PUBLIC MATTER – DESIGNATED FOR PUBLICATION

Filed December 21, 2006

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **JULIE L. WOLFF**, A Member of the State Bar.	)))))))	**00-O-13294** **OPINION ON REVIEW**

This case presents an instance where, during a one-month period, an attorney lost her ethical footing. Respondent, Julie L. Wolff, abandoned over 300 indigent dependency clients and failed to appear in 39 matters as a result of her misguided belief that the orders and rules of the juvenile court of the Sacramento Superior Court could be ignored. Although confined to a relatively brief period of time, respondent's misconduct caused numerous clients to be unrepresented at their hearings and resulted in other detrimental effects on the fair and efficient administration of justice.

Both respondent and the State Bar are appealing the decision of the hearing judge imposing a public reproval based on her findings that respondent is culpable of the following misconduct: 1) failing to obey a court order (Bus. & Prof. Code, § 6103);[1] 2) withdrawing from employment without court permission (Rules Prof. Conduct, rule 3-700(A)(1));[2] and 3) withdrawing from employment without taking reasonable steps to protect the interests of her clients (rule 3-700(A)(2)). Respondent asks this court to reject the hearing judge's culpability

[1]Unless otherwise noted, all further references to the Business and Professions Code will be referred to as "section."

[2]Unless otherwise noted, all further references to the Rules of Professional Conduct will be referred to as "rule."

findings, asserting that the expiration of the relevant statute of limitations precludes imposition of discipline and that, in any event, she maintains the State Bar did not meet its burden of proving misconduct by clear and convincing evidence.[3]

The State Bar appeals on the grounds that the hearing judge's discipline recommendation is not sufficient in view of the seriousness of the misconduct. Instead, it seeks imposition of two years' actual suspension. The State Bar also asks us to find as additional aggravation that respondent has shown lack of remorse, bad faith and lack of candor.

Upon our de novo review (*In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge's findings of culpability, but we find additional culpability for charged misconduct arising from respondent's failure to inform clients of significant developments in violation of section 6068, subdivision (m). We agree with the hearing judge that the charged misconduct under rule 3-110(A) arising from respondent's failure to competently perform legal services is duplicative of the misconduct charged for her improper withdrawal and should be given no additional weight. We also agree with the hearing judge that there is insufficient evidence to support a culpability determination that respondent failed to report judicial sanctions as required by section 6068, subdivision (o)(3).

For the reasons discussed herein, we modify the hearing judge's culpability, mitigation, and aggravation determinations, and recommend that respondent be suspended from the practice of law for three years, that the execution of the three-year suspension be stayed, and that respondent be placed on probation for three years on the condition that respondent be placed on actual suspension for 18 months and until she complies with standard 1.4(c)(ii) of the Standards of Attorney Sanctions for Professional Misconduct.[4]

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[3]On appeal, respondent has alleged several other errors of the court below. Those allegations not expressly addressed here have been considered and rejected as without merit and/or irrelevant.

[4]Unless otherwise noted, all further references to "Standard" are to this source. See p. 17.

I. FACTUAL AND PROCEDURAL BACKGROUND

The essential facts that are material to our culpability and disciplinary determinations are the subject of a stipulation, entered into on February 18, 2000, by respondent, her counsel and Sacramento county counsel (Stipulation) as part of the settlement of a civil contempt proceeding entitled *In re: The Matter of The Contempt of Julie Lynn Wolff, Contemner*.[5] In addition to the facts stated in the Stipulation, our findings are based on our de novo review of the evidence adduced in the hearing below.

Respondent has practiced law in California since her admission to the State Bar on December 11, 1989. She has no prior record of discipline. Respondent's primary experience is as a juvenile dependency attorney in Sacramento County.

Beginning in or around 1991 through 1999, respondent was a member of the Indigent Defense Program of Sacramento County (IDP). The IDP selected qualified attorneys from a panel to represent parents, and on occasion children, in dependency matters filed with the juvenile court. The court would ask the IDP to assign an attorney from the panel as counsel of record for an indigent individual in the dependency proceedings.[6]

On January 1, 1998, the Honorable Kenneth G. Peterson became the presiding judge for the juvenile court in the Sacramento County Superior Court. In late 1998, Judge Peterson became concerned about the effectiveness of the IDP program. Lawyers appointed from the IDP often represented many indigent clients simultaneously, and instances of conflicting court appearances were becoming more frequent. As a consequence, Judge Peterson decided to reorganize the method of appointment for indigent litigants.

Judge Peterson's solution was to contract with one law firm to represent all indigent clients instead of using the IDP for attorney referrals. A committee was formed to accept bids

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[5]We address respondent's evidentiary challenges to the Stipulation *post*.

[6]An administrator for the IDP, hired by Sacramento County, would select a lawyer who volunteered to be on the panel, and the appointed lawyer would be paid by the court.

from various law firms and to select one law firm to provide the services. In April 1999, Judge Peterson held a public meeting during which he explained the reorganization and bidding process for the new contract. At that meeting, Judge Peterson conveyed that no attorney would be forced to resign from his or her current cases, but the winning bidder would be required to accept any cases from which the court relieved other counsel. Judge Peterson was both financially and administratively motivated to relieve counsel from their cases, if they were willing, because the new contract set a flat rate for up to 2,000 cases for the first year. The selected law firm would receive that amount whether one case was transferred to it or 2,000.[7] The new process also was intended to mitigate scheduling conflicts as all of the attorneys would be employed by the same law firm.

Respondent, who was present at the public meeting in April 1999, submitted a bid to the committee. In July 1999, respondent was informed that her bid was rejected. In November 1999, the committee awarded the contract to the Law Offices of Dale S. Wilson.

