STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **WILLIAM WEST SEEGMILLER** **Member No. 98740** A Member of the State Bar.	**Case No.: 06-J-11086** **DECISION**

I. INTRODUCTION

Respondent William West Seegmiller is a member of both the California and Nevada state bars. In 2005, he was disciplined by the disciplinary board of the Nevada State Bar for conduct occurring in that state. This action was filed as a consequence of that misconduct and discipline. (See Bus. and Prof. Code, [1] §6049.1; *In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, 447; *Emslie v. State Bar* (1974) 11 Cal.3d 210, 224 [State Bar may prosecute misconduct of member occurring solely in another state].)

II. PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in this matter was filed by the State Bar of California on January 25, 2008. On February 19, 2008, respondent filed a motion to dismiss under section 6049.1(b)(2), contending that his conduct would not warrant the imposition of discipline in California under applicable California laws and rules. On February 29, 2008, the

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

State Bar filed an opposition to that motion. Because respondent wanted to introduce expert testimony on the issue of whether the conduct in Nevada would be subject to discipline in this state, the proceeding was bifurcated and a hearing on the section 6049(b)(2) issue was held on April 28, 2008. At that hearing respondent, over the objection of the State Bar, introduced expert testimony regarding the standards of care in California applicable to the conduct at issue in the Nevada proceeding.

Thereafter, the court entered an order that respondent had not met his burden in challenging the discipline under section 6049.1(b)(2). The discipline stage of the proceeding was then conducted on July 1, 2008. Thereafter, a request was made successfully by respondent to re-open the trial for the purpose of offering additional evidence regarding mitigation. That additional trial session was held on September 16, 2008, followed by a period of post-trial briefing. The State Bar was represented throughout these proceedings by Deputy Trial Counsel Miho Murai. Respondent was represented by Ellen Pansky.

III. STATUTORY OVERVIEW

This proceeding is governed by section §6049.1. The issues in this streamlined proceeding are limited to: (1) whether the Nevada proceeding lacked fundamental constitutional protection; (2) whether, as a matter of law, respondent's culpability in the Nevada proceeding would not warrant the imposition of discipline in California under applicable California laws and rules; and (3) the degree of discipline to be imposed on respondent in California. (Bus. & Prof. Code, section 6049.1, subd. (b).) Unless respondent establishes that the conduct for which he was disciplined in Nevada would not warrant discipline in California or that the Nevada proceeding lacked fundamental constitutional protection, his formal record of discipline in Nevada is conclusive evidence that he is culpable of misconduct in California. (Section

6049.1(a); *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 353.) The burden of proof with regard to the first two issues is on the respondent. (Section 6049.1(b).)

Respondent does not content here that the Nevada proceeding lacked fundamental constitutional protection. He does, however, contend that the conduct for which he was found culpable in that jurisdiction would not warrant discipline under the California laws and rules.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on August 21, 1981, and has been a member of the California State Bar at all relevant times.

History of Nevada Disciplinary Proceedings

On June 28, 2005, the Southern Disciplinary Board of the Nevada State Bar issued a formal decision recommending that respondent be publicly reprimanded. The decision included the following findings of fact and conclusions of law:

Findings of Fact

"On March 5, 2004, Heidi and John Rickard met at their home with Bruce Hamilton, a non-lawyer investigator. The Rickards executed retainer agreements for Respondent's firm to represent four (4) members of the Rickard family in personal injury claims arising from a motor vehicle accident.

An attorney-client relationship was established between Respondent's firm and the Rickards without any direct interaction between the clients and Respondent or a Nevada-licensed attorney employed by Respondent.

Mr. Hamilton testified that he has performed the same service for at least five (5) other law firms in Clark County, Nevada.

On or about March 11, 2004, Leticia Ostler, a paralegal in Respondent's office, sent the Rickards an introductory letter, informing them she was their case manager and that the firm of West Seegmiller now represented them. In her letter to the Rickards, Ostler cautioned that, "Please keep in mind that gaps in your treatment of seven days or longer will weaken your case. You must keep your appointments regularly. If you have not treated with a provider longer than a week, you should call us immediately. The insurance carrier looks for gaps in treatment and will value the case much less if one occurs." The letter also included a Confidential Client Information Form that Ostler requested the Rickards complete and return.

