**FILED APRIL 17, 2009**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – SAN FRANCISCO**

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| In the Matter of<br><br>**TE JUNG CHANG,**<br><br>**Member No. 147088,**<br><br>A Member of the State Bar. | ) | Case No.: 06-O-13891-PEM<br><br>**DECISION** |

## INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **TE JUNG CHANG** with six counts of professional misconduct in a single client matter. Even though she has actual knowledge of this disciplinary proceeding, respondent failed to appear either in person or by counsel. For the reasons set forth *post*, the court finds respondent culpable on five of the six counts.

The State Bar "requests that respondent be actually suspended from the practice of law for 120 days with at least two years probation." The court, however, independently concludes that that the appropriate level of discipline is a two-year stayed suspension and a ninety-day suspension, which ninety-day suspension will continue until respondent makes restitution in the amount of $409 (plus interest), pays sanctions in the amount of $1,500 (plus interest), and the

State Bar Court grants a motion to terminate her actual suspension (Rules Proc. of State Bar, rule 205).[1]

## KEY PROCEDURAL HISTORY

This proceeding was initiated by the filing of a Notice of Disciplinary Charges (NDC) against respondent by the State Bar on July 30, 2008.[2] At the time this matter was submitted for decision, the State Bar was represented by Deputy Trial Counsel Tammy M. Albertsen-Murray (DTC Albertsen-Murray).[3]

A copy of the NDC was properly served on respondent on July 30, 2008, by certified mail, return receipt requested, addressed to respondent at her official membership records address (official address). The NDC was not returned by the U.S. Post Office; however, the State Bar did not receive a return card.

Although respondent was properly served with notice of an in person status conference scheduled for November 10, 2008, at the State Bar Court, respondent failed to appear at the status conference either in person or through counsel. On November 12, 2008, the court filed a Status Conference Order which set forth that the matter was to proceed by default. A copy of the

[1] The court rejects the State Bar's recommended two-year period of probation. In a default disciplinary proceeding, it is *improper* to recommend both a period of actual suspension *and* a period of probation. (Rules Proc. of State Bar, rule 205; *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 110.)

[2] On January 3, 2008, Supervising Trial Counsel Allen Blumenthal (STC Blumenthal) caused a 20-day letter to be mailed to respondent at her official membership records address. Respondent received the 20-day letter and telephoned STC Blumenthal. Respondent and STC Blumenthal corresponded by reciprocal telephone messages and by letters. Respondent came to the Office of Enforcement and met with STC Blumenthal. The parties did not reach a resolution.

[3] Before December 10, 2008, respondent had been in contact with DTC Albertsen-Murray through voice messages left on December 2 and December 5, 2008. Through voice messages left by DTC Albertsen-Murray, respondent knew that she had to file a response; that her response was well overdue; and that the State Bar was well within its legal rights to file a motion for the entry of respondent's default (*post*).

order was properly served on respondent by first-class mail, postage fully prepaid, on November 12, 2008, addressed to respondent at her official address.

As respondent did not file a response to the NDC as required by rule 103 of the Rules of Procedure of the State Bar of California (Rules of Procedure), on December 10, 2008, the State Bar filed a motion for the entry of respondent's default. The motion also contained a request that the court take judicial notice, pursuant to Evidence Code section 452, subdivision (h), of all of respondent's official membership addresses,[4] the declaration of DTC Albertsen-Murray, and Exhibit 1. A copy of the motion was properly served on respondent on December 10, 2008, by certified mail, return receipt requested, addressed to respondent at her official address.

When respondent failed to file a written response within 10 days after service of the motion for the entry of her default, on December 29, 2008, the court filed an Order of Entry of Default (Rule of Proc., rule 200 – Failure to File Timely Response), Order Enrolling Inactive and Further Orders.[5] A copy of the order was properly served on respondent on December 29, 2008, by certified mail, return receipt requested, addressed to respondent at her official address.

On February 13, 2009, the State Bar filed a brief on the issue of the appropriate discipline in this matter.[6] In its brief, the State Bar waived the hearing in this matter and requested that the court take judicial notice, pursuant to Evidence Code section 452, subdivision (d), of the State Bar Court file in this matter.[7]

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[4] The court grants the State Bar's request and takes judicial notice of all of respondent's official membership addresses.