As of August 1999, respondent was the attorney of record for over 300 juvenile dependency cases before the Sacramento County Superior Court. In that same month, respondent submitted a document to the Sacramento County Superior Court entitled "In re: All My Cases."[8] Respondent testified that this document was intended to effectuate her resignation from her 319 IDP-appointed cases and was to be effective as of September 16, 1999. Prior to submitting this document, respondent did not notify her clients that she intended to withdraw and would not be appearing at their upcoming hearings.[9]

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[7]Judge Peterson testified that on eight occasions, from 1998 to 2004, he relieved an attorney as counsel of record on IDP cases when a proper motion to withdraw was filed in the court.

[8] Respondent testified that she gave Judge Peterson this document on August 24, 1999.

[9]When asked by the State Bar if she had conveyed to her IDP clients that she had submitted a motion to the court to be relieved as their attorney, respondent answered that she had not. The State Bar then asked respondent: "[d]id you communicate [to] them, communicate with

Judge Peterson refused to file respondent's document and instructed his clerk to return it to her and inform her that it was not a proper motion to withdraw from representation. The document did not request a hearing date nor did it indicate that any client or party had been served with the document. Moreover, the document did not identify respondent's cases by name or case number, and therefore the court could not ascertain those cases from which respondent intended to withdraw. Respondent never re-submitted a competent motion to withdraw and the court did not authorize her withdrawal.

Nevertheless, as of September 16, 1999, respondent stopped making appearances for all of the cases in which she was the attorney of record and returned her case files to the IDP administrator, John Soika. Respondent testified that it was her belief that the IDP would re-assign her cases to new attorneys, who would then make all future appearances, and that she had taken sufficient action to withdraw from her more than 300 cases.[10] Judge Peterson testified that the IDP had no authority to relieve an attorney of record, and that such authority rested entirely with the Sacramento Superior Court upon submission of a proper motion to withdraw.[11] Other than submitting the defective document entitled In re All My Cases, respondent took no affirmative action to ensure that she had been relieved as attorney of record for her IDP cases.[12]

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them in some other words to inform them that you were going to withdraw as their attorney?" Respondent answered: "[n]ot that I was withdrawing as their attorney."

[10]Respondent testified that three weeks prior to delivering the case files to John Soika, she called him for instructions. "I told him I was resigning IDP and whether I needed to bring him the files, what he wanted me to do. . . . [¶.] He said, prepare a list. Bring me your files. I will have them all reassigned."

[11]When asked whether an attorney should rely on directions from Mr. Soika as to how to resign from IDP cases, Judge Petereson testified: "I'm the one that has to grant or deny the motion, and I'll decide every case on its individual basis, if I'm going to grant or deny it. If the merits are there, I'm going to grant it."

[12]Respondent testified: "I was simply told that in Judge Peterson fashion, he had formally approved the withdrawal at some point." Respondent did not recall who told her that information, and simply "expected, in standard fashion, he would have granted it."

Respondent's absence did not go unnoticed by the court, as her failure to make scheduled appearances disrupted court proceedings, caused continuances, and resulted in some indigents appearing in court unrepresented.

For example, on September 16, 1999, respondent had a matter scheduled for 9:00 a.m. in Department 93 of the Superior Court of Sacramento County. Respondent did not appear. Instead, at 9:00 a.m. the referee for that department, sitting as the juvenile court, received a written note from respondent, which stated that she would no longer be appearing on any matters to which she had been appointed by IDP. The referee instructed her administrative assistant to contact respondent's office, and inform her that she must appear for hearing by 10:15 a.m. Respondent failed to do so.

On September 17, 1999, respondent was scheduled to appear at 8:30 a.m. on a different matter in Department 97. Again, respondent was not present when the calender was called. The court clerk called respondent's office around 9:00 a.m. and was informed that respondent was in Modesto, and then was transferred to another person. The clerk informed that person that respondent was being ordered to appear in Department 97 at 1:30 that afternoon. Respondent did not appear.

Ultimately, respondent failed to appear in 39 proceedings between September 16, 1999 and October 13, 1999.

On September 20, 1999, Judge Peterson issued an order in *In re: The Matter of The Contempt of Julie Lynn Wolff, Contemner*, to show cause why respondent should not be adjudged guilty of contempt for her failure to appear at the hearings scheduled on September 16 and 17, 1999 (OSC). On September 29, 1999, in response to the OSC, respondent appeared before Judge Peterson, represented by counsel. The judge informed respondent that the court still considered her the attorney of record for her IDP-appointed cases and instructed respondent to attend her scheduled hearings. The court then inquired as to her intentions regarding her upcoming appearances in juvenile court. Through her counsel, respondent stated that she would not make

any future appearances on behalf of her IDP cases because she no longer had the files, having delivered them to IDP. Notwithstanding her explanation, Judge Peterson did not relieve respondent of her duties as the attorney of record for any of her indigent clients.

On October 21, 1999, the court issued an Amended Order to Show Cause In re: Contempt (Amended OSC) ordering respondent to show cause why she should not be adjudged guilty of contempt for her failure to appear at 39 scheduled matters between September 16 and October 13, 1999. Ultimately, on February 18, 2000, in settlement of the contempt proceedings, respondent stipulated to entry of an Order Imposing Sanctions in the amount of $1500 (Sanctions Order) and the court withdrew the Amended OSC. On the same date, the court filed a Notice of Entry of Order and Findings (Notice).[13] In the Sanctions Order, the Sacramento Superior Court found that respondent: "failed to appear on behalf of numerous clients and/or did not make reasonable effort to ensure alternate legal representation was provided at hearings during the period September through October, 1999 [as detailed in the incorporated] Statement of Facts In Re Contempt. Such willful disobedience of court orders was without good cause or reasonable justification. [¶.] [Respondent's] conduct caused substantial disruption of the orderly administration of the juvenile court, including the attendant expenditure of judicial resources and staff time required to continue numerous proceedings, and to inventory and reassign said cases." Included as part of the Sanctions Order was respondent's Stipulation as to the above findings of the court, which was signed by her and her attorney. The Sanctions Order and the factual and legal findings contained therein, which we discuss in detail below, provide clear and convincing evidence of the misconduct for which we find culpability.

