



PUBLIC MATTER FILED

FEB 04 2005

 STATE BAR COURT
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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

CASSANDRA DENISE JONES,

Member No. 170053,

A Member of the State Bar.

Case No. 02-O-13728 – RAH;

02-O-14380;

02-O-15161;

03-O-02298;

03-O-03524

[Consolidated]

DECISION

1. INTRODUCTION

In this disciplinary proceeding, Respondent Cassandra Denise Jones is charged with eleven counts of misconduct involving five clients.

The State Bar of California, Office of the Chief Trial Counsel (“OCTC”) appeared by Deputy Trial Counsel Eli D. Morgenstern, and Respondent Cassandra Denise Jones (“Respondent”) appeared and was represented by David A. Clare.

Finding that OCTC has failed to prove the charges by clear and convincing evidence, the Court dismisses ten of the counts with prejudice. However, the Court does find Respondent culpable in one count and, after considering any and all aggravating and mitigating circumstances surrounding Respondent’s misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed; and that Respondent be placed on probation for one year on conditions including, inter alia, that she

1 be actually suspended from the practice of law for 30 days.

2 **2. PROCEDURAL HISTORY**

3 On September 4, 2003, OCTC filed a Notice of Disciplinary Charges ("NDC") against
4 Respondent in case no. 02-O-13728; 02-O-14380; 02-O-15161.

5 On September 25, 2003, Respondent filed a Response to Notice of Disciplinary Charges
6 in case no. 02-O-13728; 02-O-14380; 02-O-15161.

7 On December 8, 2003, OCTC filed a NDC against Respondent in case no. 03-O-02298;
8 03-O-03524.

9 In December 2003, the Court consolidated the cases.

10 On January 13, 2004, Respondent filed a Response to Notice of Disciplinary Charges in
11 case no. 03-O-02298; 03-O-03524.

12 Trial was held on June 28-30, August 31, and September 1 and 10, 2004, and this matter
13 was submitted for decision on November 8, 2004.

14 **3. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15 **A. Jurisdiction¹**

16 Respondent was admitted to the practice of law in the State of California on April 15,
17 1994, and since that time has been an attorney at law and a member of the State Bar of
18 California.

19 **B. The Chambers Matter – Case No. 02-O-13728, Counts One and Two.**

20 **1. Facts.**

21 Nancy K. Chambers² was a Medical Staff Services Coordinator at Garden Grove
22 Hospital. Both she and Respondent lived in Hampton Court, a condominium development
23 located at 630 West Palm Avenue, Orange, California. Respondent and Chambers frequently

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25 ¹Pursuant to Evidence Code section 452(h), the Court takes judicial notice of
Respondent's official membership records maintained by the State Bar of California.

26 ²Nancy Chambers was also known as Nancy K. Richardson. In this decision, she is
27 referred to as Nancy Chambers or "Chambers."

1 spoke to each other when passing at the condominium complex. Through this casual
2 relationship, Chambers learned that Respondent was an attorney and, in fact, sought
3 Respondent's advice on various matters. During the time that both lived at the condominium
4 complex, Respondent helped Chambers with matters involving bankruptcy, real estate refinances,
5 and, most significant, serious problems relating to Chambers's claimed default on homeowners
6 association dues owed Hampton Court, A Townhome Association ("the Association".) Because
7 of the close proximity of their residences, beginning in about 1996, Chambers and Respondent
8 met and discussed Chambers's legal problems either in Chambers's or Respondent's
9 condominium unit. As a result of this informal relationship, conversations were seldom
10 documented in writing. As is described below, decisions were made by Chambers and
11 Respondent as to litigation strategy during these meetings. However, because of this lack of a
12 documentary trail, it is difficult to determine with absolute certainty the exact nature of these
13 decisions.

14 In approximately November 1997, the Association recorded an assessment lien against
15 Chambers's condominium unit and set a trustee's sale for January 9, 1998.³ (Exhibit 2, page 17.)
16 Chambers claimed that the assessments on which this notice of trustee's sale was based were not
17 accurate.

18 Chambers retained Respondent to represent her in her defense of the claims made by the
19 Association, as well as to file an independent action for an accounting and for damages arising
20 out of the alleged improper assessment. (Exhibit 1.)⁴ On January 8, 1998, (the day before the
21 scheduled trustee's sale), Respondent filed a bankruptcy action (SA98-10292JB)⁵ as well as a
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23 ³The homeowners association claimed that Chambers had been in default on her
24 homeowners association dues for several years. (Exhibit 2, pages 19-21.)

25 ⁴Chambers signed a retainer agreement dated January 8, 1998. (Exhibit 3, pp. 7-11.)

26 ⁵At trial, Chambers at first denied that the property was in foreclosure when she retained
27 Respondent to prepare the bankruptcy and civil proceeding. While she was obviously incorrect
28 on this point, what is more surprising is that she did not recall that this was the very reason she

1 complaint for breach of contract (with a related demand for an accounting), common counts, and
2 negligence against the Association in Orange County Superior Court, entitled *Nancy K.*
3 *Richardson aka Nancy K. Chambers v. Hampton Court, A Townhome Association*, case no.
4 98CV000085 ("The Hampton Court Matter")⁶. The bankruptcy filing had the effect of staying
5 the pending foreclosure. A second, related bankruptcy proceeding was filed on February 22,
6 1999 (SA99-11715JB).

7 Attorney Bruce Gubersky ("Gubersky") represented Hampton Court throughout the
8 litigation of the Hampton Court Matter. At the end of August 1999, the Association claimed that
9 Chambers owed \$2,325 on account of homeowners dues and late fees. In September 1999, a jury
10 in the Hampton Court Matter awarded Chambers \$4,000 in economic damages and \$5,000 in
11 non-economic damages, for a total of \$9,000. The jury also found that Chambers was forty-five
12 percent contributorily negligent, thereby reducing the judgment by that amount. As a result, the
13 jury award totaled \$4,950.

14 On October 1, 1999, Gubersky filed a motion for a judgment notwithstanding the verdict
15 on behalf of Hampton Court ("Motion for JNOV").

16 On November 20, 1999, Respondent filed a motion for attorneys' fees in the Hampton
17 Court Matter. (Exhibit 3.) On December 16, 1999, the trial court partially granted Hampton
18 Court's Motion for JNOV by ordering that the economic damages awarded to Chambers be
19 reduced by \$1,100, from \$4,000 to \$2,900. After adding back in the non-economic damages of

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21 _____
22 retained Respondent.

