STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

PUBLIC MATTER

In the Matter of **LAURA JOAN COLBURN,** **Member No. 149567,** A Member of the State Bar.	Case No.: **06-C-13230-DFM** **DECISION AND ORDER OF INACTIVE ENROLLMENT**

This is a conviction referral proceeding. Even though respondent Laura Joan Colburn[1] has actual knowledge of this proceeding, she failed to appear either in person or through an attorney.[2] The State Bar is represented by Deputy Trial Counsel Joseph Carlucci.

According to the State Bar, the appropriate level of discipline is disbarment. For the reasons set forth *post*, the court agrees.

I. Relevant Procedural History

A. Respondent's Two Misdemeanor Convictions

In July 2006, in the San Diego Superior Court, respondent pleaded guilty to and was convicted on (1) one misdemeanor count of possession of a controlled substance –

[1] Respondent was admitted to the practice of law in the State of California on December 5, 1990, and has been a member of the State Bar since that time. Respondent, however, has continuously been on actual suspension under Supreme Court order for nonpayment of her bar membership fees since July 1996.

[2] Of course, respondent has a professional obligation to appear and participate in the present disciplinary matter. (Bus. & Prof. Code, § 6068, subd. (i).)

methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and (2) one misdemeanor count of child endangerment – possession of methamphetamine in the presence of a minor (Pen. Code, § 273a, subd. (a)).

B. Referral Order, Notice of Hearing on Conviction, and Respondent's Default

On February 27, 2007, the review department filed an order in which it referred respondent's convictions, which were not yet final, to the hearing department for a trial on the issue of whether the facts and circumstances surrounding them involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102)[3] or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494). (Cal. Rules of Court, rule 9.10(a); Rules Proc. of State Bar, rule 320(a);[4] see also *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 609, fn. 3; but see § 6102, subd. (e); *In re Strick* (1983) 34 Cal.3d 891, 900.)

On March 6, 2007, one of this court's case administrators properly served on respondent at her latest address shown on the official membership records of the State Bar (hereafter official address) by certified mail, return receipt requested, a notice of hearing on conviction with a copy of the review department's February 27, 2007, referral order attached to it. (§ 6002.1, subd. (c); rules 60(a) & (b), 600(b).) Thereafter, on March 9, 2007, the court received, from the United States Postal Service, a return receipt (i.e., green card) for the copy of the notice of hearing that was served on respondent. That return receipt was signed by respondent on March 8, 2007; accordingly, it is clear that respondent has had actual knowledge of this proceeding since March 8, 2007.

Respondent's response to the March 6, 2007, notice of hearing was due no later than April 2, 2007. (Rules 63(a), 601.) Respondent, however, failed to file a response.

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[3] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

[4] Unless otherwise indicated, all further references to rules are to these Rules of Procedure of the State Bar of California.

C. Augmented Referral Order & Notice of Augmented Referral Order

On April 26, 2007, the San Diego Superior Court notified the State Bar that respondent's two convictions were final. Thus, on May 8, 2007, the review department filed an augmented referral order. That order authorized this court to hold a hearing for the purpose of determining whether respondent's convictions (or the surrounding facts and circumstances) involved moral turpitude or other misconduct warranting discipline for all purposes (including discipline). (§ 6102, subd. (e); *In re Strick* (1983) 34 Cal.3d 891, 899-900.)

On May 23, 2007, one of this court's case administrators properly served on respondent by certified mail, return receipt requested, a notice of augmented referral order with a copy of the review department's May 8, 2007, augmented referral order attached to it. (Rule 602(c).) Respondent never filed a response to the May 23, 2007, notice of augmented referral order.

D. Entry of Respondent's Default and Involuntary Inactive Enrollment & Submission

As noted *ante*, respondent failed to file a response to the March 6, 2007, notice of hearing or to the May 23, 2007, notice of augmented referral order. And, on May 24, 2007, the State Bar filed a motion for the entry of respondent's default.