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[13]The Notice incorporated by reference the Sanctions Order, which in turn incorporated by reference Judge Peterson's September 20, 1999 OSC together with the supporting declarations of court personnel, and the October 21, 1999 Amended OSC, which incorporated a Statement of Facts In re Contempt. The Sanctions Order also incorporated by reference a detailed list outlining 39 specific instances when respondent failed to make an appearance.

The State Bar initiated these proceedings by filing a Notice of Disciplinary Charges (NDC) on October 14, 2004. The NDC contained six counts, charging respondent with failure to inform clients of significant developments in violation of section 6068, subdivision (m); intentional, reckless, and repeated failure to perform legal services with competence in violation of rule 3-110(A); failure to obey a court order in violation of section 6103; improper withdrawal from employment without court permission in violation of rule 3-700(A)(1); failure to provide due notice to a client upon withdrawal from employment in violation of rule 3-700(A)(2); and failure to report judicial sanctions of $1000 or more in violation of section 6068, subdivision (o)(3).

The hearing judge held a one-day trial at which Judge Peterson and respondent testified at length. There were no other witnesses. The records of *In re: The Matter of The Contempt of Julie Lynn Wolff, Contemner*, including the various orders and the Stipulation, were admitted into evidence. The hearing judge found respondent culpable of violations of section 6103, rule 3-700(A)(1), and rule 3-700(A)(2). The hearing judge also found respondent culpable of the charges of failure to communicate and failure to perform competently under section 6068, subdivision (m) and rule 3-110(A), respectively, but she further found these charges were duplicative of the conduct establishing respondent's culpability for improper withdrawal under rule 3-700(A)(2).

The hearing judge found respondent's 10 years of practice without discipline and the delay by the State Bar in filing the NDC to be mitigating circumstances. She accorded very little weight to respondent's pro bono and community service. In aggravation, the hearing judge found that respondent committed multiple acts of wrongdoing and that her conduct caused significant harm to her clients, the public, and the administration of justice. The hearing judge recommended public reproval, finding that respondent's course of conduct was "inexcusable" but nevertheless rejected the State Bar's recommendation of two years' actual suspension as "excessive and disproportionate to the gravity of respondent's misconduct."

II. DISCUSSION

A. Statute of Limitations Defense

Preliminarily, we address respondent's contention that her prosecution is barred by the limitations period specified in rule 51 of the Rules of Procedure of the State Bar of California (rule 51)[14] and that, accordingly, the hearing judge should have dismissed the disciplinary charges against her as a matter of law. The statute of limitations must be pled as an affirmative defense and respondent bears the burden of proving the facts to show a rule of limitations applies. (Evid. Code, § 500.) Respondent not only waited until the conclusion of the trial to assert her defense in her closing brief, but she put forth no evidence in support of the applicability of such a defense.

More importantly, the five-year statute of limitations provided by rule 51(a) does not apply in this case. Rule 51(a) imposes a five-year limitation on the commencement of disciplinary proceedings only in those instances where the proceedings are initiated as the result of a third-party complainant. The present matter was not initiated as the result of a third-party complainant, but by the State Bar, after the Sacramento Superior Court entered its Sanctions Order.[15] We therefore conclude as a matter of law that this case is not barred by a limitations period.

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[14]Rule 51, subsection (a) provides: "A disciplinary proceeding based solely on a complainant's allegation of a violation of the State Bar Act or Rules of Professional Conduct shall be initiated within five years from the date of the alleged violation." Parenthetically, subsection (c)(3) provides for a tolling of the five years during the time the alleged misconduct is the subject of criminal or civil proceedings. The civil contempt proceedings in the Sacramento Superior Court terminated upon entry of the Sanctions Order on February 18, 2000. The NDC was filed on October 14, 2004.

[15]The State Bar is authorized to open an investigation against an attorney on its own without the need of a complainant. (Rules Proc. State Bar, rule 2402; *McGrath v. State Bar of California* (1943) 21 Cal.2d 737, 740.) Rule 51, subsection (e) exempts from the five-year limitations period a disciplinary proceeding initiated by the State Bar on the basis of information received from a source independent of a time-barred third-party complainant.

Nonetheless, as discussed below, the hearing judge properly accorded mitigative weight because of the delay by the State Bar in filing the NDC until more than four and one-half years after the Sanctions Order was entered.

B. The Sanctions Order May Be Relied Upon as Evidence of Misconduct

Respondent also asserts that the Sanctions Order was erroneously relied upon by the hearing judge in making her findings of culpability. Respondent argues that the standard of proof in disciplinary proceedings is clear and convincing evidence, whereas the standard for a sanctions order issued by a civil court is preponderance of the evidence.