23 ⁶Because of the bankruptcy proceeding, another retainer agreement with similar terms
24 was signed on April 22, 1999. Both retainer agreements called for Chambers to pay on an hourly
25 basis at the rate of \$150 per hour. At trial, Chambers testified that, despite these agreements, she
26 did not feel she was obligated to pay on an hourly basis, but that Respondent's fees would come
27 out of an attorneys' fee award from the trial court. This assertion was contradicted, however, by
28 Chambers's payment of small installments on account during the time of Respondent's
representation of her. Despite these payments, as of November 1999, there remained owing to
Respondent over \$20,000 in unpaid fees and costs. (Exhibit 3)

1 \$5,000 and reducing the total amount by Chambers's comparative negligence, the judgment was
2 amended to the reduced net amount of \$4,345.

3 On February 2, 2000, the trial court denied Respondent's Motion for Attorneys Fees on
4 the grounds that the motion was untimely pursuant to California Rules of Court 870.2(b). On
5 February 18, 2000, Respondent filed a Motion for Reconsideration of Order Denying the Motion
6 for Attorneys Fees. This motion was later denied by the trial court in March 2000.

7 Respondent met with Chambers to discuss appealing the trial court's rulings on the
8 motion for JNOV and the motion for attorneys' fees. Respondent testified that Chambers's
9 husband was present at these meetings.⁷ On December 16, 1999, with her client's knowledge
10 and consent, Respondent filed a Notice of Appeal of the trial court's order partially granting the
11 Motion for JNOV. On March 31, 2000, again with her client's knowledge and consent,
12 Respondent filed a Notice of Appeal of the Trial Court's Orders Denying the Motions for
13 Attorneys Fees.

14 On December 4, 2000, the Orange County Superior Court, Appellate Division, dismissed
15 the appeal of the trial court's orders denying the motions for attorneys fees on the grounds of
16 Chambers's failure to prosecute. As a result of this dismissal, Hampton Court was awarded costs
17 on appeal, including attorneys fees. On January 10, 2001, Hampton Court filed a Motion for
18 Costs on Appeal incurred in connection with the appeal of the trial court's orders denying the
19 motions for attorneys fees. On February 20, 2001, the trial court ordered that Chambers pay
20 Hampton Court \$1,500 in costs and attorneys fees incurred by Hampton Court in connection with
21 the appeal of the trial court's orders denying the motions for attorneys fees.

22 On or about May 3, 2001, the Orange County Superior Court, Appellate Division,
23 dismissed the appeal of the trial court's order partially granting the Motion for JNOV, on the
24 grounds of Chambers's failure to prosecute. As with the dismissal of the prior appeal, Hampton
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26 ⁷Despite recalling Chambers as a rebuttal witness after this testimony of Respondent,
27 Chambers's husband was never called as a witness in the trial.

1 Court was awarded costs on appeal, including attorneys fees. Hampton Court's Motion for Costs
2 on Appeal was filed on July 16, 2001. As a result of that Motion, the trial court awarded
3 Hampton Court \$1,823 in costs and attorneys fees in connection with the appeal of the trial
4 court's order partially granting the Motion for JNOV. (Exhibits 16 and 17).⁸ Respondent did
5 not appear at the hearing on this motion for costs on August 16, 2001.⁹

6 An order to appear in a judgment debtor examination was served by Gubersky's firm on
7 Chambers in December 2001, scheduling a December 19, 2001 examination date. This was the
8 first time Chambers learned of the cost award against her. At the judgment debtor examination,
9 Chambers agreed to pay a total of \$5,019.46 in attorneys fees and costs. Chambers has since
10 paid the entire sum to Gubersky's firm.

11 **2. Conclusions of Law.**

12 **Chambers – Case No. 02-O-13728. Count One, Business and Professions** 13 **Code section 6104¹⁰ and Count Two, section 6068(m).**

14 Count One charges Respondent with wilfully violating section 6104. This section
15 prohibits an attorney from corruptly or wilfully and without authority appearing as an attorney for
16 a party to an action or proceeding. OCTC alleges that Respondent wilfully violated section 6104
17 in her representation of Chambers by failing to obtain Chambers's authority to appear as her
18 attorney in the two appeals.

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20 ⁸Respondent asserts she did not receive Exhibits 16 and 17, and supports this claim by
21 pointing out that the proof of service on Exhibit 17 predates the filing date. However, it simply
22 appears that the proposed order was served the day after it was prepared, and the trial court took
approximately one week to sign and file the order.

23 ⁹While Respondent's nonappearance at the attorneys' fee motion hearing in the trial court
24 is not necessarily the preferred practice, given the small amount of attorneys' fees and costs
25 requested (\$1,823), the amount Respondent would have had to bill Chambers, coupled with the
likelihood that the trial court would grant the motion, Respondent's failure to oppose the motion
was perhaps a wise decision.

26 ¹⁰Unless otherwise indicated, all future references to sections refer to provisions of the
27 California Business and Professions Code.

1 Count Two alleges a violation of section 6068(m). Section 6068(m) requires attorneys to
2 respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed
3 of significant developments in their cases. OCTC alleges that Respondent wilfully violated
4 section 6068(m) by failing to keep Chambers informed of significant developments in her case
5 by failing to inform Chambers that: (1) Respondent had filed two appeals in her matter; (2) the
6 court had dismissed the appeals; and (3) the court had ordered Chambers to pay the attorneys'
7 fees on appeal incurred by the Association.

8 Chambers and Respondent disagree as to whether Chambers's permission was obtained
9 to file the appeals. Chambers contends that she never would have agreed to appeal the court
10 order, and that she just wanted the whole ordeal to be over. However, Chambers testified that
11 she was aware of the denial of the motion for attorneys' fees filed by Respondent and was aware
12 that Respondent was going to file additional documents.¹¹

13 It is clear that Respondent failed to document her many conversations with Chambers
14 which occurred in the condominium complex. It is also possible that Respondent acted
15 negligently in failing to timely file the motion for attorneys fees. In fact, it was questionable as to
16 the advisability of filing the appeal in the Motion for JNOV, given the small amount by which
17 the trial judge reduced the judgment.¹²

18 However, it is equally clear that Chambers herself was not particularly engaged in the
19 attorney-client relationship. She disregarded, and at trial attempted to rewrite, the terms of her
20 retainer agreement with Respondent. She appears not to have paid close attention at the informal
21 meetings she had with Respondent, and the State Bar failed to bring to court her husband to rebut
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23 ¹¹If, in fact, it was Chambers's position that she never knew about the appeals, it is
24 surprising that Chambers's husband was never called to rebut the testimony of Respondent that
25 Chambers was fully informed of the appeals during meetings at which he was present. The Court
26 did not find credible Chambers's testimony concerning her lack of knowledge of the appeals.