Thereafter, because all the statutory and rule prerequisites were met, this court filed an order on June 13, 2007, in which it entered respondent's default and, as mandated by section 6007, subdivision (e), ordered that she be involuntarily enrolled as an inactive member of the State Bar.[5] On July 6, 2007, the State Bar filed a waiver of hearing and brief regarding culpability and discipline in which it set forth, for the first time, the facts it alleges establish that respondent's convictions (or the surrounding circumstances) involve moral turpitude and other

[5] Of course, respondent will remain on inactive enrollment under this court's June 13, 2007, order unless and until this court grants a motion to set aside her default or this disciplinary proceeding is completed. (§ 6007, subd. (e)(2).)

misconduct warranting discipline. On July 7, 2007, the State Bar served a copy of its July 6, 2007, waiver of hearing and brief on respondent.

On July 30, 2007, this court took the matter under submission for decision without a hearing. Thereafter, the court vacated that submission and, in an order it filed on December 21, 2007, granted respondent 20 days to file a response setting forth her position on the facts alleged and the charges made against her in the State Bar's July 6, 2007, waiver of hearing and brief regarding culpability and discipline. Respondent, however, failed to file such a response, and the court took the matter under submission again on January 10, 2008.

II. Conviction Referral Proceedings

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (§ 6101, subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) Stated differently, an attorney's conviction is conclusive proof that the attorney committed all of the acts necessary to constitute the crime of which he or she was convicted. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) However, at least with respect to crimes that do not inherently involve moral turpitude, such as respondent's two misdemeanor convictions, "Whether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction." (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.) That is because it is the attorney's misconduct, not the conviction, that warrants discipline. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935, see also *In re Gross, supra*, 33 Cal.3d at p. 568.)

Moreover, in a conviction referral proceeding involving a crime that does not inherently involve moral turpitude, the State Bar has the burden to prove, by clear and convincing evidence, that the surrounding facts and circumstances involve either moral turpitude or other misconduct

warranting discipline. (*In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 759-760, 764.) If the State Bar meets it burden and establishes that the surrounding facts and circumstances involve moral turpitude or other misconduct warranting discipline, the court must recommend an appropriate level of discipline "according to the gravity of the crime and the circumstances of the case. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510; *In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. at p. 926; *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688-689, and cases there cited.) Of course, if the State Bar fails to meet its burden of proof, the court will dismiss the proceeding with prejudice. (*In the Matter of Respondent I* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 264-265.)

III. Findings of Fact and Conclusions of Law

A. Facts and Circumstances Surrounding Respondent's Two Misdemeanor Convictions

The record clearly establishes the following facts. On January 10, 2005, the San Diego Police arrested respondent's husband, Billy Snelson, for possession for sale of more than one pound of methamphetamine. Snelson was arrested while he was transporting the methamphetamine in his car. After his arrest, the police drove Snelson to his and respondent's residence and then searched the residence in accordance with a search warrant they had obtained earlier.

Before the search of the residence, Snelson told the police (1) that there was more methamphetamine inside his chest of drawers in the master bedroom, which is where he and respondent slept, and (2) that there were two syringes in the garage. Respondent and her 12-year-old daughter were home at the time of the search; respondent's two twin 8-year-old sons were at school. Respondent admitted to the police that she knew that Snelson, to whom she had been married for about six months, sold illegal drugs.

During the search, the police found the drugs in Snelson's chest of drawers and the syringes in the garage. In addition, the police found, in Snelson's chest of drawers, a small amount of marijuana and two digital scales. On the floor of the master bedroom the police also found a large amount of small zip-loc plastic bags, which are commonly used in the sale of methamphetamine and other drugs.