Civil findings made under a preponderance of the evidence standard are entitled to a strong presumption of validity by this court if supported by substantial evidence. (*In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117.) The record in this case amply supports the findings contained in the Sanctions Order and satisfies the State Bar's evidentiary burden. Substantial evidence may consist of the testimony of a single witness. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) The question of witness credibility in the instant case was resolved by the hearing judge in favor of Judge Peterson. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 143, fn.7 [the hearing judge is in the best position to determine witness credibility and great weight is given to her findings on this subject]; Rules Proc. of State Bar, rule 305(a).) Judge Peterson's testimony corroborated the factual and legal findings contained in the Sanctions Order.[16]

Moreover, respondent and her attorney signed the Stipulation to the findings contained in the Sanctions Order in *In re: The Matter of The Contempt of Julie Lynn Wolff, Contemner.* These stipulated findings, standing alone, meet the clear and convincing standard. A stipulation may operate in the place of other direct evidence even if that evidence would otherwise be

[16]In addition to the court's express findings in the Sanctions Order stated above, the Statement of Facts in Re: Contempt, which is incorporated by reference into the Sanctions Order, clearly outlines the misconduct that resulted in the court imposing the sanctions.

inadmissible.[17] (*County of Alameda v. Risby* (1994) 28 Cal.App.4th 1425, 1430.) Additionally, a stipulation in one proceeding may constitute an admission in subsequent proceedings. (*Nungaray v. Pleasant Val. Lima Bean Growers & Warehouse Ass'n* (1956) 142 Cal.App.2d 653, 667 [holding that a stipulation of facts containing an admission is admissible in a proceeding subsequent to the one in which the stipulation was made].) A stipulation remains binding on a party during a subsequent proceeding unless the court relieves the party from the stipulation. (*Gonzales v. Pacific Greyhound Lines* (1950) 34 Cal.2d 749, 755.)

Respondent contends that she was only stipulating to the imposition of sanctions and not to the findings of the court. We find this disingenuous. The language of the Sanctions Order clearly states that she was stipulating to the court's findings as well.[18] Furthermore, the Sanctions Order expressly states that the agreed-upon disposition of *In re: The Matter of The Contempt of Julie Lynn Wolff, Contemner* would not preclude a referral of the matter to the State Bar, so respondent was on notice in signing the Stipulation that her conduct might well be the subject of a disciplinary investigation.

C. Count One: Failure to Inform Clients of Significant Developments (§ 6068, subd. (m))

The State Bar disagrees with the hearing judge's dismissal of count one alleging a violation of section 6068, subdivision (m) (failure to communicate significant developments) as duplicative of the conduct found in count five under rule 3-700 (A)(2) (improper withdrawal).

We also disagree with the hearing judge on this point. It is not necessarily duplicative to find culpability for failure to communicate with clients under section 6068, subdivision (m), and culpability for a rule 3-700 (A)(2) violation for failure to withdraw properly from representation

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[17]Respondent's stipulated findings of fact and law in the Sanctions Order were properly admitted by the hearing judge as party admissions, which are an exception to the hearsay rule. (Evid. Code, § 1220; *Crawford v. Alioto* (1951) 105 Cal.App.2d 45, 50.).

[18]In addition, in these disciplinary proceedings, respondent stipulated that she had in turn stipulated to the Sanctions Order.

when, as in the instant case, the culpability findings are based on separate acts of misconduct. (*In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 204-205.) Here, respondent failed to inform her clients that she intended to withdraw as counsel, that she no longer would appear on their behalf in upcoming proceedings, or that a new attorney would be handling their cases. Respondent testified that if she happened to see one of her clients, she informed him or her that "there would be a different attorney appearing at the next hearing." But she made no formal effort to contact her more than 300 clients to inform them she would not appear for them at their pending proceedings.

Respondent's culpability in count five for improper withdrawal is based on her failure to take reasonable steps to protect her clients' interests, whereas her culpability in count one under section 6068, subdivision (m), arises due to her failure to inform her clients of crucial information regarding her representation of them at upcoming hearings.

D. Count Two: Failure to Perform Competently (Rule 3-110(A))

Rule 3-110(A) provides: "A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Even if an attorney does not intentionally or recklessly fail to competently perform legal services, the rule is violated if there is a repeated failure to perform. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 539-540.) In *Valinoti*, we found culpability when an attorney's failure to appear at an immigration hearing was not an isolated incident, "but was one of many such failures." (*Id*. at p. 540.) In *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115, we concluded that an attorney of record who intentionally absented himself from a client's deposition, despite knowing that the client would be unrepresented, failed to perform legal services competently.

Here, we find respondent's failure to perform was intentional in that Presiding Judge Peterson specifically instructed her at the first OSC hearing that he still considered her to be attorney of record for all of her IDP cases and that he expected her to appear at all future

proceedings. Nevertheless, she made no further appearances on behalf of her IDP clients. These facts clearly establish culpability under rule 3-110(A), but we agree with the hearing judge that this misconduct is duplicative of the conduct surrounding her improper withdrawal as alleged in count five, and therefore we assign no additional weight to our recommended discipline.

E. Count Three: Failure to Obey a Court Order (§ 6103)

Section 6103 provides, in relevant part, that "willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession . . . [constitutes cause] for disbarment or suspension." In order to establish a violation of an attorney's statutory duty to obey court orders, the State Bar must prove by clear and convincing evidence that 1) the attorney disobeyed a court order willfully; and 2) the court order required the attorney to do or forbear an act in connection with the attorney's practice of law that ought to have been done or not done in good faith. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 603.) Respondent stipulated to the finding in the Sanctions Order that her disobedience of the court's order was "willful."

This stipulated finding alone provides substantial evidence of respondent's violation of section 6103. However, the record in this matter provides additional support as well. As to the first prong of willful disobedience, respondent attempted to unilaterally resign from representation of her indigent clients in late August of 1999, when she tendered her document to the court entitled "In re: All My Cases." When the court refused to file her document, respondent should have known that she had not been authorized by the court to withdraw from her IDP cases. As of the OSC hearing on September 29, 1999, respondent had actual knowledge that the court required her to continue to appear on behalf of her indigent clients at their upcoming hearings. (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403-404 [attorney was present when order was issued and could not claim lack of knowledge as a defense].) Although she expressly declined to proceed as ordered – and in fact failed to appear at any subsequent IDP

proceedings – respondent had not been relieved as counsel of record by the court. We thus conclude respondent's disobedience was willful.