27 ¹²However, the Office of the Chief Trial Counsel has failed to prove by clear and
28 convincing evidence that it was Respondent who recommended this appeal.

1 the testimony of Respondent as to the conversations regarding appeals. She received extensive
2 legal services from Respondent, but apparently does not feel compelled to pay for those services.
3 As a result, the Court puts little value on Chambers' testimony.

4 Similarly, as the Court finds that Respondent filed the appeal with Chambers's
5 knowledge and consent, the Court does not find Respondent culpable of failing to inform
6 Chambers of significant developments (specifically, the filing of the appeals) in her civil matter.
7 With respect to the allegation that Respondent wilfully failed to inform her client of significant
8 developments in her legal matter by failing to inform her client that the court had dismissed the
9 appeals, and that the court had ordered Chambers to pay the attorneys' fees on appeal incurred by
10 the Association, the Court finds that OCTC failed to prove these allegations by clear and
11 convincing evidence.

12 OCTC also seemed to assert that Respondent's nonappearance at the attorneys' fee
13 motion hearing in the trial court was either charged misconduct or an aggravating factor.
14 However, Respondent was not charged in the NDC with this alleged misconduct. Furthermore,
15 OCTC failed to prove this alleged misconduct by clear and convincing evidence.

16 It is unclear the contribution that the testimony of Gubersky made to the trial. Aside from
17 authenticating the documents involved in the trial and subsequent motions and appeals, his
18 testimony did not illuminate any of the issues present in Count One or Count Two.¹³

19 For the above reasons, the Court concludes that the Office of the Chief Trial Counsel has
20 failed to sustain its burden of proving a wilful violation of section 6104 in Count One or a wilful
21 violation of section 6068(m) in Count Two of case no. 02-O-13728. Count One and Count Two
22 in case no. 02-O-13728 are therefore dismissed with prejudice.

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25 ¹³Indeed, given the nature of the charges (wilfully violating section 6104 [Appearing for
26 party without authority] and section 6068(m) [Failure to inform client of significant
27 development], it is unlikely that the opposing counsel in litigation would have any substantive
28 information to add on these subjects.

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1 Clayton and informed him she would be walking over to the office again, since some parts of the
2 file were missing from the earlier copy. On that occasion, Clayton gave Ponce the original file
3 after making a copy for Respondent's office records.

4 Respondent's office received a substitution of attorney form from Escobedo on
5 approximately August 31, 2002. Within one day, Clayton obtained the signature of Respondent
6 and returned it to the client. On September 10, 2002, Escobedo faxed a letter to Respondent
7 demanding the file.¹⁵ In addition, Clayton received a call from "Patty," Escobedo's secretary,
8 requesting the file. Clayton informed Patty that the file had already been twice turned over to the
9 client.

10 Escobedo testified that she never received the file and never received a substitution of
11 attorney. She also stated that her calls to Respondent went unreturned. She stated that she was
12 required to obtain an order of the court substituting her into the case. She also testified that
13 Respondent never returned her phone calls.

14 **2. Conclusions of Law.**

15 **Ponce – Case No. 02-O-14380. Count Three, rule 3-700(D)(1) of the Rules of** 16 **Professional Conduct¹⁶**

17 In Count Three, Respondent is charged with wilfully violating rule 3-700(D)(1) which
18 required Respondent to promptly release to the client all of the client's papers and property, upon
19 termination of her employment.

20 On the eve of the hearing in the family law matter, Ponce sought to change attorneys. No
21 evidence was received as to the reason that this decision was made at such a late date.

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23 ¹⁵See Exhibit 24. There was testimony that on September 5, 2002, Escobedo's office
24 faxed a substitution of attorney form signed by Escobedo and Ponce to Respondent's office for
25 her signature. However, that document reflected a fax cover sheet that had the wrong fax number
26 for Respondent's office. As such, this fax was never received by Respondent.

27 ¹⁶Unless otherwise indicated, all further references to rules refer to the Rules of
28 Professional Conduct of the State Bar of California.

1 Nevertheless, it appears to the Court that Respondent and her son/employee, Clayton, acted
2 reasonably in responding to the client's requests. Despite Ponce's habit of not making an
3 appointment, Clayton complied with her request for the file on two occasions. In the end, he
4 gave her the original file.

5 While Escobedo's testimony was credible, it is not inconsistent with Respondent's or
6 Clayton's testimony. The breakdown in communication appears to this Court to be attributable
7 to Ponce. She is the person who received both the sets of files, and she is the person who was
8 given the substitution of attorney. Apparently, those documents were not passed on to Escobedo.
9 While the record does show that Respondent was not as responsive to the telephone calls made
10 by Escobedo as she could have been, that conduct is not charged by OCTC.

11 On the contrary, Ponce was decidedly not credible. Her demeanor at trial was hostile and
12 evasive. Apparently, she did not eventually obtain custody of her children, and appears to be
13 angry at Respondent for that result. The Court also took into consideration her felony conviction
14 in evaluating her credibility.

15 In light of the above, the Court concludes that OCTC has failed to sustain its burden of
16 proving a wilful violation of rule 3-700(D)(1) in Count Three of case no. 02-O-13728, and Count
17 Three is therefore dismissed with prejudice.

18 **D. The Flores Matter – Case No. 02-O-15161, Counts Four, Five and Six.**

19 **1. Facts.**

20 In June 2000, Irene Flores ("Flores") retained Respondent to handle the probate of her
21 late husband's will. For these services, she paid an advance retainer of \$1,000. Later, in January
22 2001, Flores retained Respondent to handle an unlawful detainer proceeding against her step-son.
23 For the unlawful detainer, Flores paid an additional advance retainer of \$700.

24 Flores originally came to Respondent's office in June 2000 seeking Respondent's
25 assistance in the probate. Flores felt that a probate of the will was necessary to assure that title to
26 her husband's house would pass to her, not to her step-children. It was Flores's belief that title to
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1 the house was held solely in her husband's name. Apparently, the house was the only asset
2 Flores felt needed to be probated. This information was given to Respondent in their first
3 meeting. Respondent asked if she had a copy of the deed to the house, and Flores said she would
4 bring it to the next meeting.

5 Pursuant to her client's wishes, Respondent commenced preparation of the Petition for
6 Probate of Will and for Letters Testamentary and Authorization to Administer Under the
7 Independent Administration of Estates Act, as well as related documents (Exhibit A).

