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DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

IN BANK

In the Matter of	)	01-O-00379
	)	
STEPHINE M. WELLS,	)	ORDER
	)	
A Member of the State Bar.	)	
	)	

Having considered the motions for reconsideration of the State Bar and respondent and upon the court's own motion, the type-scripted opinion on review filed December 5, 2005, is hereby modified as set forth below.

1. On page 8, footnote 10, the fourth word of the second line of footnote text is changed from "a" to "in" so that the sentence reads:

> Rule 1-300(B) provides: "A member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

2. On page 9, the language of footnote 11 is deleted and the following paragraph is inserted as the new footnote 11:

> As noted in footnote 10, in order to establish respondent's culpability under rule 1-300(B), we must first determine if her conduct "*would be in violation* of regulations of the profession *in that jurisdiction*" i.e., in South Carolina. (Emphasis added.) SCC section 40-5-310 is the only source cited and relied upon by the parties and the hearing judge as regulating respondent's unauthorized practice in South Carolina, and this statute makes UPL a felony punishable by up to five years in prison and/or a

$5,000 fine. The constitutionally required standard of proof for criminal violations, whether felonies or misdemeanors, is guilt beyond a reasonable doubt. (*In re Winship* (1970) 397 U.S. 358, 364 [due process clause of the United States Constitution requires that criminal conviction of an accused must be by "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."].) We are persuaded that the record in this case satisfies the more stringent evidentiary standard of beyond a reasonable doubt, particularly in view of the undisputed facts and respondent's Stipulation.

3. On page 12, line 17 to page 13, line 2; and page 13, line 20 and 21, all references to *In re Van Sickle* are deleted.

4. On page 15, the portion of the sentence on lines 8 through 10, commencing with the words "and we therefore recommend" is changed to "and we therefore dismiss with prejudice count six charging a violation of section 6106" so that the sentence reads:

> Although these actions were insufficient to protect respondent from a charge of UPL, they do militate against a finding of clear and convincing evidence of ill will or dishonesty establishing moral turpitude, and we therefore dismiss with prejudice count six charging a violation of section 6106.

5. On page 19, line 2, the word "respondent" is changed to "Odeh" so that the sentence reads:

> Respondent thus charged and received a total of $6,500 in fees ($1,500 from Odeh + $5,000 from Thaxton), which is 43 1/3 percent of the gross recovery.

6. On page 23, the sentence on lines 13 and 14 is deleted and the following sentence is inserted in its place:

> We therefore dismiss with prejudice count 11.

7. On page 27, the language of footnote 25 is deleted and the following paragraph is inserted as the new footnote 25:

> As discussed herein, we reject respondent's argument that she is entitled to the *procedural* protections in these disciplinary proceedings that are afforded defendants in criminal trials. But, as noted in footnote 11, we do agree with her assertion that in finding a violation of rule 1-300, the *evidentiary* standard in the instant case is that of beyond a reasonable doubt because the applicable South Carolina statute regulating the professions makes UPL a crime. As such, proof beyond a reasonable doubt is constitutionally required. (*In re Winship, supra,* 397 U.S. 358, 364.) We recognize that ordinarily in disciplinary proceedings "guilt need not be proved beyond a reasonable doubt [but] must be established by convincing proof and to a reasonable certainty. . . ." (*Emslie v. State Bar*, *supra*, 11 Cal.3d at pp. 225-226.) However, this standard does not apply where "otherwise provided by law." (*In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 327.) We have found that the evidence here satisfies the higher standard of proof.

8. On page 30, the sentence on lines 4 and 5 beginning with "We balance" and ending with "in aggravation" is deleted and the following sentence inserted in its place:

> We find respondent's strong showing of mitigation is balanced by the equally strong evidence in aggravation.

9. On page 37, line 7, after the phrase "irrespective of mitigating circumstances," a new footnote 29 is inserted with the following language:

> [29]Mitigating circumstances are balanced by aggravating circumstances in the instant case. Accordingly, we find no additional guidance in standards 1.2(b) and 1.2(e), which in this matter are in equipoise, the one standard suggesting that "a greater degree of sanction . . . for the particular act of professional misconduct . . . is needed" (std. 1.2(b)), while the other suggesting "a more lenient degree of sanction than set forth in [the] standards for the particular act of professional misconduct (std. 1.2(e))."

10. The following language is to be inserted on page 38, line 12, at the beginning of the sentence that starts with the words "We believe this recommendation" and the capital letter of the word "We" is changed to a lower case "w":

> The Supreme Court and this court have addressed these very same concerns as well as additional misconduct raising other "grave" concerns in *Finch v. State Bar*, *supra*, 28 Cal.3d 659 and *In the Matter of Harney*, *supra*,3 Cal. State Bar Ct. Rptr. 266, and nevertheless concluded that six months actual suspension was sufficient to protect the public, courts and legal profession. While we have carefully considered and followed the level of discipline suggested by the relevant standards, including standard 2.7, we have also given appropriate deference to the decisional law, which provides substantial guidance under the facts of this case. Accordingly,

11. On page 40, the15th line of text, the word "three" is changed to "two" so that the sentence reads:

> And, at the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending

respondent from the practice of law for two years will be satisfied, and the suspension will be terminated.

In all other respects, the parties' motions for reconsideration are denied.

Presiding Judge