On the top of respondent's dresser in the master bedroom, the police found a woman's coin purse, which had a zip-loc bag containing methamphetamine in it. Respondent initially denied that the coin purse was hers, but eventually admitted that it was hers. Respondent claimed that the methamphetamine in the coin purse was solely for her and Snelson's personal use. Respondent's claim is supported by the facts that the methamphetamine Snelson was transporting in his car for sale when he was arrested was only 53 percent pure methamphetamine and that the methamphetamine he had for sale stored in his chest of drawers was only 25 percent pure, while the methamphetamine in respondent's coin purse was 99 percent pure. A reasonable inference to be drawn from these facts is that Snelson sold only methamphetamine that was "diluted" or "watered down," but that he and respondent kept and used the "pure" methamphetamine for themselves.

In June 2006, respondent was initially charged with (1) felony possession of methamphetamine for sale and (2) felony child abuse. But, in July 2006, she entered into a plea agreement with the district attorney and, as noted *ante*, pleaded guilty and was convicted on (1) one misdemeanor count of possession of a controlled substance -- i.e., the methamphetamine in her coin purse (Health & Saf. Code, § 11377, subd. (a)) and (2) one misdemeanor count of child endangerment -- i.e., possessing methamphetamine while in the presence of her minor daughter (Pen. Code, § 273a, subd. (a)).

Respondent was, inter alia, placed on summary probation and required to enroll in and complete an outpatient drug rehabilitation program, which she did.

B. Conclusions of Law -- Moral Turpitude or Other Misconduct Warranting Discipline

Contrary to the State Bar's contention, the record fails to establish, by clear and convincing evidence, that respondent possessed the methamphetamine in the coin purse for sale or with an intent to distribute. Moreover, the record fails to otherwise establish, by clear and convincing evidence, that the facts and circumstances surrounding respondent's convictions involved moral turpitude.

Nonetheless, the record clearly establishes that the facts and circumstances surrounding respondent's convictions involve other misconduct warranting discipline. First, she possessed a significant amount of methamphetamine, which strongly indicates that she is again addicted to methamphetamine.[6] (Cf. *In re Kelley, supra*, 52 Cal.3d at pp. 495-496.) Second, she possessed the drugs in the presence of her minor daughter. Third, she and her three minor children continued to live with Snelson even though she knew that he was a drug dealer.

"Although it is true that [respondent's] misconduct caused no harm to her clients, this fact alone does not insulate her from discipline aimed at ensuring that her potentially harmful misconduct does not recur. Lack of past or present adverse impact on an attorney's practice or clients is an appropriate consideration in assessing the amount of discipline warranted in a given case, but it does not preclude imposition of discipline as a threshold matter. [Citation.]" (*In re Kelley, supra*, 52 Cal.3d at p. 496.)

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[6] As noted *post*, respondent was addicted to methamphetamine for at least the seven-year period from 1991 through 1998.

IV. Aggravating and Mitigating Circumstances

A. Aggravating Circumstances

1. Prior Record of Discipline

Respondent has three prior records of discipline, which is a very serous aggravating circumstance under Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(e)(i) (all further references to standards are to this source).

a. Respondent's First Prior Record

Respondent's first prior record of discipline is the Supreme Court's May 16, 1995, order in *In re Laura Joan Colburn on Discipline*, case number S045304 (State Bar Court case number 93-O-12879, et al.) in which the Supreme Court placed respondent on one year's stayed suspension, two years' probation, and sixty days' actual suspension. The Supreme Court imposed that discipline on respondent because, in a single client matter, she failed to competently perform legal services (Rules Prof. Conduct, rule 3-110(A)) and improperly withdrew from representation (Rules Prof. Conduct, rule 3-700(A)(2)) and because she failed to cooperate in two State Bar disciplinary investigations (§ 6068, subd. (i)). Even though respondent filed a response in her first prior record of discipline, she thereafter failed to participate and the matter proceeded by default.

b. Respondent's Second Prior Record

Respondent's second prior record of discipline is the Supreme Court's October 31, 1997, order in *In re Laura J. Colburn on Discipline*, case number S063736 (State Bar Court case number 95-O-15113, et al.) in which the Supreme Court placed respondent on three years' stayed suspension, three years' probation, and one year's actual suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation as to facts and disposition

that respondent entered into with the State Bar in May 1997 (hereafter "parties' May 1997 stipulation").