As to the second prong, we find that respondent's disobedience was not in good faith. Indeed, respondent stipulated to the finding in the Sanctions Order that her failure to follow the court's instructions "was without good cause or reasonable justification." We deem as bad faith respondent's arbitrary and unilateral decision to ignore the court's order and simply discard her 319 indigent clients without any reasonable assurance that their rights would be protected. We thus find clear and convincing evidence of respondent's culpability under section 6103.

F. Count Four: Withdrawal from Employment Without Court Permission (Rule 3-700(A)(1))

Rule 3-700(A)(1) provides: "If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission." Respondent contends that no violation of rule 3-700(A)(1) occurred because the indigents she represented were not her clients. We again find her contention to be disingenuous, since respondent testified at trial and admitted in her answer to the NDC that she had been appointed as counsel of record in 319 IDP cases. Moreover, the record confirms that respondent was appointed by the court pursuant to Welfare and Institutions Code section 317, subdivision (a). The version of Welfare and Institutions Code section 317, subdivision (a) in effect during the relevant time period provides: "When it appears to the court that a parent or guardian of the minor desires counsel but is presently financially unable to afford and cannot for that reason employ counsel, the court may appoint counsel as provided in this section." A court appointment is sufficient to establish an attorney-client relationship. (*Responsible Citizens v. Superior Court* (1993)16 Cal.App.4th 1717, 1732 [stating that a court appointment or an express

agreement by a partnership attorney to represent an individual partner established the attorney-client relationship].)[19]

Respondent also incorrectly argues that the juvenile court had no formal procedures for withdrawal as an indigent's attorney of record. Respondent testified that IDP only required an attorney to return case files and that Judge Peterson never indicated to her that a proper motion was necessary in order to withdraw from her cases. But she also stipulated to the finding in the Sanctions Order that once an attorney was selected to participate in the IDP program, "[i]n the event that it is necessary to consider relieving an attorney . . . only the court can make the determination whether the attorney should be relieved." In addition, the hearing judge found Judge Peterson's testimony to be credible regarding the requirement of a formal motion and approval of the court for an attorney seeking to withdraw from IDP cases. Finally, there is statutory authority requiring court approval for withdrawal by appointed counsel. (Welf. & Inst. Code, § 317, subdivision (d) [appointed counsel for a parent or minor can only be relieved by the court upon substitution of other counsel or for cause].)[20] We thus find clear and convincing evidence of respondent's culpability for withdrawing from employment in the dependency proceedings without the court's permission in violation of rule 3-700(A)(1).

G. Count Five: Withdrawing from Employment Without Protecting the Client's Interests (Rule 3-700(A)(2))

Rule 3-700(A)(2) provides that reasonable steps must be taken to avoid foreseeable prejudice to the rights of a client when a member withdraws from employment, including giving notice to the client and allowing for time for employment of other counsel. That duty continues

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[19]Additionally, respondent's own testimony was that the indigents disclosed confidential information to her; she had a duty of loyalty to keep that information confidential; she had the duty of zealous advocacy for the people she represented; she spoke for the indigents; and they were not pro per litigants. In addition, she provided legal advice and admitted that the indigents would have regarded her as representing them in a professional capacity.

[20]Section 317(d) applies to juvenile dependency hearings in accordance with Welfare and Institutions Code, section 353.

until a court grants leave to withdraw. (*In the Matter of Riley, supra*, 3 Cal. State Bar Ct. Rptr. at p. 115.) Respondent stipulated in the Sanctions Order that she "did not make reasonable efforts to ensure alternate legal representation was provided at hearings during the period September through October, 1999." Clearly, she violated her duty under rule 3-700(A)(2) when she did nothing to avoid foreseeable prejudice to her clients after she no longer appeared on their behalf in the dependency proceedings.

Although rule 3-700(A)(2) applies whether or not prejudice actually occurs (*In the Matter of Riley, supra,* 3 Cal. State Bar Ct. Rptr. at p. 115), in the instant matter, numerous clients were prejudiced because their matters were continued or they had to appear without counsel.[21] Accordingly, we find clear and convincing evidence supporting the hearing judge's determination that respondent violated rule 3-700(A)(2).

H. Count Six: Failure to Report Judicial Sanctions (§ 6068, subd. (o)(3))

Section 6068, subdivision (o)(3) requires an attorney to report judicial sanctions of $1000 or more to the State Bar within 30 days of the attorney's knowledge of such sanctions. The hearing judge found that the State Bar did not meet its burden of clear and convincing evidence to establish culpability under section 6068, subdivision (o)(3). We agree. Respondent testified that her attorney complied with section 6068, subdivision (o)(3) and timely informed the State Bar of the imposition of sanctions. The State Bar presented no evidence to contradict that testimony nor any other independent evidence to satisfy the clear and convincing standard of proof.

III. DISCIPLINE

A. Degree of Discipline

The State Bar contends that a public reproval, which was recommended by the hearing judge, is insufficient given the seriousness of respondent's conduct. We agree. In making our recommendation of discipline, our primary concerns are the protection of the public and

[21]Judge Peterson testified that in addition to respondent's misconduct being disruptive, "some of the cases eventually went to trial without anybody representing that party."

maintaining high professional standards by attorneys. (*King v. State Bar* (1990) 52 Cal.3d 307, 315; Atty. std. 1.3.) We look to the standards and relevant case law for guidance in determining the appropriate level of discipline (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr.__) and afford the standards great weight. (*In re Silverton* (2005) 36 Cal. 4th 81, 92.)