8 When Flores finally produced the deed to Respondent, likely in August 2000, Respondent
9 noticed that it showed title vesting in Flores and her deceased husband as joint tenants arising
10 from a previous transfer from her husband, as sole owner, in 1992. As such, because of the joint
11 tenancy, Flores was now the sole owner of the house by operation of law. Respondent advised
12 Flores of this development in her matter, and Respondent performed no further services on the
13 now unnecessary probate.¹⁷

14 The unlawful detainer matter which Flores retained Respondent to handle was against
15 Flores's step-son, Henry Flores, Jr. Respondent prepared the form complaint and both
16 Respondent and Flores signed the document. It appears that the matter was delivered by the
17 County Sheriff's office to the residence of Henry Flores, Jr. on December 13, 2000 with a follow-
18 up mailing on December 14, 2000. (Exhibit B.) Flores was afraid of her step-son, Henry. She
19 felt he was a drug addict. At some point after service, Flores instructed Respondent to stop
20 pursuing the unlawful detainer, changing her mind about pursuing the action because she feared
21 her step-son's reaction. Respondent complied with this request. Later, Respondent received a
22 request for the file from Roger Denny, Esq., the new attorney for Flores. Clayton Jones sent the
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24 ¹⁷The Office of the Chief Trial Counsel contends that a refund was owed of part or all of
25 the \$1,000 retainer, characterizing as "preposterous" Respondent's position that all this money
26 was earned. (State Bar closing brief at page 16.) Respondent testified that she spent at least six
27 hours over four to five meetings with Flores. However, there is no allegation of a failure on
28 Respondent's part to refund an unearned fee. (Rule 3-700(D)(2).) Therefore, this Court does not
consider such a charge in this decision.

1 file to Mr. Denny upon his request.

2 There may have been one or two phone calls from Flores that were not promptly returned
3 by Respondent. However, Flores's preferred method of communication with Respondent's
4 office was not by calling and making an appointment. Rather, she would appear at the offices on
5 breaks from, or after her workday. When she did call ahead and make an appointment, she
6 would often miss the appointments. This happened at least three times. In addition, Flores also
7 failed to return phone calls.

8 **2. Conclusions of Law.**

9 **Flores – Case No. 02-O-15161, Counts Four, rule 3-700(A)(2); Five, section**
10 **6068(m); and Six, rule 3-700(D)(1).**

11 Count Four alleges that Respondent wilfully violated rule 3-700(A)(2) by abandoning
12 Flores. Rule 3-700(A)(2) prevents an attorney from withdrawing from employment until he or
13 she takes reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.
14 Count Five alleges that respondent wilfully violated section 6068(m) by ceasing to communicate
15 with Flores. Section 6068(m) requires attorneys to respond promptly to reasonable status
16 inquiries of clients and to keep clients reasonably informed of significant developments in their
17 cases. Count Six alleges Respondent's failure to return important documents to Flores in
18 violation of rule 3-700(D)(1). This rule requires attorneys upon termination to promptly release
19 to the client, upon request, all the client's papers and property.

20 In the probate matter, Flores came to the first meeting without the necessary documents.
21 However, Respondent commenced work on the client's case and stopped only when she saw the
22 vesting in joint tenancy, eliminating the need for a probate of the will in order to effect a transfer
23 of the house. In the unlawful detainer matter, Flores asked for Respondent's services, then
24 changed her mind, fearing her step-son's reaction. In the interim, Respondent performed
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1 services, including preparing, filing and serving the form complaint.¹⁸

2 When Flores sought to disengage from the relationship with Respondent, the evidence
3 indicated that Clayton Jones timely delivered or sent her files as instructed.

4 Flores's tendency to drop in to Respondent's office without appointment, Flores's failure
5 to return phone calls, and her frequently missed appointments indicate a client not fully engaged
6 in the attorney-client relationship. While it is true that there were occasions where Respondent
7 did not promptly return telephone calls to Flores, these minor lapses do not rise to the level of a
8 violation of section 6068(m). Overall, the Court does not find that OCTC proved by clear and
9 convincing evidence that Respondent did not respond promptly to her client's reasonable status
10 inquires.

11 For the above reasons, the Court concludes that OCTC failed to sustain its burden of
12 proving by clear and convincing evidence a wilful violation of rule 3-700(A)(2) in Count Four,
13 section 6068(m) in Count Five, and rule 3-700(D)(1) in Count Six of case no. 02-O-15161.
14 Counts Four, Five and Six of case no. 02-O-15161 are therefore dismissed with prejudice.

15 **E. The Padilla Matter – Case No. 03-O-02298, Count One.**

16 **1. Facts.**

17 Blanca Padilla ("Padilla") retained Respondent to represent her in her marital
18 dissolution.¹⁹ Padilla appears to have paid Respondent \$2,500 in several payments.²⁰

19 On October 23, 1997, both Padilla and Respondent appeared in family law court for trial.
20 Apparently, the family law court was very busy on that day and, as a result, continued trial in the
21 matter to December 11, 1997. An order was prepared by the family law court which reflected
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23 ¹⁸Whether these services justified the fee would be the subject of a fee arbitration or a rule
24 3-700(D)(2) charge, neither of which is before this Court.

25 ¹⁹Respondent substituted into the case, which had been handled by Padilla, in propria
26 persona. (Exhibit 26.)

27 ²⁰See Exhibits 27 and 28. Again, however, OCTC has not alleged a violation of rule 3-
28 700(D)(2).

1 this continuance, and further the court ordered that a judgment for status only be prepared to
2 terminate the marriage, reserving only property issues for the continued trial date. (Exhibit 29.)
3 Respondent had no knowledge of the portion of the order requiring her to prepare a judgment for
4 status only and did not receive Exhibit 29, the court's minute order.²¹

5 The trial date was further continued, and on February 24, 1998, Respondent and the
6 parties entered into a stipulation and order for judgment on reserved issues. (Exhibit 69, pages
7 14-17.)

8 **2. Conclusions of Law.**

9 **Padilla – Case No. 03-O-02298, Count One, rule 3-110(A).**

10 Respondent is alleged to have violated rule 3-110(A) by intentionally, recklessly, or
11 repeatedly failing to perform legal services with competence. OCTC alleges that by failing to
12 prepare and file a judgment for status only, as apparently ordered by the family law court,
13 Respondent wilfully violated rule 3-110(A) and, as result of this misconduct, it is claimed that
14 Padilla's son was denied necessary medical treatment.

