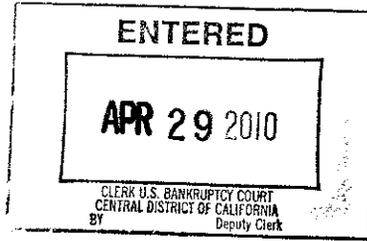
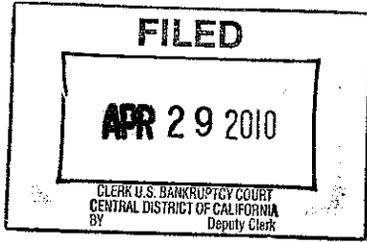


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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re:

THE DISCIPLINARY PROCEEDING OF  
JENNIFER ARAGON

Case Number: MI09-00016

Date: February 12, 2010  
Time: 10:00 a.m.  
Place: Courtroom 1545  
225 E. Temple Street  
Los Angeles, CA 90012

This matter comes before the undersigned pursuant to General Order 96-05 which established the Attorney Discipline Procedures in Bankruptcy Court for the Central District of California. On August 24, 2009, Bankruptcy Judge Victoria S. Kaufman submitted a Statement of Cause to the Clerk of the Bankruptcy Court referring attorney Jennifer Aragon, State Bar of California #176487, to the disciplinary committee based on Ms. Aragon's representation in two chapter 13 cases pending before Judge Kaufman.

1 In accordance with General Order 96-05, three judges of the bankruptcy court were  
2 randomly selected out of all the eligible judges, not including the referring judge. The  
3 undersigned accepted the designation, agreeing to sit on the hearing panel (the "Panel").  
4 Thereafter, a Notice of Assignment of Hearing Panel along with a copy of the State of Cause was  
5 served on Ms. Aragon. Ms. Aragon was given ten days to request that one or more of the  
6 designated judges be recused. No such request was received by the Clerk. Thereafter, a notice  
of the date for hearing was served on Ms. Aragon. Ms. Aragon, represented by Kathleen P.  
March of The Bankruptcy Law Firm, P.C., filed a timely response and a hearing was held on  
February 12, 2010.

7 The General Order states, in relevant part:

8 "The Attorney may appear at the Disciplinary Hearing with legal counsel and may  
9 present evidence (1) refuting the statements contained in the Statement of Cause, (2)  
10 mitigating the discipline (i.e., that notwithstanding the validity of the statements in the  
11 Statement of Cause the attorney should not be disciplined), and (3) bearing on the type  
and extent of disciplinary action appropriate under the circumstances."

12 Ms. March appeared on behalf of Ms. Aragon. Ms. Aragon and attorneys Warren Brown  
13 and Andrew Smyth gave testimony. At the conclusion of the hearing, the matter was submitted  
for decision.

14 After careful consideration of the Statement of Cause, Ms. Aragon's response, the  
15 testimony of the witnesses, and argument of counsel, the judges of the Panel conclude that no  
16 further discipline is necessary in this matter for the reasons set forth below.

17 Chronology of Facts Leading to the Referral by Judge Kaufman

18 The following facts are either undisputed or constitute findings based on the evidence  
19 presented in the pleadings or by testimony before the Panel.

20 Ms. Aragon has represented individual debtors in chapter 7 and chapter 13 cases before  
21 this court for a number of years and has represented debtors in hundreds of Chapter 7 cases. On  
22 December 10, 2008, Ms. Aragon filed a chapter 13 case for Fernando and Elvia Salandez  
(LA 08-31431) ("*Salandez*").

23 The first confirmation hearing in the *Salandez* case was held on February 25, 2009. Prior  
24 to the hearing, Judge Kaufman posted a written ruling on the Court's website identifying certain  
25 issues that precluded confirmation and should be addressed, including failure to demonstrate that  
the plan and notice of the confirmation hearing had been served on all creditors. At the hearing,  
26 *Salandez* was represented by an attorney employed by Ms. Aragon. After discussing the  
27 deficiencies with counsel, the matter was continued to April 1, 2009, to allow counsel to remedy  
the issues raised by the court. The record does not reflect whether the chapter 13 trustee had  
28 other issues that needed to be addressed.

1 The second confirmation hearing in *Salandez* was held on April 1, 2009. No one  
2 appeared for the debtors. The same written ruling had been posted prior to this hearing. The  
3 court's issues had not been addressed. After being informed by the chapter 13 Trustee that the  
4 debtors were current on their payments, Judge Kaufman continued the case to May 20, 2009, and  
5 issued an order (EOD May 4, 2009) requiring Ms. Aragon to appear on the matter personally.

6 On May 20, 2009, Warren Brown, another attorney with a consumer practice before this  
7 court, appeared in place of Ms. Aragon. Mr. Brown informed the court that Ms. Aragon was ill  
8 and, although ordered to do so, could not appear herself. The issues raised prior to the first  
9 confirmation matter remained unresolved. Judge Kaufman continued the confirmation hearing a  
10 fourth time and issued an Order to Show Cause Why Debtors' Counsel Should Not be Required  
11 to Disgorge Unreasonable Fees in Accordance with 11 U.S.C. §329(b) (the "OSC").

