imposed under Penal Code Section 1202.4(b). Payment of this fine is stayed and shall become effective upon revocation of Probation.

Defendant shall pay Recovery. court's installment all fines, fees, assessments and restitution through the process, which may include the Department of Revenue

Defendant pay a fine of \$10.00 for crime prevention programs pursuant to Section 487 (1202.5) of the Penal Code.

Pay Court Security Surcharge fee of \$20.00 (PC 1465.8)

Defendant shall report to the Department of Revenue Recovery for a financial

BOOK: 06F09493
PAGE: WHALEY
DATE:

CASE NO.:
CASE TITLE;
DISTRIB:

08

2

PAGE
10/16/2008

JICR0220/CR30 (12/1991)

evaluation and recommendation of ability to pay costs for and in the amount (---) of \$702.00 for the presentence report and \$46.00 per month for probation supervision, payable through the Courtis installments process.

Defendant shall pay a \$263.85 main jail booking fee pursuant to Section \~ 29550.2 of the Government Code, payable through the Court's installments process.

Defendant pay through the Court's installments process the amount determined ⁹ after an evaluation and recommendation of ability to pay and for development of a payment schedule for court-ordered costs, fees, fines and restitution within five (5) days of sentencing or within five (5) days of release from custody.

Defendant shall report to the Probation Office within 4 days. *mo*

Defendant may petition Court for 17(b) after 18 months of successful cnc completion of probation.

It is the further Order of the Court that you shall, during your term of probation, comply in all respects with the following General Conditions of probation as authorized by the provisions of the Probation Statutes of the State of California. Further, that you shall comply in all respects with any Special Conditions of Probation contained in your Order of Probation or which may subsequently be ordered by the Court or the Probation Officer.

1. Obey all laws applicable to you.
11. Seek and/or maintain regular and steady employment or be enrolled in an educational or vocational program approved by the probation officer having your supervision; not voluntarily change employment without having gained approval for such change; and if your employment is terminated, either temporarily or permanently, for any cause whatsoever, you are to notify your probation officer within 48 hours;
12. You are not to remain away from your regular residence for more than 48 hours without first having secured permission from your Probation Officer. You are to notify your Probation Officer at once of any intended change of address and the reasons therefore.
13. You are to follow in all respects any reasonable instructions given to you by the Probation Officer having your supervision.

BOOK: 08
PAGE:
DATE: 10/16/2008
CASE NO. : 06F09493
CASE TITLE: WHALEY

DISTRIB: PAGE 3

JICR0220/CR30 (12/1991)

5. You are to report in person to the Division of,Adult Probation at such times and dates as the Probation Officer having your supervision may direct. (If for any reason beyond your control you are unable to report on your assigned date and time, you shall communicate this fact to the Division of Adult Probation on or before the assigned date.)
6. You shall allow Probation Officers to visit your home and place of employment at reasonable times.

Failure by you to comply with any of the foregoing Specific and General Conditions of Probation could result in: (1) the grant of probation being revoked, resulting in confinement in the County Jail for additional periods, or imposition of any sentence which the Court could have imposed on you before you were placed on probation; (2) the term of probation being extended up to the maximum provided by law; or (3) the conditions of probation being amended, resulting in a change or addition to the conditions within the limits of the Probation Statutes.

Defendant is released on probation.

Done in open Court 10/16/2008

BOOK: 06F09493
PAGE: WHALEY
DATE:

CASE NO. :

CASE TITLE:

DISTRIB:

08

4

PAGE
10/16/2008

JICR0220/CR30 (12/1991)

The foregoing terms and Conditions of Probation have been explained to me and I fully understand them and agree in every particular to abide by them.

Date:

Probationer

Witnessed:

By:

Officer

Sec. 1203.4 Penal Code: PROBATIONER MAY WITHDRAW PLEA OF GUILTY.

At any time after the termination of the period of probation, upon completion of the requirements of Penal Code section 1203.4, you may petition the court to exercise its discretion to allow you to withdraw your plea of guilty or nolo contendere or to set aside a verdict of guilty and dismiss the accusations against you. If such relief is granted by the court, you may also petition the court for a certificate of rehabilitation and pardon upon completion of the requirements of Penal Code section 4852.01.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess or have in his custody or control any firearm capable of being concealed upon the person or prevent his conviction under Section 12021.

NOTICE: Both California Penal Code Section 12021 and the Federal Gun Law of 1968 prohibit the use or possession of any firearm, including any handgun, rifle or shotgun, by any individual convicted of a felony.

BOOK: 06F09493
PAGE: WHALEY
DATE:

CASE NO. :
CASE TITLE:

DISTRIB: 5
08

PAGE
10/16/2008

JICR0220/CR30 (12/1991)