15 While Respondent may not have prepared the judgment for status only pursuant to the
16 family law court's October 23, 1997 order (Exhibit 29), there is no evidence that Respondent had
17 knowledge of the order or ever received the order, and there is no evidence that failing to prepare
18 and file a judgment for status only was significant or required to accomplish Padilla's goals.
19 Furthermore, there is no evidence that the failure to prepare such an interim order had any impact
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23 ²¹As counsel for Respondent pointed out at trial in this matter, the certified copy of the
24 minute order, Exhibit 29, lacks a proof of service. At trial, OCTC did not supplement the exhibit
25 with a proof of service. Indeed, it appears that even the same order in the complete court file
26 lacks a proof of service. See Exhibit 69, page 28. Further, while Padilla did appear at the
27 hearing on October 23, 1997, it is clear that she has limited English language skills. As such, it
is unlikely that she would understand the significance of an order made by the court that counsel
for defendant is to prepare a judgment for status only.

1 on Padilla whatsoever.²²

2 As such, the Court concludes that OCTC failed to sustain its burden of proving by clear
3 and convincing evidence a wilful violation of rule 3-110(A) in Count One of case no. 03-O-
4 02298. Count One of case no. 03-O-02298 is therefore dismissed with prejudice.

5 **E. The Fischer Matter – Case No. 03-O-03524, Counts Two, Three, Four and**
6 **Five.**

7 **1. Facts.**

8 On January 18, 2000, Respondent filed a personal injury action on behalf of Scott
9 Fischer (“Fischer”) entitled *Fischer v. Buschini*, Orange County Superior Court case no.
10 00CC01056 (“the Buschini lawsuit”). (See Exhibit 30.) Respondent began settlement
11 discussions with Mercury Insurance, defendant’s insurance carrier (“Mercury”). At some point
12 in these discussions, the workers’ compensation and property claims were resolved with the
13 bodily injury claims left to be settled at a later time.

14 a. The Settlement Discussions with Mercury.²³

15 Between May 2000 and October 2001,²⁴ several letters were sent to Respondent by
16 Mercury concerning the bodily injury portion of the claim. All of these letters said essentially the
17 same thing: that Mercury was willing to pay \$9,675 to settle the bodily injury claim.

18 Several adjusters were involved in the claim before the above letters were sent, but there
19 was no evidence in the file of any adjusters assigned to the claim prior to May 13, 2000, when
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21 ²²Padilla continued to get the assistance of the district attorneys of both Orange and San
22 Bernardino counties in obtaining medical benefits for her son. Both of these agencies apparently
23 relied on the stipulation and order for judgment on reserved issues (Exhibit 69, pages 14-17) as
the relevant judgment.

24 ²³One of the key issues in resolving these claims against Respondent is whether she felt
25 that the Buschini lawsuit had been settled, and therefore, so advised her client and the court in
that case and did not serve the complaint.

26 ²⁴In March 2001, Respondent had emergency gall bladder surgery. She was out of the
27 office while recovering for approximately six to eight weeks in that time period.

1 Stacy Walker was assigned to the matter.²⁵ In all, a total of 10-12 adjusters handled this claim.
2 According to Respondent, after a settlement amount was agreed upon by one adjuster,
3 subsequent adjusters did not honor the higher settlement amount.

4 Respondent believed that sometime during the summer of 2001, she and Mercury reached
5 an oral agreement settling the case for \$11,300.²⁶ Although Mercury's file does not memorialize
6 this settlement agreement, the Mercury file on this claim appears to have records missing from it.
7 Not only was there no information in the file on the adjusters who handled this matter prior to
8 Stacy Walker, each of the letters after March 2001 requested documentation of the loss of
9 earnings claim. This was repeatedly requested despite the fact that Respondent had already
10 submitted that information on March 28, 2000. (See Exhibit E, stamped "received" by Mercury
11 on March 28, 2000.) In addition, Justin Samson left the employ of Mercury in July 2001.
12 Thereafter, the file contained a gap as to who was handling the case between July and September
13 2001 when Lisa Perini took over the claim. Between Respondent's last correspondence with
14 Justin Samson (July 2001) and her first correspondence with Lisa Perini (October 2001),
15 Respondent spoke with Gary Plashak ("Plashak"), a supervisor. Although nothing in the file
16 reflects his participation in the claim, Plashak handled the claim during this period.²⁷ This fact is
17 significant, since it is Plashak with whom Respondent claims to have agreed on the \$11,300
18 settlement. The Court finds that Respondent honestly and reasonably believed that sometime
19 during the summer of 2001, she and Mercury reached an oral agreement settling the case for
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23 ²⁵The adequacy of Mercury's file and follow-up systems was seriously called into
24 question at trial.

25 ²⁶Fischer agreed that this amount was discussed with him by Respondent during this time
26 period. The Court finds Respondent's testimony on this issue to be credible.

27 ²⁷It is undisputed that Respondent spoke to Plashak during this period, and Lisa Perini
28 admitted at trial that Gary Plashak handled the claim during this period.

1 \$11,300.²⁸

2 b. Failure to Serve Complaint/Representations to the Court and to Fischer.

3 Respondent never served the defendant with the Buschini lawsuit.²⁹ After receiving the
4 first of the above letters, on June 27, 2000, Respondent was served with an Order to Show Cause
5 re: Dismissal ("OSC"), arising out of her failure to serve the complaint. She was out of town on
6 vacation when this OSC arrived, and the hearing was not calendared in her office. The trial court
7 dismissed the case; however, Respondent did not learn of this dismissal until later.

8 While reviewing the file in response to correspondence from the insurance company in
9 December 2000, Respondent noticed the OSC. On January 18, 2001, Respondent filed a motion
10 for relief under Code of Civil Procedure section 473. (Exhibit 31). This motion was granted and
11 an evaluation conference was set for May 17, 2001. Respondent did not appear at this evaluation
12 conference. The trial court then set an OSC re: dismissal or monetary sanctions for June 13,
13 2001 for failing to appear at the evaluation conference. This OSC was continued to August 16,
14 2001, and then to September 18, 2001, and then again to October 2, 2001. (See Exhibits 32, 33,
15 36, and 37.) A hearing was held on October 9, 2001, but Respondent did not appear at the
16 hearing. The case was dismissed on October 9, 2001. However, Respondent did not have
17 knowledge of the dismissal. Respondent was not present at or have knowledge of the October 9,
18 2001 hearing. (See Respondent's Closing Trial Brief, p. 20, footnote 49.)³⁰

19
20 ²⁸Gary Plashak was not called as a witness at trial and no explanation was given as to
21 OCTC's failure to do so.

