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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **STEPHINE WELLS**, **Member No. 113148**, A Member of the State Bar.	)	**Case No. 04-O-14314 – RAH;** **[05-O-00507;** **05-O-04100;** **06-O-11964]** **DECISION**

1. INTRODUCTION

In this consolidated original proceeding, the Office of the Chief Trial Counsel of the State Bar of California (hereafter "Office of the Chief Trial Counsel" or "State Bar") seeks disbarment for respondent's alleged issuance of two client trust account checks that were paid on insufficient funds, a charge of commingling client trust funds with personal funds, and two instances of her failure to cooperate with the State Bar. Respondent contends that the matter should be dismissed. As is more specifically set forth below, the court recommends that respondent be suspended for three years, stayed, be placed on probation for three years, with conditions, including that she be actually suspended for the first two years of the period of probation and that she comply with the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

2. PERTINENT PROCEDURAL HISTORY

On September 20, 2006, the State Bar filed a Notice of Disciplinary Charges (hereafter "NDC") against respondent in this matter. On November 2, 2006, an Amended NDC was filed. On March 13, 2007, the court granted the State Bar's February 13, 2007 motion to dismiss count four of the NDC. On April 6, 2007, the State Bar filed a Second Amended NDC. The Second Amended NDC reflects the fact that counts three (A), three (B), and four were dismissed by the

State Bar, all in the interest of justice.

Trial was held on April 23, 24, 26, May 30, and September 13, 2007. Thereafter, the matter was submitted for decision.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 13, 1984 and since that time has been an attorney at law and a member of the State Bar of California.

B. Relevant Background.

Although the exact dates are unclear, respondent had been married, but is now divorced. As a result of the divorce, respondent obtained post office boxes in San Francisco and, later, in Tiburon, California to be used as her official membership records address, so that her ex-husband could not track her down. Because these boxes were used for such a limited purpose, she often did not check them.

In November 2004, respondent was diagnosed with breast cancer. She had surgery to remove the tumor in December 2004 and was hospitalized for three days. Her doctor, Dr. Eisenberg, was a cancer specialist. He recommended a second surgery, which respondent declined. In January, he requested that respondent meet with him to discuss her decision. After encouraging her to reconsider, they compromised on agreeing to do chemotherapy and radiation in order to arrest further development of the cancer.[1] From the surgery in December 2004 to June 2005, she was under the care of Dr. Eisenberg, Dr. Halberg, and Dr. Poen. During that time, she received chemotherapy and radiation for her cancer. In May 2005, she was in the middle of a six and one-half week course of radiation therapy, and during this period, she felt very fatigued and uncomfortable, and was unable to attend to her regular duties at work. In fact, she only worked a couple days in the month of June 2005. In late May 2005, Dr. Poen prepared a letter indicating that respondent should be off work for a period of time, and then working only part time "for up

[1]See memo from Dr. Eisenberg, Exhibit D.

to two months after her radiotherapy is completed."[2] While the exact date of the conclusion of her radiation is not clear from the record, assuming that on the date of the May 27, 2005 letter from Dr. Poen, she had just started her radiation, she would have been finished with the six and one-half week treatment in mid-July 2005.[3] The two month period during which she was under her doctor's work limitations would end in mid-September 2005. Respondent testified that even after that date, she suffered from fatigue from her treatment.

C. Count One (A); Case no. 04-O-14314, (Hsu); Business and Professions Code section 6106[4] [Moral Turpitude for Trust Check Issued on Insufficient Funds]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

At all relevant times, respondent maintained a client trust account at Bank of America, (hereafter "bank") account number 16649-05255 (hereafter "CTA") into which she regularly deposited, or caused to be deposited, entrusted funds. On March 13, 2004, respondent issued CTA check number 477 in the amount of $459.65, payable to Henry Hsu, M.D., one of respondent's clients. (Exhibit 6, pages 2-3.) The bank paid check number 477 against insufficient funds ("NSF").[5]

At trial, however, respondent did not dispute that the account had insufficient funds for check number 477, but rather noted that the "reason" for the NSF check was that a $7,000 check that had been deposited was not honored, causing there to be less in the account than she or the

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[2]Exhibit D, page 4.

[3]On July 13, 2005, respondent was treated on an emergency basis for an adverse reaction to medication. (Exhibit D, page 3.)