Standard 1.6 provides that the most severe discipline should be recommended of the various violations, adjusted to reflect the aggravating and mitigating circumstances. We have found respondent culpable of violating sections 6103, 6068, subdivision (m), and rules 3-110(A), 3-700(A)(1), and 3-700(A)(2). We therefore focus on standard 2.6, which provides for disbarment or suspension for a violation of section 6103 or 6068.[22]

In order to assess the degree of discipline, we first consider the evidence in mitigation and aggravation. (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 24.)

1. Mitigation

We agree with the hearing judge's decision giving "strong" mitigative weight to respondent's 10 years of practice without discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [over 10 years of practice before first act of misconduct given significant weight]; std. 1.2(e)(i).)

We also agree with the hearing judge's decision to weigh as considerable mitigation the State Bar's delay in initiating disciplinary proceedings against respondent. (Std. 1.2(e)(ix)). Absent a specific showing of prejudice, delay in a State Bar disciplinary proceeding is not a basis for dismissing the charges. However, the delay may be considered in mitigation. (*In the Matter of Crane & DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 157 [three and one-half year delay was sufficient for the purpose of mitigation]. Here, the State Bar waited nearly five years to file disciplinary charges in this matter.

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[22]Standard 2.10 requires reproval or suspension according to the gravity of the offense or the harm to the victim and applies to rules 3-700(A)(1) and 3-700(A)(2).

Respondent testified that she spent significant time volunteering at the SPCA and representing pro bono clients. Respondent bears the burden of proving mitigation by clear and convincing evidence. (Std. 1.2(e).) No evidence as to the amount of time spent in connection with her volunteer or pro bono work was presented apart from her own testimony, and we find her own estimation of pro bono hours not credible.[23] Therefore, we assign no weight in mitigation to her community and pro bono activities. Additionally, respondent presented no witnesses to testify as to her character.

2. Aggravation

The hearing judge found in aggravation that respondent's misconduct involved multiple acts of wrongdoing. (Std. 1.2 (b)(ii).) We agree and assign substantial weight in aggravation because of the sheer number of clients and proceedings affected by respondent's misconduct. However, we do not consider that respondent's misconduct constitutes a habitual pattern because it was confined to one month, and we have no evidence of misconduct either before or after that period of time. (*In the Matter of Valinoti, supra,* 4 Cal. State Bar Ct. Rptr. 498, 555 [misconduct not considered a "pattern" unless it spans an extended period of time].)

We also agree with the hearing judge's finding in aggravation that respondent's misconduct caused significant harm to the administration of justice. (Std. 1.2 (b)(iv).) Respondent's absences resulted in substantial disruption of the juvenile court proceedings and delay in the resolution of her clients' cases. We assign significant weight in aggravation because the harm to the administration of justice exceeded this procedural disarray. Her actions substantively impacted the underpinnings of the indigent dependency hearings, which rely on

[23]Respondent testified that she had spent 10 hours a day, seven days a week, working on pro bono matters for the past three years, and devoted close to 10 hours a day to her regular caseload. In addition to her approximately 140-hour work week, respondent testified that she had spent time each week volunteering for the Valley SPCA (a non-profit animal rescue organization) and singing in her church's choir, which included practices on Thursday nights and performances on Sundays.

appointed counsel to protect against unjust outcomes and ensure that decisions are not antagonistic to the best interests of the child or to the parents' constitutional rights. (*In re Emilye A.* (1992) 9 Cal. App. 4th 1695, 1710 [discussing the importance of appointed counsel to indigent parents in juvenile dependency hearings].)

We agree with the State Bar, which asks that we find as additional aggravation that respondent demonstrated indifference and lack of remorse regarding the consequences of her misconduct. (Std.1.2(b)(v).) Respondent continues to deny any culpability despite her Stipulation establishing her misconduct as charged. At oral argument, respondent presented a tangled web of excuses and sought to shift responsibility to Judge Peterson for the procedural gridlock that was occasioned by her actions. An attorney's failure to accept responsibility for her actions when it is not based on an honest belief of innocence may be considered an aggravating factor. (*In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.) Moreover, respondent's assertion that the indigent dependency clients were not her clients provides additional evidence of her indifference.

The State Bar also asks that we find that respondent's misconduct was surrounded by bad faith, dishonesty, concealment, or overreaching (std. 1.2(b)(iii)), based on inconsistencies in respondent's testimony regarding whether or not she made an apology to Judge Peterson. Judge Peterson refuted these allegations during his testimony and the hearing judge made a credibility finding in Judge Peterson's favor. While we also find respondent's testimony not credible, we do not deem it sufficient to be an aggravating factor under this standard. (Compare with *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 475 [respondent engaged in multiple check forgeries intended to conceal his misuse of client trust account]; *In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 383 [respondent committed a defalcation against a partner while acting in a fiduciary capacity].)

The State Bar further asks that we find that respondent displayed a lack of candor and cooperation in these proceedings, citing her unwillingness to admit to the stipulated facts in the

Sanctions Order. (Std. 1.2(b)(vi).) The Bar also maintains that respondent provided conflicting answers in her Answer and Amended Answer to the NDC. Respondent's refusal to acknowledge the facts contained in her Stipulation has already been addressed as a failure to recognize the consequence of her misconduct under standard 1.2(b)(v). Furthermore, the inconsistencies found in respondent's Answer and Amended Answer are not clear and convincing evidence of lack of candor. (See *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-283 [discussing the distinction between credibility and candor].)

B. Comparable Cases

The hearing judge relied on *In the Matter of Respondent X, supra*, 3 Cal. State Bar Ct. Rptr. 592 and *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 in arriving at her discipline recommendation of a public reproval. In both of these cases, the attorney disobeyed a single court order and the misconduct was not nearly as serious as presented here. Clearly, respondent's misconduct "was not a single isolated incident which would warrant supervised probation and no actual suspension." (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 791.) In fact, the Supreme Court has generally considered actual suspension warranted where multiple instances of misconduct involving client inattention have occurred. (*Ibid.*; *Lester v. State Bar* (1976) 17 Cal.3d 547.)