22 ²⁹It was Respondent's position that, as a matter of courtesy, she would not serve
23 defendant with the Buschini lawsuit while the parties were conducting settlement discussions.

24 ³⁰Actually, Respondent's counsel suggests that Respondent also did not know about the
25 October 2, 2001 hearing. However, at trial, Respondent acknowledged being at the October 2,
26 2001 hearing, saying that the trial court advised her to "serve or settle" the case. Further, the
27 minute order of the September 18, 2001 hearing (Exhibit 37) also appears to contradict counsel's
28 suggestion. It notes the appearance of Respondent and also documents the continuance to the
October 2, 2001 date. It does appear, however, that Respondent did not actually have knowledge
of the eventual dismissal, since Lisa Perini testified that she learned of the dismissal in October

1 During the period of the continuances of the OSC from June through October 2001,
2 Respondent continually advised the trial court and Fischer of the pending settlement discussions
3 and eventual settlement. In November 2001, Respondent finally realized that Mercury had
4 "renege" on their offer. Respondent then immediately proposed to Fischer the filing of a bad
5 faith case against Mercury. Respondent also offered to loan Fischer the \$11,300 she felt she had
6 negotiated with Mercury, as Respondent was aware that Fischer was in a difficult financial
7 condition. (See Exhibit 41, page 28, lines 4-12.)³¹ Fischer advised Respondent he would speak
8 with his uncle (who was a judge) about the advisability of a bad faith case. No bad faith case
9 was filed.

10 In June 2002, Fischer found out that the case had been dismissed. He immediately called
11 Respondent. Respondent immediately called Lisa Perini of Mercury, who acknowledged that she
12 was aware that it had been dismissed. Shortly thereafter, on July 17, 2002, Lisa Perini sent a
13 letter to Respondent asking for proof from Respondent "if the court reinstates this case."
14 (Exhibit 56)

15 Fischer filed a legal malpractice case against Respondent. (*Fischer v. Jones*, Orange
16 County Superior Court case no. 03CC01701. After a court trial on January 26, 2004, that case
17 went to judgment with Fischer being awarded \$37,296.61.³² Commissioner Eleanor M. Palk
18 found that Respondent was professionally negligent in her handling of the Buschini lawsuit, but
19 specifically did not find fraud.³³

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23 2001 but did not want to tell Respondent about it for fear the claim would be revived.

24 ³¹Fischer's father had recently died, his step-mother decided not to give him an interest in
25 a business she owned, and his wife had just had a baby.

26 ³²The transcript of the trial is marked as Exhibit 41.

27 ³³Exhibit 41, page 96, lines 17-19.

1 **2. Conclusions of Law.**

2 **Fischer – Case No. 03-O-03524, Counts Two, rule 3-110(A); Three, section**
3 **6068(d); Four, section 6106; and Five, section 6106.**

4 It is alleged that Respondent wilfully violated rule 3-110(A) [failure to act with
5 competence] in her handling of the Buschini lawsuit by failing to take any action to prosecute the
6 Buschini lawsuit or to settle the matter and by permitting the matter to be dismissed. (Count
7 Two.) It is also alleged that Respondent wilfully violated section 6068(d) by misleading the
8 judge in the Buschini lawsuit through continued representations that the matter had settled and
9 that the settlement was being finalized. (Count Three.) In addition, it is alleged that Respondent
10 committed an act of moral turpitude in wilful violation of section 6106 by misrepresenting to the
11 judge in the Buschini lawsuit that a settlement had been reached. (Count Four.) Finally, it is
12 alleged that Respondent committed a further act of moral turpitude by telling Fischer that the
13 Buschini lawsuit was still pending. (Count Five.)

14 As was found by Commissioner Eleanor M. Palk in the legal malpractice case filed
15 against Respondent, *Scott P. Fischer v. Cassandra D. Jones*, Orange County Superior Court case
16 no. 03CC01701, Respondent was professionally negligent in her handling of the Buschini
17 lawsuit. This Court agrees, and further, this Court is of the opinion that Respondent's failures
18 constituted a violation of rule 3-110(A). Her repeated failures to serve the complaint, to calendar
19 hearings, and to attend those hearings where the trial court was seeking the ultimate sanction –
20 dismissal – is conduct that falls well below that expected of attorneys practicing in this State.
21 Her behavior in this case cannot be completely explained away by her illness in March and April
22 2001.

23 But as Commissioner Palk noted, her loss of control of this case did not constitute fraud.
24 She honestly thought the matter was settled and she acted accordingly, with both the trial court
25 and her client. At no time did she seek to mislead a judge, nor did she seek to mislead her client.
26 In particular, her actions with respect to Mr. Fischer were honorable – upon learning of the
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1 dismissal, she immediately proposed filing a bad faith case and, because she knew of Fischer's
2 compromised financial condition, offered to loan him the \$11,300 she felt she had negotiated
3 with Mercury. She has paid for her errors and presumably made Fischer whole through the
4 \$37,296.61 judgment in the malpractice claim.

5 As such, the Court concludes that OCTC has proven by clear and convincing evidence a
6 wilful violation of rule 3-110(A) as alleged in Count Two of case no. 03-O-03524. OCTC has,
7 however, failed to sustain its burden in that same case of proving by clear and convincing
8 evidence a wilful violation of section 6068(d) in Count Three, and section 6106 in Counts Four
9 and Five. Counts Three, Four and Five in case no. 03-O-03524 are therefore dismissed with
10 prejudice.

11 **A. LEVEL OF DISCIPLINE**

12 **A. Factors in Mitigation**

13 In March 2001, Respondent had emergency gall bladder surgery. She was out of the
14 office while recovering for approximately six to eight weeks in March and April 2001. However,
15 the Court gives only very limited weight to this evidence, as this misconduct in this matter
16 occurred several months after her surgery and recovery period, and there was no expert testimony
17 offered to establish that Respondent's misconduct was directly related to her surgery or recovery
18 period. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard
19 1.2(e)(iv) ("standard").)

20 Nevertheless, Respondent was also dealing with family issues concerning her mother
21 during this period of time. (Standard 1.2(e)(iv).)

22 When Respondent finally realized that Mercury had "reneged" on their offer, she
23 immediately proposed to Fischer the filing a bad faith case against Mercury. As she was also
24 aware that Fischer was having financial difficulties, she offered to loan Fischer the \$11,300 she
25 felt she had negotiated with Mercury. This conduct demonstrates that Respondent promptly
26 took steps which spontaneously demonstrate recognition of her wrongdoing in an effort to timely
27

atone for the consequences of her misconduct. (Standard 1.2(e)(vii).)