In addition, Ostler signed and sent other correspondence including, but not limited to, letters of representation to third parties and letters terminating West Seegmiller's representation of the Rickards.

During the 31 days that Respondent represented them, the Rickards never communicated with a Nevada-licensed attorney of Respondent's firm, but rather only with non-lawyer assistants.

The foregoing conduct by Respondent's non-lawyer assistants was performed in accordance with Respondent's office policies and practices."

Conclusions of Law

In addition to the above factual findings, the Nevada board made various conclusions of law, including the following:

"Mr. Hamilton engaged in the unauthorized practice of law when he met with the Rickards and had them execute retainer agreements on behalf of Respondent's firm without any direct interaction between the clients and an attorney with Respondent's firm.

Respondent's staff engaged in the unauthorized practice of law by sending out, under their own signature, letters of representation to third parties, letters to the clients offering advice on the legal impact of missing medical appointments, and termination letters to the client and third parties.

The foregoing activities by Respondent's non-lawyer staff constituted an improper delegation of professional judgment from a lawyer to a non-lawyer.

By unanimous vote, the Panel finds by clear and convincing evidence that Respondent violated SCR [Supreme Court Rules] *154 (Communication) in that Respondent failed to appropriately communicate with his clients during the entire 31-day representation.*

By unanimous vote, the Panel finds by clear and convincing evidence that Respondent violated SCR 155 (Fees), only insofar as Respondent failed to include the specific language required by the rule.

By unanimous vote, the Panel finds by clear and convincing evidence that Respondent violated SCR 187 (Responsibilities regarding nonlawyer assistants) and SCR 189(1) (Unauthorized practice of law) by failing to adequately supervise both the investigator and nonlawyer staff, and failing to have in place adequate measures to properly define the roles of nonlawyer staff and ensure their compliance with the Rules of Professional Conduct."

Decision and Recommendation

The board recommended that respondent be publicly reprimanded for violating SCR 154 (communication), SCR 187(responsibilities regarding nonlawyer assistants) and SCR 189(1) (unauthorized practice of law).

Respondent then unsuccessfully appealed the panel's decision to the Nevada Supreme Court. On December 8, 2005, the Nevada Supreme Court's issued an order approving the Nevada State Bar's recommendation that respondent be publicly reprimanded. In its order, the court concluded that the violations were supported by clear and convincing evidence. It also found that the record demonstrated that respondent had "failed to exercise adequate control over his firm's initial contacts with potential clients and impermissibly delegated to nonlawyer staff the tasks of initiating the lawyer-client relationship and maintaining client communication."

Assessment of Whether Respondent's Nevada Misconduct Would Be Not Disciplinable Under Applicable California Rules

In the NDC filed in the instant proceeding, the California State Bar alleges that respondent's misconduct would be culpable under rules 1-300(A) and 3-110(A) of the California Rules of Professional Conduct.[2] Under section 6049.1, respondent has the burden to show that, as a matter of law, the "culpability determined in the [Nevada] proceeding ...would not warrant the imposition of discipline in the State of California under the laws or rules binding upon members of the State Bar at the time the member committed misconduct in such other jurisdiction, as determined by the proceedings specified in subdivision (a)." Respondent has failed to carry that burden.

In looking to the Nevada rules on which that jurisdiction's findings of culpability are based, this court finds that those rules are substantially equivalent to the rules applicable to attorneys in California, both at the time of the Nevada misconduct and now. As previously noted, respondent was found culpable in the Nevada proceeding of assisting another person in the unauthorized practice of law (SCR rule 189) and failing to take adequate steps to supervise

[2] The State Bar does not allege that the Nevada finding of culpability for "communication" (SCR 154) warrants discipline in this state.

the work of nonlawyer employees. (SCR rule 187.) Rule 187 of the Nevada Supreme Court Rules (SCR) provides:

"Responsibilities regarding nonlawyer assistants. With respect to a nonlawyer employed or retained by or associated with a lawyer:

1. *A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;*
2. *A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and*
3. *A lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:*
   (a) The lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
   (b) The lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action."