[4]All further references to "section(s)" are to this source.

[5]Exhibit 1 reflects the Hsu bounced check which was paid by the bank. This notice was sent on March 29, 2004, three days after the check was presented for payment.

bookkeeper thought should be there.[6]

At the time of the NSF check, respondent employed a bookkeeper to monitor transactions in the CTA and to reconcile the account every month. At trial, the parties presented certain accounting records for the CTA. (See Exhibit 6, pages 16-21, Exhibit C, page 2, and Exhibit H.) Exhibit 6, pages 16-21 are records on ledger sheets reflecting the efforts of either respondent or her bookkeeper to reconcile her CTA. These ledger sheets cover the period of January to June 2004, and appear to reconcile the bank statements, Exhibit 6, pages 4-15. In the February 2004 bank statement, there is a negative balance reflected as occurring on February 20, 2004.[7] The ledger sheets also reflect an earlier negative balance on February 2, 2004.[8]

The above transactions, while some of which are not being prosecuted by the State Bar, act as a prelude to the charged misconduct. Given this prior activity in her CTA, the court finds that respondent was on notice of the generally poor condition of her account before the issuance of check number 477 to Dr. Hsu in the amount of $459.65.

The NSF in respondent's CTA was a result of her failure to maintain and properly monitor her CTA. Respondent was grossly negligent in the handling of her CTA as a result of her failure to closely monitor the account, despite being on notice of prior dips in the account. Had she properly monitored her account, she could have avoided the problems that bring her to this court.

After these errors were pointed out to respondent by the State Bar, however, she changed her practices to make sure that "checks that have not cleared are not written against." She has also made efforts to make sure she gets her earned fees out of the CTA faster to avoid confusion

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[6]See Exhibit 3.

[7]Exhibit 6, page 7. Respondent typically received a Notice of Insufficient Funds when the account balance dropped below zero. (See Exhibit 1 and 10.) However, there is nothing in the record that indicates that respondent received such a notice from the bank regarding the February 20, 2004 negative balance in the account.

[8](See Exhibit 6, page 17.) However, it does not appear that the daily account balance fell below zero as a result of this dip. The ledger sheet also notes other negative balances on February 13 and February 18, 2004.

as to the remaining balance.

While respondent's failures may have been only the result of gross negligence, as noted above, a finding of gross negligence is sufficient to support a violation of section 6106. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.) Therefore, the State Bar has sustained its burden by clear and convincing evidence that respondent committed an act of moral turpitude in wilful violation of section 6106.

D. Count One (B); Case no. 04-O-14314; rule 4-100, Rules of Professional Conduct of the State Bar of California[9]; [Commingling personal funds in CTA]

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney shall be deposited therein or otherwise commingled therewith. It further provides that when the right of the attorney to receive a portion of trust funds is disputed by the client, the disputed portion must not be withdrawn until the dispute is finally resolved.

State Bar investigator John Matney reviewed the bank statements of the CTA.[10] As part of his investigation, he prepared a spreadsheet setting forth the deposit and withdrawal transactions in the CTA. Based on his training, he identified several "red flags" that made him feel that respondent was commingling her own funds with those in the CTA. Primarily, these transactions were cash deposits made at various branches of the Bank of America.[11] Mr. Matney concluded that the deposits were of personal funds. He also made other observations based on what he felt were irregular transactions, including questioning check deposits identified as fees

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[9]All further references to "rule(s)" are to this source.

[10]Although Mr. Matney has an academic background in business and economics, the State Bar failed to qualify him as an expert in forensic accounting or a related field.

[11]These transactions are reflected in Exhibit 8, pages 19, 20, 27, 28, 30, 34, 35, 40, 41, 57, 58, 63, 64, 68, 69, 81, 82, 91, 92, and 108.

without concomitant withdrawals by respondent for payment of her fees.[12] He also questioned various payments to respondent in generally small amounts of under a few hundred dollars.

Mr. Matney gave the State Bar attorneys his data. Based on Mr. Matney's suspicions, the State Bar then made the tables contained in, and forming the basis for, the allegations in paragraphs 10 and 11 of the NDC (now, paragraphs 11 and 12, respectively, in the Second Amended NDC). When Mr. Matney presented this data to the attorneys for the State Bar preparing the NDC, he never told them that his conclusions were based on "facts." Rather, he told them that the data which resulted in the tables in the NDC represented only his analysis of the accounts and what he felt were "red flags."