B. Factors in Aggravation

In aggravation, Respondent has two prior records of discipline. (Standard 1.2(b)(i).)³⁴

1. On November 25, 2003, the Supreme Court filed an order in case no. S118768 (State Bar Court case no. 01-O-01078, etc.) suspending Respondent from the practice of law for two years; staying execution of said suspension; and placing Respondent on probation for two years subject to certain conditions of probation, including a 60-day period of actual suspension. Respondent was found culpable in this prior disciplinary matter of misconduct involving six clients. In all six of these client matters. Respondent was found culpable of violating section 6068(m); in four client matters she violated section 6068(i); and in three client matters she wilfully violated rules 3-700(D)(1) and 3-700(A)(2). In aggravation, harm to client(s), the public or the administration of justice was found. In mitigation, family problems were noted. Respondent's misconduct in this prior disciplinary matter occurred between July 1998 and approximately June 2002.

2. On January 5, 2005, the Hearing Department of the State Bar Court issued an Order Granting Motion to Revoke Probation and Order of Involuntary Inactive Enrollment in case no. 04-PM-14982 and recommending to the Supreme Court that Respondent's probation pursuant to the Supreme Court order in case no. S118768 (State Bar Court case no. 01-O-10178, etc.) be revoked, that the previous stay of execution of the suspension be lifted, and that Respondent be suspended from the practice of law for two years, that said suspension be stayed, and that Respondent be placed on probation for two years on conditions including that she be actually suspended from the practice of law for the first year of probation. Respondent was

³⁴Pursuant to Evidence Code section 452(d) and 453, the Court takes judicial notice of Respondent's prior record of discipline in Supreme Court matter S118768 (State Bar Court case no. 01-O-01078, etc.). Pursuant to Evidence Code section 452(d), the Court also take judicial notice of the discipline recommendation of the State Bar Court in case no. 04-PM-14982 filed on January 5, 2005.

1 found culpable in case no. 04-PM-14982 of wilfully violating the conditions of probation ordered
2 by the Supreme Court in case no. S118768 (State Bar Court case no. 01-O-01078, etc.) by failing
3 to submit a written quarterly report due no later than October 10, 2004; failing to promptly
4 respond to a Probation Deputy's telephone message and correspondence; and failing to submit
5 evidence of no less than six hours of MCLE approved courses in law office management,
6 attorney client relations and/or general legal ethics by a certain date.

7 OCTC contends that the court should find as a factor in aggravation that Respondent
8 engaged in uncharged misconduct by failing to return Fischer's file. However, there is no clear
9 and convincing evidence that Respondent wilfully failed to return her client's file. The Court
10 therefore declines to find uncharged misconduct as an aggravating circumstance in this matter.

11 **C. DISCUSSION**

12 In determining the appropriate discipline to recommend in this matter, the Court looks at
13 the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of
14 disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal
15 profession; the maintenance of high professional standards by attorneys and the preservation of
16 public confidence in the legal profession."

17 In addition, standard 1.6(b) provides that the specific discipline for the particular
18 violation found must be balanced with any mitigating or aggravating circumstances, with due
19 regard for the purposes of imposing disciplinary sanctions.

20 In this case, the standards provide for the imposition of sanctions ranging from reproof
21 to suspension. (Standards 2.4(b).) In addition, standard 1.6(a) states, in pertinent part, "If two or
22 more acts of professional misconduct are found or acknowledged in a single disciplinary
23 proceeding, and different sanctions are prescribed by these standards for said acts, the sanction
24 imposed shall be the more or most severe of the different applicable sanctions."

25 Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct
26 in any proceeding and the member has a record of two prior impositions of discipline, the degree
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1 of discipline to be imposed in the current proceeding must be disbarment, unless the most
2 compelling mitigating circumstances clearly predominate.

3 The standards, however, are only guidelines and do not mandate the discipline to be
4 imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-
5 251.) “[E]ach case must be resolved on its own particular facts and not by application of rigid
6 standards.” (*Id.* at p.251.)

7 The State Bar recommends, inter alia, that Respondent be suspended from the practice of
8 law for five years and until she complies with the requirements of standard 1.4(c)(ii); that
9 execution of said suspension be stayed; and that Respondent be placed on probation for five
10 years on conditions including that she be actually suspended for the first two years of the period
11 of her probation. However, Respondent has only been found culpable of one of the eleven counts
12 charged against her. Accordingly, the Court does not concur with the OCTC discipline
13 recommendation.

14 Respondent has been found culpable in one client matter of one count of wilfully failing
15 to perform legal services with competence in October 2001. However, in determining the
16 appropriate discipline to recommend in this matter, the Court notes that Respondent’s
17 misconduct in this matter occurred within the same time period as the misconduct in
18 Respondent’s first prior disciplinary matter, and well before her misconduct in case no. 04-PM-
19 14982. Thus, in determining the discipline to recommend in this matter, the Court gives no
20 weight to the discipline imposed in case no. 04-PM-14982, as it could not have had any possible
21 rehabilitative effect on Respondent, as the misconduct upon which it is based occurred well after
22 the misconduct found in this matter. Furthermore, although Respondent’s first prior record of
23 discipline is still considered an aggravating circumstance, the aggravating force of Respondent’s
24 first prior discipline is diminished because the misconduct underlying Respondent’s first prior
25 record of discipline occurred within the same time period as the misconduct found in this matter.
26 (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) It is
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1 therefore necessary for the Court to consider the totality of the findings in both Respondent's first
2 prior disciplinary matter and in this matter to determine what discipline would have been
3 imposed if all the charged misconduct had been brought as one disciplinary proceeding. (*Id.* at p.
4 619.)

5 In Respondent's first prior disciplinary matter, Respondent was found culpable in six
6 client matters of violating section 6068(m); in four client matters, she was found culpable of
7 violating section 6068(i); and in three client matters, she was found culpable of wilfully violating
8 rules 3-700(D)(1) and 3-700(A)(2). The Supreme Court suspended Respondent from the practice
9 of law for two years; stayed execution of said suspension; and placed Respondent on probation
10 for two years subject to certain conditions of probation, including a 60-day period of actual
11 suspension.³⁵ In this matter, Respondent has been found culpable of one count of wilfully failing
12 to perform legal services with competence. In aggravation, Respondent has a prior disciplinary
13 record which is discounted. In mitigation, Respondent was dealing with family issues, and her
14 spontaneous actions towards Fischer demonstrated recognition of her wrongdoing and an effort
15 to timely atone for the consequences of her misconduct. However, only very limited mitigating
16 weight was given to Respondent's evidence of health problems.