SCR rule 189, in pertinent part, provides:

"Unauthorized practice of law.

1. *General Rule. A lawyer shall not: ...*

   (b) Assist another person in the unauthorized practice of law."

These Nevada rules are substantively equivalent to comparable rules contained at all relevant times in the California Rules of Professional Conduct and cited by the State Bar in the

NDC. (See rule 1-300(A) ["member shall not aid any person or entity in the unauthorized practice of law"], and rule 3-110(A) ["a member shall not intentionally, recklessly, or repeatedly fail to perform services with competence."].) The formal "Discussion" in the California Rules of Professional Conduct accompanying rule 3-110 is explicit in stating, "The duties set forth in rule 3-110 include the duty to supervise the work of subordinate attorney and non-attorney employees or agents. (See, e.g., *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Trousil v. State Bar* (1985) 38 Cal.3d 337, 342 [211 Cal.Rptr. 525]; *Palomo v. State Bar* (1984) 36 Cal.3d 785 [205 Cal.Rptr. 834]; *Crane v. State Bar* (1981) 30 Cal.3d 117, 122; *Black v. State Bar* (1972) 7 Cal.3d 676, 692 [103 Cal.Rptr. 288; 499 P.2d 968]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 857-858 [100 Cal.Rptr. 713; 494 P.2d 1257]; *Moore v. State Bar* (1964) 62 Cal.2d 74, 81 [41 Cal.Rptr. 161; 396 P.2d 577].)" Hence there has been no showing that respondent's culpability in Nevada was predicated on rules having no equivalent counterpart in California.

Nor has respondent shown that the evidence supporting the findings of culpability in the Nevada proceeding do not show conduct disciplinable under the California rules. That evidence showed that a nonlawyer employee of respondent's firm first discussed with Mrs. Rickard the possibility of respondent representing her; that this nonlawyer was told that there had been a car accident involving the Rickards' car (containing two adults and three children) and an unidentified other person. The nonlawyer then instructed Mr. Hamilton, the third-party investigator routinely used by respondent's firm, to take a fee agreement for respondent's office out to the Rickards' home and to discuss the case with Mrs. Rickard. The investigator went the next day to the Rickards' home, meeting there with both Mr. and Mrs. Rickard. He had Mrs. Rickard sign a fee agreement in her own name. He then decided to have Mr. Rickard sign a fee agreement, but only as the "natural father" of two of the Rickard children. There was no discussion with the Rickards about whether there were potential conflicts between the Rickard

family members; nor was there any discussion as to the legal effect of Mr. and Mrs. Rickard signing the fee agreement. Respondent indicated that, notwithstanding the signed fee agreement, it was his policy not to decide whether to sign the agreement until after his office has gathered documents. Until then, he does not have any contact with the "client" and does not view the contract as binding. He followed that practice with respect to the Rickards.[3] Notwithstanding this view by respondent, his staff sent letters, with his approval, to the Rickards and to the involved insurance companies, notifying all that the Rickards were being represented by respondent. The letters were signed by Ms. Ostler (Ostler), a nonlawyer case manager, and they included legal advice and opinions. The letter to the Rickards' own auto insurance carrier also included an arbitration demand, although there had been no discussion between respondent and the Rickards about making any such a demand; nor had there been any analysis by respondent as to whether making such a demand constituted a waiver of the Rickards' right to a jury trial. With respect to the property damage claim the Rickards had for the value of their damaged car, the fee agreement included a provision stating, "Client agrees to pay $250.00 should WEST SEEGMILLER ATTORNEYS handle the property damage claim." Because the investigator