12 On July 6, 2009, Ms. Aragon filed her declaration in response to the OSC. She stated  
13 that she failed to appear at the second confirmation hearing on April 1, 2009, because she was  
14 unaware of it. She said that she failed to appear at the hearing on May 20 because of "serious  
15 ongoing health issues." Ms. Aragon did not offer any corroborating information about her  
16 illness on April 1. Ms. Aragon stated that additional staff had been hired in her office to help  
17 manage the large caseload. She responded to various of the court's concerns related to  
18 confirmation of the *Salandez* case but certain of the deficiencies in the *Salandez* matter remained  
19 and new ones were presented by a newly filed amended plan. Ms. Aragon did not provide an  
20 itemization of the services rendered and costs incurred in that case although the OSC required  
21 such information to be given.

22 The OSC came on for hearing on July 15, 2009. Attorney Andrew Smyth represented  
23 Ms. Aragon. Mr. Smyth informed the court that Ms. Aragon intended to stop representing  
24 Chapter 13 debtors because it was overly burdensome but declined to stipulate to this result. Mr.  
25 Smyth argued that the *Salandez* case was an exception to Ms. Aragon's normal diligence and  
26 could be attributed to insufficient staff. He further argued that Ms. Aragon should not be  
27 referred to the disciplinary panel because many counsel make mistakes that require their client's  
28 cases to be continued.

At the conclusion of the OSC hearing, Judge Kaufman ordered disgorgement of fees to  
the *Salandez* debtors in the amount of \$500 and determined that Ms. Aragon should be referred  
to the disciplinary panel because of her repeated failure to resolve issues raised by the court and  
her failure to comply with two orders of the court, one to appear on May 20, 2009, and the other  
to provide a detailed description of the services rendered in the *Salandez* case.

On the same afternoon as the OSC was heard, there were two more failures to appear on  
Ms. Aragon's chapter 13 cases on the confirmation calendar. One was the *Salandez* case which  
was dismissed. The other was for Robert and Aimee Antuna (LA 09-14624) ("*Antuna*"). The  
*Antuna* case was continued to a later date when the chapter 13 trustee informed Judge Kaufman  
that the debtor was up to date on the payments.

1                   Jurisdiction

2                   Ms. Aragon advances an argument that both the bankruptcy court and this panel lack  
3 jurisdiction to even consider the question of discipline because discipline is not an enumerated  
4 core proceeding under 28 U.S.C. §157(b)(2). The argument is apparently largely based on the  
5 First Circuit's decision in *In re Sheridan*, 362 F.3d 96 (1<sup>st</sup> Cir. 2004). However, the argument  
6 need not detain us for long. As the Ninth Circuit BAP has observed, discipline regarding matters  
7 that are themselves core proceedings *are* core proceedings, and therefore *Sheridan* is  
8 distinguishable. *In re Brooks-Hamilton*, 400 B.R. 238, 244 (9<sup>th</sup> Cir. B.A.P. 2009), citing *Price*  
9 *v. Lehtinen (In re Lehtinen)*, 332 B.R. 404, 410-11 (9<sup>th</sup> Cir. B.A.P. 2005), *affd'* 564 F.3d 1052  
10 (9<sup>th</sup> Cir. 2009). *See also Peugeot v. United States Trustee (In re Crayton)*, 192 B.R. 970 (9<sup>th</sup> Cir.  
11 B.A.P.1996). Confirmation of Chapter 13 plans is clearly a core proceeding under 28 U.S.C.  
12 §157 (b)(2)(A), and Ms. Aragon's apparent inattention to plan confirmation was the issue arising  
13 in both the *Salandez* and *Antuna* matters. In contrast, *Sheridan* involved alleged attorney  
14 misconduct over the course of numerous previously closed bankruptcy cases, but even in  
15 *Sheridan*, the majority acknowledged that attorney discipline *during* a pending bankruptcy case  
16 may constitute a core proceeding. *Brooks-Hamilton*, 400 B.R. at 244-45 n. 11, *citing In re*  
17 *Sheridan*, 362 F.3d at 107, 111. Moreover, aside from the core proceedings issue, the Ninth  
18 Circuit has repeatedly held that bankruptcy courts (as all federal courts) have the inherent  
19 authority to discipline attorneys appearing in cases before them. *Hale v. United States Trustee*,  
20 509 F.3d 1139, 1148 (9<sup>th</sup> Cir. 2007); *Lehtinen*, 332 B.R. at 412-13; *Crayton*, 192 B.R. at 975;  
21 *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 284 (9<sup>th</sup> Cir. 1996);  
22 *Fink v. Gomez*, 239 F. 3d 989, 992-93 (9<sup>th</sup> Cir. 2001). This inherent authority may extend in  
23 extreme cases to suspension of practitioners. *Lehtinen*, 564 F.3d at 1062. The bankruptcy  
24 judges of this district have adopted a general order delineating the procedures to be followed  
25 when one judge desires the involvement of other judges of this court in deciding on sanctions.  
26 This panel has the authority that any individual judge of this court would have. There cannot,  
27 then, be any serious question about this panel's authority to impose such discipline as may be  
28 warranted under the circumstances.