The parties' May 1997 stipulation establishes the following facts. In July 1995, while she was on actual suspension under the Supreme Court's May 16, 1995, order in case number S045304, respondent deliberately engaged in the unauthorized practice of law in violation of sections 6125 and 6126, subdivisions (a) and (b), which violations are disciplinable under section 6068, subdivision (a). Respondent engaged in the unauthorized practice of law by entering a general appearance as the attorney of record for a defendant in a criminal case and entering a not guilty plea and demanding a jury trial on behalf of the defendant. Respondent's unauthorized practice of law involved moral turpitude in willful violation of section 6106 because it included misstatements to a court.

The parties' May 1997 stipulation also establishes the following facts. Respondent, in willful violation of section 6068, subdivision (i), failed to cooperate with the State Bar's disciplinary investigation into her unauthorized practice of law. Finally, respondent, in willful violation of section 6068, subdivision (k), failed to comply with the probation conditions imposed on her under the Supreme Court's May 16, 1995, order in case number S045304 in that she did not timely report her completion of three required hours in law office management.

c. Respondent's Third Prior Record

Respondent's third prior record of discipline is the Supreme Court's January 29, 2002, order in *In re Laura J. Colburn on Discipline*, case number S102113 (State Bar Court case number 99-C-11947, et al.) in which the Supreme Court placed respondent on one year's stayed suspension, two years' probation, and thirty days' actual suspension. The Supreme Court imposed that discipline on respondent in accordance with a stipulation regarding facts,

conclusions of law, and disposition that respondent entered into with the State Bar in August 2001 (hereafter "parties' August 2001 stipulation").

The parties' August 2001 stipulation establishes the following facts. In February 1998, respondent and a cashier at a Thrifty Drug Store had a mutual friend. Respondent, the cashier, and the mutual friend arranged for respondent to shop at Thrifty and to be charged only for a few of the items respondent selected. Shortly thereafter, respondent and respondent's four-year-old daughter went shopping at Thrifty. While shopping, respondent placed 62 items valued at $403.96 into a suitcase, a plastic container, and a cooler she selected at the store. When respondent checked out, the cashier charged respondent and respondent paid only $4.99 for the 62 items. Respondent was arrested outside of the store for theft. In September 1998, respondent pleaded no contest and was convicted on one count of petty theft (a misdemeanor) in violation of Penal Code sections 484, subdivision (a) and 488. Without question, respondent's acts in obtaining the 62 items for only $4.99 amount to moral turpitude. (*In re Rothrock* (1944) 25 Cal.2d 588, 592.) In any event, petty theft inherently involves moral turpitude. (*Id.* at p. 590.)

Finally, the parties' August 2001 stipulation establishes that respondent was addicted to methamphetamine for at least the seven-year period from 1991 through 1998.

2. Respondent's Failure to File a Response

Respondent's failure to file a response to either the March 6, 2007, notice of hearing or to the May 23, 2007, notice of augmented referral order is serious aggravation particularly in light of the fact that State Bar personnel made multiple attempts to notify her of impending events and the consequences of her nonappearance. (Cf. *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) First, it establishes that respondent fails to appreciate the seriousness of her criminal conduct. (*Ibid.*) And, second, "it establishes that [she] does not comprehend the duty as an officer of the court to participate in disciplinary proceedings. [Citation.]" (*In the Matter of Stansbury* (Review

Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109, citing *Conroy v. State Bar* (1992) 53 Cal.3d 495, 507-508; but see *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, 1080 [failure to participate in a default hearing is not an aggravating circumstance].)

B. Mitigating Circumstances

Because respondent failed to appear and participate in this proceeding, there is no evidence of any mitigating circumstance.

V. Discussion on Discipline

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. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090.) As the review department noted more than 17 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not do so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310, 1311.)