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[3] The Review Department in *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635, 651, cited such a procedure with apparent disapproval and as a basis for finding culpability, albeit for improper solicitation in that situation: "The evidence shows without dispute that respondents, Southern California practitioners, set up their Northern California office to expand their client base but with the intent that one of them would be present only about one day a week. They deliberately authorized non-lawyer independent contractors to have office space and access to respondents' attorney-client retainer agreements, and to explain the complex details of respondents' fee agreements and accompanying documents to prospective clients. As OCTC's expert witness, Werchick, testified, several of these details were unusual provisions in plaintiff personal injury fee agreements such as the provision for a minimum hourly fee upon the client's unauthorized discharge of respondents and the recital which clients were asked to sign stating that they had not been solicited. Werchick also testified that in his opinion an attorney, not a non-lawyer, should decide whether or not to accept responsibility for a case, particularly when the attorney has yet to inspect a police accident report. Yet, by their own practice respondents did not review the cases until after their agents had signed up the clients and the testimony of several clients who were solicited showed that when they asked to study the retainer agreement before signing or to first speak with respondents, the agents declined to let them do so."

was under strict instructions not to discuss the meaning of the fee agreement with the prospective clients, the Rickards were not told that it was the practice and desire of respondent's office not to become involved in handling the property damage claim. This quickly led to an emotional misunderstanding between the Rickards and Ostler. During this time, Mrs. Rickard, according to her testimony at trial, viewed Ostler as being her attorney. The unpleasant interactions between them, in turn, caused respondent to direct Ostler to "disengage" the Rickards as clients. She did this in a letter dated April 7, 2004. In the meantime, she refused Mr. Rickard's request that he be allowed to talk with respondent, inaccurately telling Mr. Rickard that only Mrs. Rickard and her children were respondent's clients and that Mr. Rickard was not. Ostler then terminated respondent's representation of the Rickards with the April 7, 2004 letter, signed by her and not by respondent. This letter advised the Rickards that the statute of limitations on their case "expires on 3/04/06." Respondent was not at all involved in the determination of this date. Instead, he testified that the statute of limitations date was calculated by the nonlawyer intake personnel, who just input the accident date into a computer at the time of the initial conversation with the prospective client. The computer would then use this accident date to calculate when the statute of limitations would expire, here apparently using a two-year statute of limitations. Respondent agreed at trial that the statute of limitations for the Rickards might actually be only one year (if the claim proved to be uninsured); at the same time, the running of any statute of limitations for the minor children would be tolled until they turned eighteen. Hence the legal opinion contained in Ostler's letter was both given without any involvement by an attorney and was at least partially incorrect. With regard to all of the above actions by Ostler and Hamilton, respondent consistently emphasized that they were acting in accordance with office procedures approved by him.

This evidence regarding the conduct of respondent and his nonlawyer employees and agent is sufficient to sustain a finding that respondent aided a nonlawyer in the unauthorized practice of the law, in wilful violation of rule 1-300(A). (See, e.g., *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal.State Bar Ct. Rptr. 498, 519.)

It is also sufficient to sustain a finding that he wilfully violated rule 3-110(A) by failing to appropriately control the activities of his nonlawyer employees and agents. (See, e.g., *In the Matter of Rubens* (Review Dept. 1995) 3 Cal.State Bar Ct. Rptr. 468, 476-479; In *the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, 418 [former rule 6-101(A)(2)].)

Utilizing the procedures set forth in section 6049.1, this court concludes that the determination in Nevada that respondent committed professional misconduct there constitutes conclusive evidence that he is culpable of professional misconduct in this state. The court, therefore, turns to the issue of what degree of discipline is appropriate to impose.