With respect to the transactions set forth in paragraph 10 of the NDC (paragraph 11 of the Second Amended NDC), neither Mr. Matney nor the State Bar offered evidence, much less clear and convincing evidence, to support the conclusion that these "red flagged" transactions were actually improper withdrawals representing more than respondent was entitled to withdraw. The State Bar attorneys simply adopted his numbers from his table and inserted them in the NDC, and then offered no proof that the withdrawals were improper.

In paragraph 11 of the NDC (paragraph 12 of the Second Amended NDC), the State Bar similarly adopted Mr. Matney's table in forming its allegations that respondent repeatedly deposited non-client funds into the CTA. As noted above, Mr. Matney's table pointed out several cash deposits made at various branches of the Bank of America. He, and the State Bar attorneys that followed, assumed that the "suspicious" deposits represented respondent's own funds, not client funds. At trial, respondent credibly testified, however, that it was her practice to give her clients her CTA account number and permit them to make retainer payment deposits in branches of the Bank of America closer to their residence or workplace, rather than having to drive to respondent's office. She pointed out that the deposit locations were spread out over the region, and in some instances, she could identify certain clients who lived near the Bank of

[12]These transactions are reflected in Exhibit 8, pages 24, 31, 39, 43 (along with 134), 46, 56, and 125.

America branch where the deposit was made. While a rather unorthodox method of receiving payment from clients, respondent has satisfactorily explained the "red flags" identified by Mr. Matney, and later incorporated into the NDCs. Respondent never advised the investigator of this practice of remote deposits, but there was no evidence offered by the State Bar that they asked her this question.[13]

The State Bar has therefore failed to sustain its burden of proof by clear and convincing evidence as to the commingling alleged in Count One (B). It is therefore dismissed with prejudice.

E. Count Two (A); Case no. 05-O-00507; section 6106 [Moral Turpitude for Trust Check Issued on Insufficient Funds]

On or about November 4, 2004, respondent issued CTA check number 584 in the amount of $875, payable to herself. She negotiated the check at the window at her branch of the Bank of America on a Saturday. She was not told by the teller that at the time, there were insufficient funds in the account. The bank paid respondent the $875 on insufficient funds. She received a notice of insufficient funds from the bank, dated November 5, 2004. (Exhibit 10.)

As noted above in the discussion of Count One (A), even prior to March 2004, respondent was on notice of the problems with her CTA. She or her bookkeeper noted several instances of negative balances in her CTA. (Exhibit 6, pages 17 and 18.) She had already received bank statements reflecting negative balances. (Exhibit 6, pages 7 and 9.)[14] Further, on

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[13]The letters by Mr. Matney to respondent received in evidence focus on the NSFs reported from the bank and related documentation of respondent's CTA. They do not ask respondent to identify her procedure for receiving payments from clients. Further, they do not request respondent to explain the "red flags" identified by Mr. Matney. Since the evidence was unclear as to exactly when Mr. Matney identified the "red flags," it is possible that he had not yet identified these issues at the time of the letters. However, there was no evidence of further questions being posed to respondent by the State Bar on this issue.

[14]The court did not receive any bank statements or reconciliations reflecting CTA transactions after June 2004. It appears that these were not provided because the initial request from the State Bar investigator in case no. 04-O-14314 was for documents only through June 2004. It is not clear, however, why respondent did not present statements or reconciliations from after June 2004 in her defense of the charge in Case no. 05-O-00507.

or shortly after March 29, 2004, respondent received the Notice of Insufficient Funds sent from the bank. (Exhibit 1.)

The November 4, 2004 bounced check in respondent's CTA was a result of her failure to maintain and properly monitor her CTA. Given her heightened awareness as a result of the prior problems she had with her account, the court concludes that her actions in failing to properly monitor her account constitute gross negligence. A finding of gross negligence is sufficient to support a violation of section 6106. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d at 475.) Therefore, the State Bar has sustained its burden by clear and convincing evidence that respondent committed an act of moral turpitude in wilful violation of section 6106.