Turning to the standards, the court looks first to standard 3.4. "Under standard 3.4, the discipline suggested for an attorney's conviction of a crime not involving moral turpitude but involving 'other misconduct warranting discipline' is that discipline 'appropriate to the nature and extent of the misconduct.' " (*In re Kelley, supra*, 52 Cal.3d at p. 498.) Admittedly, the nature and extent of respondent's two misdemeanor convictions for possession of methamphetamine for personal use and for child endangerment by possessing methamphetamine

in the presence of a minor is not overtly severe or venal and might not ordinarily result in very grave discipline. But this is not respondent's only instance of misconduct. Thus, the court also looks to standard 1.7(b) for guidance.

Standard 1.7(b) provides that, if an attorney "has a record of two prior impositions of discipline . . . , the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." Of course, notwithstanding the apparent mandatory language in standard 1.7(b), it is clear that the number of prior records of discipline cannot, without more analysis, foretell the results. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 778-780; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.) Instead, this court must review the nature and extent of respondent's three prior records of discipline to ensure that the application of standard 1.7(b) does not lead to an unjust result. (E.g., *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) This approach is consistent with the principle that this court's findings should provide the Supreme Court with a full and complete picture of the nature and extent of an attorney's misconduct (*Recht v. State Bar* (1933) 218 Cal. 352, 354-355).

Reviewing respondent's three prior records of discipline, the court notes that the latter two (like the present matter) involve clear violations of the law. In her second prior record of discipline, respondent deliberately engaged in the unauthorized practice of law, which is a crime in this state. (§ 6126, subd. (b).) In her third prior record of discipline, respondent planned and conspired with two other women to steal goods from a drug store. Respondent's September 1998 petty theft conviction inherently involved moral turpitude. (*In re Rothrock, supra*, 25

Cal.2d at p. 590.) Under standard 3.2, respondent's petty theft conviction alone could have resulted in her disbarment.[7]

Even though there are differences in the types of misconduct and criminal conduct underlying each of respondent's prior records of discipline and the present proceeding, each of her three prior disciplinary proceedings presented respondent with a meaningful " 'opportunity to reform [her] conduct to the ethical strictures of the profession.' [Citation.] Despite these opportunities to learn from [her] mistakes, [respondent] has again committed misdeeds that, regardless of the absence of immediately resulting harm, necessarily reflect a further lack of understanding by [respondent] of [her] professional responsibilities." (*Arm v. State Bar, supra*, 50 Cal.3d at p. 780.)

The State Bar has not cited to (and the court is not aware of) any prior case dealing with misconduct similar to that found here.

When viewed collectively, respondent's prior criminal conduct and her present criminal conduct establish that respondent has a long standing lack of respect for the law and of her professional obligation to obey it. Thus, there is "a significant threat of misconduct in the future." (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245.) Therefore, the court concludes that only disbarment will adequately further the goals of attorney discipline. (Cf. *In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 164.) In any event, there are no mitigating circumstances to cause the court to recommend anything less than disbarment under standard 1.7(b).

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[7] Standard 3.2 provides: "Final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission shall result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances."

VI. Discipline Recommendation

The court recommends that respondent LAURA JOAN COLBURN be disbarred from the practice of law in the State of California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VII. Rule 9.20 & Costs

The court further recommends that COLBURN be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the California Supreme Court order in this proceeding.

Finally, the court recommends that costs be awarded to the State Bar in accordance with California Business and Professions Code section 6086.10 and are enforceable both as provided in California Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that LAURA JOAN COLBURN be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: April 8, 2008.

DONALD F. MILES
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court of California. 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 April 8, 2008, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INACTIVE ENROLLMENT

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

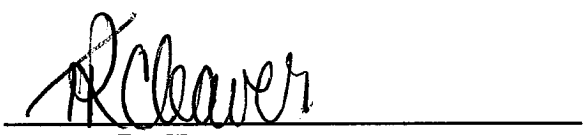
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LAURA J. COLBURN
PO BOX 178784
SAN DIEGO, CA 92177

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

JOSEPH CARLUCCI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 8, 2008**.



Tammy R. Cleaver
Case Administrator
State Bar Court