17 Therefore, after considering the totality of the findings in both the current proceeding and
18 in Respondent's first prior disciplinary matter, the Court finds that had this matter been brought
19 as part of Respondent's first disciplinary proceeding, a 90-day period of actual suspension would
20 have been an appropriate discipline recommendation in that first disciplinary matter. Thus, the
21 Court finds it appropriate in this matter to recommend a period of stayed suspension and
22 probation on conditions including a 30-day period of actual suspension.

23
24 ³⁵In the first prior disciplinary matter, the parties entered into a Stipulation Re Facts,
25 Conclusions of Law and Disposition and the Court issued an order recommending to the
26 Supreme Court the 60-day period of actual suspension agreed to by the parties in the stipulation.
27 The Court notes that, as in the current disciplinary proceeding, Respondent was represented in
28 the first disciplinary matter by David A. Clare and the State Bar was represented by Deputy Trial
Counsel Eli Morgenstern.

1 **B. DISCIPLINE RECOMMENDATION**³⁶

2 Accordingly, it is hereby recommended that Respondent Cassandra Denise Jones be
3 suspended from the practice of law for a period of one year; that execution of said suspension be
4 stayed; and that Respondent be placed on probation for a period of one year, subject to the
5 following conditions of probation:

6 1. That during the first 30 days of said period of probation, Respondent shall be actually
7 suspended from the practice of law in California;

8 2. That during the period of probation, Respondent shall comply with all provisions of
9 the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

10 3. Within 10 days of any change, Respondent shall report to the Membership Records
11 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the
12 State Bar's Office of Probation in Los Angeles, all changes of information, including current
13 office address and telephone number, or if no office is maintained, the address to be used for
14 State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

15 4. Respondent shall submit written quarterly reports to the State Bar's Office of
16 Probation on each January 10, April 10, July 10, and October 10 of the period of probation.
17 Under penalty of perjury, Respondent shall state whether Respondent has complied with the State
18 Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding
19 calendar quarter. If the first report will cover less than 30 days, that report shall be submitted on
20 the next following quarter date and cover the extended period.

21 In addition to all quarterly reports, a final report, containing the same information, is due
22 no earlier than 20 days before the last day of the probation period and no later than the last day of
23 the probation period;

24 5. Subject to the assertion of applicable privileges, Respondent shall answer fully,

25 _____
26 ³⁶The Court makes this discipline recommendation irrespective of whether or not the
27 Supreme Court adopts the State Bar Court Hearing Department's recommendation in case no.
28 04-PM-14982.

1 promptly, and truthfully, any inquiries of the State Bar's Office of Probation which are directed
2 to Respondent personally or in writing, relating to whether Respondent is complying or has
3 complied with the conditions contained herein;

4 6. Within one year of the effective date of the discipline herein, Respondent shall provide
5 to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given
6 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639,
7 or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the
8 end of that session, unless she was ordered to comply with this requirement by the Supreme
9 Court in its order imposing discipline in case no. 04-PM-14982. Arrangements to attend Ethics
10 School must be made in advance by calling (213) 765-1287, and paying the required fee. This
11 requirement is separate from any Minimum Continuing Legal Education Requirement
12 ("MCLE"), and Respondent shall not receive MCLE credit for attending Ethics School (Rule
13 3201, Rules of Procedure of the State Bar);

14 7. Within one year of the effective date of the discipline herein, Respondent shall submit
15 to the Office of Probation satisfactory evidence of completion of no less than 15 hours of MCLE
16 approved courses in attorney general legal ethics, client relations and/or law office management.
17 This requirement is separate from any MCLE requirement, and Respondent shall not receive
18 MCLE credit for attending these courses (Rules Proc. of State Bar, rule 3201.)

19 8. The period of probation shall commence on the effective date of the order of the
20 Supreme Court imposing discipline in this matter;

21 9. At the expiration of the period of this probation, if Respondent has complied with all
22 the terms of probation, the order of the Supreme Court suspending Respondent from the practice
23 of law for one year shall be satisfied and that suspension shall be terminated.³⁷

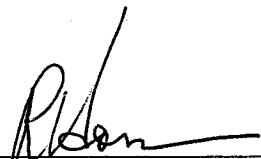
24
25 ³⁷The Court will not act as a collection agency and recommend that the amount of the
26 malpractice judgment awarded in favor of Fischer be paid as restitution. As the Review
27 Department of the State Bar Court noted in *In the Matter of Torres* (Review Dept. 2000) 4 Cal.
28 State Bar Ct. Rptr. 138, "[I]n *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct.

1 It is also recommended that Respondent be ordered to take and pass the Multistate
2 Professional Responsibility Examination given by the National Conference of Bar Examiners
3 within one year after the effective date of the discipline imposed herein and furnish satisfactory
4 proof of such to the State Bar's Office of Probation within said period, unless Respondent has
5 been ordered by the Supreme Court to take and pass said examination in State Bar case no. 04-
6 PM-14982.

7 **B. COSTS**

8 It is further recommended that costs be awarded to the State Bar pursuant to Business and
9 Professions Code section 6086.10, to be paid in accordance with section 6140.7 of that Code.

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13 Dated: February 4, 2005


RICHARD A. HONN
Judge of the State Bar Court

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23 Rptr. 631, 650, we held that it is inappropriate to use restitution as a means of awarding tort
24 damages for legal malpractice. (Accord *King v. State Bar* (1990) 52 Cal.3d 307, 312, 315-316
25 [Supreme Court adopted review department's discipline recommendation, which
26 recommendation deleted the hearing panel's probation condition requiring King to make
27 restitution to a former client for the \$84,000 legal malpractice judgment client obtained against
28 King].)" (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 153.) Accordingly, the
Court declines to recommend the payment of restitution to Fischer in this matter.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 4, 2005, I deposited a true copy of the following document(s):

DECISION, filed February 4, 2005

in a sealed envelope for collection and mailing on that date as follows:

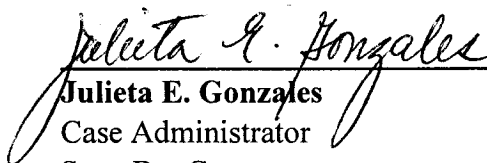
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DAVID A CLARE ESQ
4675 MACARTHUR CT #1250
NEWPORT BEACH CA 92660**

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 4, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court