F. Count Two (B) and Count Three (C); Case nos. 05-O-00507 and 05-O-04100, respectively; section 6068subdivision (i) [Failure to Cooperate in State Bar Investigation]

Section 6068 subdivision (i) provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

Count Two (B). After the November 5, 2004 notice of insufficient funds from the bank, Mr. Matley sent respondent a letter dated February 25, 2005. The letter was addressed to respondent at her official membership records address,[15] a post office box in San Francisco, California (Exhibit 14.) In it, he requested a written response regarding the issuance of the NSF check in the Hsu matter. The letter was not returned by the post office, nor was it responded to by respondent. On March 18, 2005, Mr. Matney sent a second letter to respondent's official membership records address requesting the same information. (Exhibit 15.) This letter was also not returned by the post office, nor was it responded to by respondent.

On March 21, 2005, Mr. Matney spoke with William Hopkins, the named partner in respondent's firm, who is also respondent's son. (See memo of conversation, Exhibit J.) In that conversation, Mr. Matney learned from Mr. Hopkins that respondent had primary control over the CTA and the general account, and that he only utilized the accounts when she was

[15]See a record of respondent's official membership records address, Exhibit 18.

unavailable. Also on March 21, 2005, Mr. Matney spoke with respondent. He learned from respondent that she was ill with cancer, and because of her illness, she was not checking her post office box for mail. She told him that she would soon respond to his two letters. However, he never received anything from respondent. Shortly after his telephone call with respondent, Mr. Matney informed the Deputy Trial Counsel handling the case of respondent's illness.[16]

Count Three (C). On June 9, 2005, respondent changed her official membership records address to a post office box in Tiburon, California. On October 13, 2005, Mr. Matney sent respondent a letter to her new official membership records address asking for information involving a complaint to the State Bar made by Antonio Del Castillo. (Exhibit 16.) This letter was not returned by the post office nor was it responded to by respondent. As before, a follow-up letter was sent by Mr. Matney on October 27, 2005 to respondent's official membership records address requesting the same information. Again, the letter was not returned by the post office as undeliverable, nor was it responded to by respondent.

By failing to respond to the State Bar's February 25, 2005, March 18, 2005, October 13, 2005, and October 27, 2005 letters or participate in the investigation of the NSF check from respondent's CTA and the Del Castillo matters, respondent failed to cooperate with the State Bar in wilful violation of section 6068 subdivision (i).

4. LEVEL OF DISCIPLINE

A. Factors in Mitigation

There was no evidence of harm to any client or other person as a result of the NSF checks, since both were paid by the bank. (Std. 1.2(e)(iii).)

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[16]Respondent did, however, cooperate earlier in the Hsu investigation. On October 6, 2004, Mr. Matney sent respondent a letter requesting information regarding the issuance of CTA check number 477 to Dr. Hsu in the amount of $459.65 that was returned for insufficient funds. (Exhibit 4.) On November 3, 2004, respondent replied to the State Bar's inquiry. (Exhibit 5.) In that letter, she noted that she had tried to call Mr. Matney at the telephone number set forth on his October 6, 2004 letter, but that she got a recording that the number was out of order. In fact, this number on the State Bar's letterhead was a wrong number. Again on November 12, 2004, respondent provided additional information, including bank statements, ledgers, bills, and copies of the requested check, and requested additional time to go through her stored files. (Exhibit 6.)

As noted above, respondent suffered from medical problems arising out of her cancer and the treatment of that illness.

In addition to the evidence of respondent's medical condition set forth above, Diane Brandon also testified on behalf of respondent. Ms. Brandon is employed at the Marin Cancer Institute, as a Cancer Resource and Recovery Specialist. Ms. Brandon does counseling and administrative work to assist recovering cancer victims in their rehabilitation and reentry into everyday life. She first observed respondent during June 2005, when respondent was a participant in several programs at the Institute. She observed that from June through July 2005, respondent had difficulty making decisions, was distracted and had difficulty dealing with everyday details of life. She noted that respondent had difficulty remembering, was emotionally vulnerable and had difficulty organizing herself. She also noted an improvement in respondent's abilities in this area as time progressed. In September 2005, respondent was able to participate in a fashion show put on by cancer victims as a fund-raiser for the Institute. Ms. Brandon was not a medical doctor and did not know respondent before her illness, and therefore, had no baseline for the behaviors she noted. However, much of her testimony did not require extraordinary training, but rather was anecdotal evidence of everyday behavior. In addition, she was able to see improvement in respondent's abilities as she completed her chemotherapy and radiation treatment and continued in her recovery.