19                   The Disciplinary Hearing

20                   Attorney sanctions of any sort are taken very seriously and not imposed lightly. This  
21 Panel is aware of how reluctant judges are to impose sanctions as well as how difficult such  
22 situations are for the attorney involved. The task of the Panel is to review all relevant  
23 considerations and reach a conclusion appropriate to the circumstances of the particular matter.  
24 In particular, the Panel must consider all matters in mitigation of the errors referred to the Panel.

25                   The judges of this Panel conclude that the instant matter is the unfortunate result of a  
26 convergence of mistakes and misunderstandings which Ms. Aragon has explained and taken  
27 steps to remedy.

28                   This matter arises during a time when both consumer bankruptcy attorneys and the court  
are dealing with an overwhelming crush of cases. Ms. Aragon is an experienced consumer  
practitioner who was handling a very heavy caseload and had brought in a junior attorney to

1 assist. It appears that the initial problems in addressing the court's issues in the *Salendez* case  
2 were caused by the failure of the newly hired, junior counsel to properly calendar the  
3 continuance of the *Salendez* matter or to relate the problems in the case to Ms. Aragon. As a  
4 result, the junior counsel no longer works for Ms. Aragon. In addition, Ms. Aragon informed the  
5 Panel that other staffing problems at the time have also been remedied.

6 The Panel is satisfied that Ms. Aragon's failure to appear personally at the second  
7 confirmation hearing in response to Judge Kaufman's order to do so was the result of ongoing  
8 health issues. The Panel notes that Ms. Aragon arranged to have other bankruptcy counsel  
9 appear in her stead. Ms. Aragon assured the Panel that the absence of corroborating information  
10 about her health issues either then or later was driven by privacy concerns and a lack of  
11 appreciation for the desirability of providing such information to the court.

12 With regard to the OSC in July 2009, the Panel agrees that Judge Kaufman's order to  
13 disgorge \$500 in attorneys' fees to the *Salendez* debtors was appropriate. Regardless of  
14 mitigating circumstances, Ms. Aragon had not remedied certain deficiencies in the case that were  
15 within her control and she did not provide the itemization of services required by the court.

16 It is ironic that there were two failures to appear on Ms. Aragon's cases on the very day  
17 of the hearing on the OSC and that one of those failures to appear was in *Salendez*, the very case  
18 that was the subject of the OSC. The explanation presented to the Panel demonstrated that this  
19 was the result of a misunderstanding or mistake.

20 The hearing on the OSC came after the conclusion of the confirmation calendar. Ms.  
21 Aragon and Mr. Smyth, her counsel for the OSC matter, were both in the courthouse, outside  
22 Judge Kaufman's court at the time the *Salendez* and *Antuna* cases were called. Ms. Aragon  
23 testified that she thought Mr. Smyth knew he was expected to appear at these hearings. Mr.  
24 Smyth testified that he did not realize that he was supposed to appear on the confirmation matters  
25 for *Salendez* and *Antuna* until sometime well after the court adjourned for the day. As noted  
26 above, the result was dismissal of *Salendez* and continuance of *Antuna*, both of which are  
27 consequences appropriate to the cases involved.

28 Importantly, Ms. Aragon's actions after these missteps in the *Salendez* and *Antuna* cases  
resulted in both cases ending successfully. In *Antuna*, Ms. Aragon was able to confirm a Chapter  
13 plan. After the *Salendez* case was dismissed, Ms. Aragon filed a Chapter 7 case for the  
debtors. By then, Chapter 7 was a better fit because the debtors had a reduction in income,  
qualifying them as within the means test for Chapter 7. Ms. Aragon did the *Salendez* Chapter 7  
free of charge, including paying the filing fee herself. None of these debtors appears to have  
been prejudiced by the earlier errors in the cases.

The errors made in the *Salendez* and *Antunez* cases appear unlikely to be repeated. Ms  
Aragon informed the panel that her calendaring issues have been remedied by terminating some  
staff and adding new staff. Her followup attention to these cases resulted in successful  
outcomes. Her explanations assure the Panel that the unfortunate cascade of events that led to  
this proceeding are not characteristic of her dedication to her cases or indicative of any disrespect  
for her duties to her clients or to the court.

1 Conclusion

2 Based on the foregoing, the Panel finds that no further action need be taken on this  
3 referral.

4 Date: 3/15/10

5 Maureen Tighe  
6 Maureen Tighe  
7 United States Bankruptcy Judge

Date: 3/29/2010

Theodor Albert  
Theodor Albert  
United States Bankruptcy Judge

8 Date: 3/18/2010

9 Kathleen Thompson  
10 Kathleen Thompson  
United States Bankruptcy Judge