Considerations Regarding Appropriate Degree of Discipline

Although the findings of culpability are subject to the process set forth in section 6049.1, such is not true with regard to issues of aggravation and mitigation. Instead, the burdens of proof with regard to those issues are the same as in any other case. (*In the Matter of Jenkins* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 157, 163-164.) The State Bar has the burden of proving aggravating circumstances by clear and convincing evidence; the respondent has the burden of proving mitigating circumstances. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b) and (e)[4].) The court finds the following with regard to those issues:

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

Aggravating Circumstances

Prior Discipline

Respondent has been disciplined in this state on one prior occasion. He previously stipulated to a public reproval for conduct occurring during the period 1996-1998. That reproval was issued on November 9, 2004. That discipline was a result of two separate cases. In case no 99-O-13410, he admitted to violating section 6068(a) by permitting chiropractors to contribute to the payment of his legal advertising costs. In case no. 04-O-11768, he admitted to violating rule 3-310(C)(1) by accepting representation of more than one client in a matter in which the interests of the clients conflicted without the informed written consent of each client. The stipulation entered into by the State Bar afforded respondent mitigation credit for good faith (including the fact that he had unsuccessfully researched the propriety of the chiropractors' contributions), candor/cooperation, remorse, the absence of harm, and his extensive pro bono and charitable activities. There were no aggravating circumstances. Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

Multiple Acts

The State Bar contends that discipline should be increased because there are multiple acts of misconduct. It bases this argument on the fact that respondent's conduct violated both rule 3-110(A) and 1-300(A). The court declines to follow that analysis. The two violations are based on the same conduct, respondent's failure to adequately oversee the work of his nonlawyer employees and agents. In such situations, the court will not attach any additional weight in determining the appropriate discipline to the fact that the same conduct would violate several different rules. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155; *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403; *In the Matter of Rubens, supra*, 3 Cal.State Bar Ct. Rptr. at p. 479, fn. 9; *In the Matter of Scapa &*

Brown, supra, 2 Cal.State Bar Ct. Rptr. at p. 646 [court declined to find violation of failure to adequately supervise staff where conduct supported culpability for violation of another rule]; accord: *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 [the appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct].)

Harm

Although harm to the public and the administration of justice is deemed to be inherent in the unauthorized practice of law, there was no clear and convincing evidence that any such harm here was significant. Hence this is not viewed as an aggravating circumstance. (Std. 1.2(b)(iv); *In the Matter of Trousil, supra,* 1 Cal. State Bar Ct. Rptr. at pp. 239-240 [absence of actual harm to individuals treated as basis for awarding mitigation credit].)

Mitigating Circumstances

Good Faith

Good faith by the member during the course of the misconduct is a factor in mitigation. (Std. 1.2(e)(ii).) The evidence here was clear and convincing that respondent had taken significant steps before the misconduct here to adopt extensive office procedures, safeguards, training procedures, and form letters (written by him) that he believed complied with all applicable standards. For most of the conduct here, there would have been no culpability under California standards if the form letters had merely been signed by respondent, rather than Ostler. Further, while the Nevada authorities relied heavily on an unpublished decision of the Nevada Supreme Court as a basis for disciplining respondent for his failure to meet with prospective clients before having them sign fee agreements, the State Bar acknowledged during these proceedings that there is no clear comparable California authority on this issue. (Hawk v. State

Bar (1988) 45 Cal.3d 589, 602.) In sum, although respondent's belief that the system he developed was flawless proved to be mistaken, his actions were nonetheless taken in good faith.

Character Evidence

Respondent presented extensive evidence regarding his considerable charitable, pro bono, and community activities and good character testimony from several attorneys regarding his good character. Although the number of character witnesses falls somewhat short of being "a wide range of references in the legal and general communities", the court nonetheless finds the overall presentation to have established clear and convincing proof of his good character.

Remorse/Remediation

Considerable measures have been taken by respondent, both individually and with the assistance of outside consultants, to modify his office procedures to eliminate the issues giving rise to the discipline in Nevada. He is entitled to mitigation credit for his attitude and efforts in that regard. (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal.State Bar Ct. Rptr. 608, 614; *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 126.)

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and 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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is "not bound to follow the standards in talismanic fashion. As the final

and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' [Citations.]" (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

As previously noted, the Nevada court concluded that a public reprimand was appropriate for respondent's misconduct. That misconduct, however, included violations of more rules there than what has been charged by the State Bar in this proceeding. The discipline also included as aggravation the fact that respondent had disciplined in that state for his prior discipline in this state.