Even though respondent's misconduct occurred during a relatively short period of time, the consequences were so broad in scope as to render this a sui generis case. We consider as most comparable those cases where the misconduct was widespread or where there were multiple instances of client abandonment. The most serious cases warranting disbarment generally arise where there is a prolonged course of extensive misbehavior demonstrating a pattern of misconduct. (*Stanley v. State Bar* (1990) 50 Cal.3d 555 [attorney disbarred for 30 "egregious" acts of misconduct and abandonment of 20 clients over a seven-year period, in addition to acts of moral turpitude including stealing names from other attorneys' answering services, falsely claiming work performed, misappropriating settlement funds by forging clients' names, and

conviction for burglary and larceny]; *Farnham v. State Bar* (1988) 47 Cal.3d 429 [seven instances of abandonment spanning approximately four years with prior disciplinary record resulting in disbarment]; *Slaten v. State Bar* (1988) 46 Cal.3d 48 [disbarment for failure to perform for seven clients during a five-year period, commingling funds, advising client to act in violation of law and an extensive discipline record]; *McMorris v. State Bar* (1983) 35 Cal.3d 77 [disbarment for habitual failure to perform in seven matters involving five clients during a nine-year period of time, with two prior suspensions for the same misconduct].)

We conclude disbarment is not appropriate here because, as we noted *ante*, the misconduct was neither prolonged nor did it constitute a "pattern." (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217 [abandonment affecting several clients over a period of a few months was not a pattern of misconduct]; *In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr. 498, 555 [questioning whether two and one-half years of misconduct is a sufficient period of time to establish a pattern of misconduct warranting disbarment].) In cases imposing penalties short of disbarment arising from widespread misconduct, the discipline has ranged from three years' to six months' actual suspension.

The State Bar cites to *In the Matter of Valinoti, supra,* 4 Cal. State Bar Ct. Rptr. 498, wherein an attorney with a large volume of immigration cases intentionally abandoned nine clients over a two and one-half year period. (*Id.* at pp. 561, 566.) Even though the attorney continually was warned by several immigration judges of his duty to fully represent his immigrant clients, his cases repeatedly were dismissed due to his misconduct. Valinoti also failed to notify over one thousand clients that he had moved his offices. (*Id.* at p. 562.) We found Valinoti was culpable of 18 counts of charged misconduct and five counts of uncharged misconduct in aggravation, including the aiding and abetting of non-attorney immigration providers in the unauthorized practice of law, engaging in a reckless and careless method of practicing law, and making misrepresentations to the State Bar in his verified answers to interrogatories. We recommended a three-year actual suspension. (*Id.* at p. 564.) *Valinoti* involved more serious

misconduct than occurred here because it consisted of several acts of moral turpitude involving fraud and misrepresentations to the courts, and the misconduct continued over a far longer time period. Moreover, there was substantial harm to several clients, including the loss of their rights to remain in the United States (*id*. at p. 560), and abandonment of asylum cases which we considered as tantamount to death penalty cases. (*Id*. at p. 562.)

The State Bar also suggests *Young v. State Bar, supra*, 50 Cal.3d 1204 is an analogous case. In *Young*, the Supreme Court rejected this court's recommendation of disbarment, and instead imposed two years' actual suspension for misconduct that resulted in at least nine cases of client abandonment. In several instances, Young accepted a fee and then wilfully failed to perform the agreed-to services or return the unearned fees. Seven of the cases involved criminal defendants whose causes were abandoned by Young, and, in one instance, resulted in the dismissal of a criminal appeal. (*Id.* at p. 1210.) Young also wilfully disobeyed four court orders to appear in four different proceedings, one of which resulted in the court issuing a warrant for his arrest (which ultimately was rescinded when he eventually appeared.) (*Ibid.*) He was held in contempt on at least two occasions. (*Id.* at p. 1212.)

The Supreme Court found that the abandonment of Young's practice was caused by the combination of his illness with hepatitis, the stress of a heavy trial schedule, financial problems, and drug use. (*Id.* at p. 1220.) The court considered these factors in mitigation (other than the drug use), and, in addition, found that none of his clients had been "substantially" harmed, that Young had no prior discipline, that he showed remorse, and that he cooperated with the State Bar. (*Id.* at p. 1221.)

The *Young* case is instructive in that it involved multiple instances of client abandonment as the result of one act when the attorney moved to Florida and completely deserted his practice without notifying his clients. (*Id.* at p. 1209.) In the instant case, the scope of the misconduct is quantitatively greater, but qualitatively less serious. In essence, respondent refused to follow Judge Peterson's order to continue to represent her indigent clients, resulting in her failure to

appear in 39 matters. Ultimately, she resolved this matter without a contempt citation, albeit after being sanctioned in the amount of $1,500. In contrast, in *Young v. State Bar, supra*, 50 Cal.3d 1204, the attorney disobeyed orders of four separate courts, was subject to an arrest warrant, and was at least twice held in contempt.

We also consider *In re Morse, supra,* 11 Cal.4th 184 because it, too, involved widespread misconduct consisting of misleading mass mailings to over four million individuals, where an attorney offered his assistance in filing homestead declarations during a period of more than four years. The Supreme Court placed the attorney on three years' actual suspension, with the possibility of reducing this discipline to two years' actual suspension upon payment of restitution, because of the extended and methodical nature of the misleading advertising and the gross negligence and other aggravating circumstances involved. (*Id.* at p. 207.) In the instant case, the conduct was far less widespread and it did not continue for any significant time period. Nevertheless, respondent shares with Morse a remarkable unwillingness even to consider the wrongfulness of her actions or to accept any meaningful discipline. (*Id*. at p. 209.)