Respondent is entitled to mitigation for these issues, since there was evidence that respondent's physical and psychological problems were the cause of her misconduct and that her disabilities have improved dramatically. (Std. 1.2(e)(iv) .)

In addition, respondent no longer handles her CTA in the same way as she did when she committed the misconduct. Respondent has taken some objective steps demonstrating remorse and recognition of her wrongdoing, including correcting her practices to avoid the chance of checks being returned for insufficient funds. Primarily, respondent has recognized that she must wait until checks clear before writing checks against the amount deposited. As such, she is entitled to mitigation credit. (Std. 1.2(e)(vii).)

B. Factors in Aggravation

Respondent has a prior record of discipline, which is a substantial aggravating factor. (Std. 1.2(b)(i).)

Respondent has two prior incidents of discipline. Effective April 14, 1993, in case number 91-O-04351, respondent was privately reproved for violations of former rules 8-101(A) [commingling] and 8-101(A)(2) [failure to deposit client funds into trust] with conditions, for one year. These conditions included the requirement that she take and pass the California Professional Responsibility Examination and attend State Bar Ethics School. (Exhibit 20.)

Effective June 14, 2006, by Supreme Court order in case number S140918 (01-O-00379), respondent was suspended from the practice of law for two years, the execution of said suspension was stayed, and she was put on probation for two years on conditions, including that she be actually suspended for six months and until she paid restitution. She was also ordered to provide proof of passage of the Multi-State Professional Responsibility Examination, and comply with rule 955 (now 9.20) of the California Rules of Court. The underlying misconduct in this discipline involved violations of rule 1-300(B) [unauthorized practice of law in another jurisdiction], 4-200 [illegal and unconscionable fee]; 3-700(D) [failure to return unearned fees], 4-100(A) [failure to deposit client funds in trust], and section 6106 [moral turpitude.] (Exhibit 21.)

Respondent committed multiple acts of wrongdoing, including two CTA checks drawn on insufficient funds separated by several months. (Std. 1.2(b)(ii).)

5. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single

disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standard 1.7(b), which provides that discipline is progressive, also applies.

Respondent's misconduct involved two trust account violations and her failure to cooperate in State Bar investigations. The standards provide a broad range of sanctions ranging from reproval to disbarment for such violations, depending upon the gravity of the offenses and the harm to the client. (2.3, and 2.6.)

In this matter, Standard 2.3 is the most severe sanction. Standard 2.3 provides that culpability of moral turpitude must result in actual suspension or disbarment. As discussed above, respondent's two occasions of drawing CTA checks on insufficient funds was an act of moral turpitude.

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

The State Bar urges disbarment, arguing that respondent has exhibited an inability or unwillingness to uphold her professional obligations and conform her conduct to the requirements of the law. The State Bar further asserts that there is a serious risk that respondent will continue to be unable to manage her CTA if she were allowed to continue to practice law.

The court disagrees. The only matters remaining in the NDC after the court dismissed one count, and the State Bar dismissed three counts, were two instances of CTA checks drawn on insufficient funds and two instances of failure to cooperate with the State Bar. Clearly, bouncing trust account checks is conduct that is not to be condoned. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 315; *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 11.) But there was no proof presented by the State Bar that either of the NSF checks resulted in harm to a client. Both were paid by the bank and the total represented a rather modest amount of money.

While it is clear that the NSF checks were not written during respondent's serious

medical problems, it is equally clear that her failure to cooperate with the State Bar was either in the middle of her chemotherapy and radiation treatment for cancer, or during her recovery, albeit near the end. During the entire period from her initial surgery through November 2005, however, respondent credibly testified that she suffered from serious fatigue and an inability to focus on managing her business. Further, the State Bar investigator was aware of her medical condition. It is significant to note that when she was contacted prior to her diagnosis and commencement of treatment, she cooperated fully. Her timely correspondence with the State Bar only stopped when she received the bad news of her cancer and began her treatment. (See Exhibits 4, 5, and 6.) As such, the court finds that, at least with respect to the two violations of section 6068 subdivision (i), compelling mitigating circumstances existed which clearly predominated.