The State Bar contends that the appropriate level of discipline here is two years' stayed suspension, 90-days' actual suspension, and two-years' probation. This recommendation is predicated on the State Bar's contention that there were multiple acts of misconduct, to wit: aiding the unauthorized practice of law and failing to act with competency. This assessment, however, fails to recognize that the same conduct gave rise to both violations. Under such circumstances, it is not proper to treat them as multiple acts for purposes of assessing the appropriate degree of discipline.

It is well-settled that the level of discipline assessed in the foreign jurisdiction does not dictate the degree of discipline to be assessed in this jurisdiction. (*In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 217.) Nonetheless, it is the court's

conclusion that the appropriate level of discipline to be assessed here is the equivalent of what the Nevada court ordered in that jurisdiction: a public reproval. That conclusion is based on a number of different factors. First, there is no reason to believe that more discipline is needed to protect the public. Respondent's failure to adequately supervise his Nevada staff did not result from any lack of effort on respondent's part but instead from a mistaken belief that his high level of advance preparation had been sufficient. While his belief in that regard was incorrect, it was nonetheless held by him in good faith.

Further, when it became clear that such preparations were not a substitute for his personal involvement, respondent moved aggressively to amend the errant office practices.[5] The steps he has taken to modify his office practices provide strong evidence that there will not be any repetition of the Nevada misconduct.

The court's conclusion that significant discipline is not necessary to protect the public is further buttressed by respondent's past record in this state. He has maintained a very active practice in this state for more than a quarter century. During that time he has been disciplined only one time (a public reproval), for misconduct that was also found by the court to have been performed in good faith. That conduct took place in 1998, more than 10 years ago. There has been no evidence of any misconduct in this state since that time. In the same vein, this court received ample evidence regarding respondent's significant and ongoing commitments to community, pro bono and other charitable activities.

Finally, the discipline is consistent with that assessed in prior cases involving similar misconduct. See, e.g., *Crawford v State Bar* (54 Cal.2d 659 [public reproval for attorney allowing disbarred father to continue to practice law in his firm].

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[5] In many instances, the only change necessary was for him to sign the form letters he had previously prepared for signature by his staff.

Although standard 1.7(A) suggests that discipline in a second disciplinary action should generally be greater than that assessed in the first, the court finds that strict adherence to that concept here would be unjustified, unnecessary, and manifestly unjust.

VI. RECOMMENDED DISCIPLINE

Accordingly, it is ordered that Respondent **WILLIAM WEST SEEGMILLER** is hereby publicly reproved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public reproval shall be effective when this decision becomes final. Furthermore, pursuant to rule 956(a) of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproval imposed in this matter. Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for wilful breach of rule 1-110 of the Rules of Professional Conduct. Respondent is hereby ordered to comply with the following conditions[6] attached to his public reproval for a period of one year following the effective date of the public reproval imposed in this matter:

1. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

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

[6]See rule 271, Rules of Proc. of State Bar (motions to modify conditions attached to reprovals are governed by rules 550-554 of the Rules of Procedure).

telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

3. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates).[7] However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

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

(b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period. During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

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[7] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

4. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

5. Within one year after the effective date of this order, respondent must attend and satisfactorily complete (a) the State Bar's Ethics School and (b) no less than six (6) hours of MCLE approved courses in law office management; and he must provide satisfactory proof of such completion to the State Bar's Office of Probation within that same timeframe. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

6. Respondent must take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

7. Respondent's probation will commence on the effective date of this order imposing discipline in this matter.

VII. COSTS

It is further ordered that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

Dated: December 17, 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 December 17, 2008, I deposited a true copy of the following document(s):

DECISION

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

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

ELLEN ANNE PANSKY, ESQ.
PANSKY & MARKLE
1010 SYCAMORE AVE #101
SOUTH PASADENA, CA 91030

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 17, 2008.

Rose M. Luthi

Rose Luthi
Case Administrator
State Bar Court