Finally, we consider another immigration case, *Gadda v. State Bar* (1990) 50 Cal.3d 344, wherein the Supreme Court imposed six months' actual suspension for serious acts of client neglect and other misconduct in four matters involving at least nine clients, including, inter alia, encouraging a client to lie to a governmental official (*id*. at p. 348) and repeated deliberate misrepresentations to his clients. (*Id*. at p. 350.) The court found that Gadda's dishonesty constituted acts of moral turpitude. (*Id*. at p. 355.) The court also noted the potentially serious consequences of the client neglect in his asylum cases, analogizing them to death penalty cases. (*Id*. at p. 354.)

Additionally, Gadda mailed 500-800 letters to past and present clients misrepresenting that Congress had enacted amnesty legislation. (*Gadda v. State Bar, supra,* 50 Cal.3d at p. 350.) As a result, at least 14 individuals were misled into believing they might be eligible for citizenship. (*Id*. at p. 355.) According to the court, these actions in all likelihood undermined public

confidence in the legal profession. (*Ibid.*) Aggravating circumstances included Gadda's reluctance to recognize the seriousness of his wrongdoing and his indifference to the proceedings. (*Id*. at p. 356.) Although he had no prior discipline, Gadda had only been practicing for five and one-half years, so no mitigation weight was given by the court. However, the court did afford considerable mitigation to Gadda's substantial pro bono work on behalf of indigent immigrants.

The scope of the misconduct in *Gadda* is similar to the instant case in that Gadda's widespread mailing of the amnesty law letters containing untrue statements not only misled 14 clients, but in all likelihood undermined public confidence in the legal profession. (*Gadda v. State Bar, supra*, at p. 355.) However, although Gadda's abandonment and inattention affected only two clients as opposed to respondent's 319 clients, in some respects his conduct was more serious because it involved several intentional acts of dishonesty.

Given the wide-ranging discipline imposed in the above cases, we are left to ponder the fundamental questions posed by the Supreme Court in *In re Morse*, *supra,* 11 Cal.4th at pp. 208-209: 1) What did respondent do wrong? and 2) What is the discipline most likely to deter respondent from future wrongdoing? As to the first question, we conclude that, essentially, respondent's improper withdrawal without court permission resulted in the abandonment of over 300 clients and the failure to appear in 39 separate matters. We are concerned that by wilfully ignoring proper procedures and a court order, respondent caused significant disruption to the administration of justice within the juvenile court of the Sacramento Superior Court. Furthermore, although the delay of each dependency proceeding may not have caused "significant" harm to a particular client (see generally *Young v. State Bar*, *supra*, 50 Cal.3d 1217), we remain concerned with the large number of affected indigent clients, who are among the most vulnerable in our system of justice. In this respect, the instant case most closely resembles the immigration cases, *In the Matter of Valinoti, supra,* 4 Cal. State Bar Ct. Rptr. 498 and *Gadda v. State Bar, supra,* 50 Cal.3d 344.

Ultimately, we conclude that the public reproval recommended by the hearing judge is inadequate to assure protection to the public and to the courts and the maintenance of professional standards within the legal profession. After considering standard 2.6, the case law, the evidence of mitigation and aggravation and the unique facts of this case, we conclude that an 18-month period of actual suspension is warranted, coupled with a requirement under standard 1.4(c)(ii) that respondent demonstrate to the State Bar Court her rehabilitation and present fitness to practice. Were it not for respondent's lack of recognition of the nature and extent of her wrongdoing, we would be inclined to consider her one-month moral hiatus as aberrational and would contemplate a lesser discipline. (See e.g. *Gadda v. State Bar, supra,* 50 Cal.3d 344.) However, we simply cannot ignore respondent's failure to appreciate her professional duties towards the Sacramento Superior Court and her many indigent clients. This demonstrated lack of insight into the nature of her misconduct suggests that there is a likelihood respondent's misconduct may recur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

IV. RECOMMENDATION

We therefore recommend that respondent Julie L. Wolff be suspended from the practice of law in the State of California for three years, that execution of that suspension be stayed, and that respondent be placed on probation for three years on the condition that she be actually suspended from the practice of law in the State of California during the first 18 months of probation and until she shows proof satisfactory to the State Bar of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii) of the Standards of Attorney Sanctions for Professional Misconduct, and on the following further conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of this probation.

2. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation in Los Angeles, her current office address and telephone number, or if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1(a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation

in Los Angeles, her current home address and telephone number. (Bus. & Prof. Code, § 6002.1(a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1(d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

3. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and must certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

   During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

4. Within one year of the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of no less than four hours of Minimum Continuing Legal Education (MCLE) approved courses in general legal ethics. This requirement is separate from any MCLE requirements, and respondent will not receive MCLE credit for attending the courses.

5. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any MCLE requirements, and respondent will not receive MCLE credit for attending the Ethics School. (Rules Proc. State Bar, rule 3201.)

A. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners during the period of her actual suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

B. RULE 955

We further recommend that respondent be ordered to comply with rule 955 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 days after the effective date of the Supreme Court order in this matter.

C. COSTS

We further recommend that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code, section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code, section 6140.7 and as a money judgment.

EPSTEIN, J.

We concur:

WATAI, Acting P. J.

STOVITZ, J.*

*Retired Presiding Judge of the State Bar Court, serving by designation of the Presiding Judge.

Case No. 00-O-13294

In the Matter of

Julie L. Wolff

Hearing Judge

Hon. Joann M. Remke

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