With respect to the two NSF checks, the court is satisfied that the rather simple corrective measures that respondent has taken, along with Ethics and Client Trust Accounting School and other financial conditions imposed by this decision, will prevent future instances of insufficient funds in her CTA.

In determining the appropriate discipline in this matter, *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, is instructive. There, the respondent issued two checks from his client trust account and, by his own admission, he had no reasonable belief that there were insufficient funds in the account. McKiernan hoped that he would receive a settlement in another case that would cover the funds. When that check came later than expected, the checks bounced. In addition, he had a history of writing bad checks – at least eleven times in approximately one year, and on at least two occasions, the amounts of the overdrafts were over $10,000. McKiernan did not regularly review his trust account during the time in which the misconduct occurred, and he had no one in the firm who had that responsibility. He was charged with a violation of section 6106 for these two checks.

The court in *McKiernan* found him culpable of moral turpitude for his misconduct with the two checks. In mitigation, the court gave some credit for respondent's 21 years without prior discipline. However, that mitigation was discounted because the court found that respondent's misconduct with respect to the trust account began much earlier. McKiernan was suspended

from the practice of law for two years, stayed. He was placed on probation for two years with conditions, including that he be actually suspended for ninety days.

In *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, an attorney wrote seven dishonored checks, some of which were drawn on his client trust account. In addition, he failed to cooperate with the State Bar, in violation of section 6068 subdivision (i). He had practiced for 16 years without prior discipline, but did not participate in the State Bar proceeding, and his default was entered. He received one year stayed suspension, and two years probation on conditions, including six months actual suspension.

As noted above, the State Bar has requested that this court disbar respondent. The court does not feel disbarment is appropriate in this matter, given the small amount involved in only two NSF checks, the relatively minor discipline (private reproval) imposed in 1993 in case no. 91-O-04351, as well as the mitigation respondent presented in her response to the section 6068 subdivision (i) charges. However, it is clear that a substantial period of actual suspension is warranted. A significant difference between the facts of *McKiernan* and *Heiser* is the aggravating impact of respondent's two prior instances of discipline since her admission in 1984. Therefore, having considered the facts and the law, the Court recommends, among other things, actual suspension of two years and probation, as is set forth more fully below.

6. RECOMMENDED DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent Stephine Wells be suspended from the practice of law for three years and until she provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. It is further recommended that execution of that suspension be stayed, and that she be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first two years of probation and until she provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct;

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation and any probation monitor assigned under these conditions which are directed to respondent personally or in writing, relating to whether she is complying or has complied with the conditions contained herein;

6. Within two years after the effective date of the discipline herein, respondent must provide to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School and a session of the Client Trust Accounting 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, and passage of the test given at the end of each session. Arrangements to attend Ethics School and Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate

from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School (Rules of Procedure of the State Bar of California, rule 3201).

7. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending her from the practice of law for three years and until she complies with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, will be satisfied and that suspension will be terminated.

9. Trust Account Reporting Requirements.

a. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from respondent and a certified public accountant or other financial professional approved by the Office of Probation, certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:

i. a written ledger for each client on whose behalf funds are held that sets forth:

1. the name of such client,

2. the date, amount, and source of all funds received on behalf of such client,

3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and

4. the current balance for such client;

ii. a written journal for each client trust fund account that sets forth:

1. the name of such account,

2. the date, amount, and client affected by each debit and credit, and

3. the current balance in such account.

iii. all bank statements and canceled checks for each client trust account; and

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held;

2. the person on whose behalf the security or property is held;

3. the date of receipt of the security or property;

4. the date of distribution of the security or property; and

5. the person to whom the security or property was distributed.

b. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

c. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

10. Within two years after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six hours of MCLE approved continuing legal education courses in law office management. This requirement is separate from and in addition to any MCLE requirement imposed on California attorneys and respondent will not receive MCLE credit for attending such course(s). (Rules of Procedure of the State Bar of California, rule 3201.)

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,

Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation within two years after the effective date of discipline herein. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar of California.**

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule 9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.[17]

7. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Until costs are paid in full, respondent will remain actually suspended from the practice of law unless relief is obtained under rule 282 of the Rules of Procedure of the State Bar.

Dated: March ___, 2008

RICHARD A. HONN
Judge of the State Bar Court

[17]Respondent is required to file a rule 9.20(c) affidavit even if she has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)