[5] Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

[6] On February 26, 2009, the court granted the State Bar's motion for an order permitting the late filing of its discipline brief.

[7] The State Bar's request is granted.

The Declaration of Tammy M. Albertsen-Murray and Exhibit 1 attached to the State Bar's motion for the entry of respondent's default, as well as the Declaration of Tammy M. Albertsen-Murray and Exhibits 1 and 2 attached to the State Bar's brief on the issue of discipline are admitted into evidence. (Rules of Proc., rule 202(c).)

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings of fact are based on: (1) the well-pleaded factual allegations (not the alleged conclusions of law or the charges) contained in the NDC, which allegations are deemed admitted by the entry of respondent's default (§ 6088; Rules Proc. of State Bar, rule 200(d)(1)(A)); (2) the exhibits admitted into evidence *ante*; and (3) the facts in the official court files in this proceeding.

### Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 11, 1990, and has been a member of the State Bar of California since that time.

### Misconduct

On about April 20, 1998, respondent hired Attorney Justin Schwartz to represent her in a personal injury matter arising from a traffic accident involving Benita White. Respondent and Attorney Schwartz have been friends since high school.

Attorney Schwartz entered into negotiations with White's insurance company in an attempt to settle respondent's claims without litigation. Respondent, however, would not authorize a settlement. And, in about November 1998, Attorney Schwartz withdrew from representing respondent.

Proceeding in propria persona, respondent thereafter filed a lawsuit against White in the Alameda Superior Court. Ultimately, the superior court dismissed that lawsuit. Moreover, when respondent sought to appeal that dismissal, the Court of Appeal dismissed the appeal.

In about November 1998, Attorney Schwartz (1) billed respondent for $1,156 in attorney's fees; (2) "recorded" a lien on respondent's lawsuit against White; and notified White's insurance carrier of his lien. When the insurance company asked him to substantiate his lien, Attorney Schwartz sent, to the insurance company, a redacted copy of his fee agreement with respondent.

On about November 30, 1999, respondent, proceeding in propria persona, filed a lawsuit in the Alameda Superior Court against Mr. Schwartz for professional malpractice and breach of fiduciary duty (malpractice lawsuit). On about December 30, 1999, which was before respondent had even served Schwartz, respondent filed a first amended complaint in the malpractice lawsuit. Between about December 30, 1999, and May 4, 2000, respondent failed to serve Schwartz in the malpractice lawsuit.

On about May 4, 2000, the superior court filed a case management conference order in the malpractice lawsuit in which it directed respondent to serve Schwartz before the next case management conference, which was scheduled for July 21, 2000. On about July 20, 2000, respondent served a copy of her first amended complaint on Schwartz. On about August 21, 2000, Schwartz filed a motion to strike that first amended complaint.

On about October 10, 2000, a hearing was held on Schwartz's motion to strike before Superior Court Judge Judith D. Ford. At that hearing, respondent objected to the superior court's jurisdiction. Respondent alleged that she never received service of Schwartz's motion to strike[8] and that, therefore, the court lacked authority to hear Schwartz's motion or to give Schwartz time to file an answer after the hearing. Judge Ford unequivocally rejected respondent's contentions

[8] Respondent admits, however, that she knew of and obtained a copy of the motion from the superior court's case file.

and held that the court had jurisdiction. Thereafter, Judge Ford denied Schwartz's motion to strike, but granted him 10 days' leave to file an answer to respondent's first amended complaint.

Respondent never sought review of Judge Ford's rulings. Nonetheless, as set forth *post*, throughout the course of the malpractice lawsuit, respondent continued to object to the superior court's jurisdiction. She repeated her arguments that the superior court lacked jurisdiction to hear Schwartz's motion to strike or to permit Schwartz to file an answer after the October 10, 2000 hearing on that motion and that the superior court should have entered her default judgment against Schwartz.

Even though respondent had actual knowledge of Judge Ford's October 10, 2000 order granting Schwartz 10 days in which to file his answer, respondent filed, on about October 11, 2000, a request to enter Schwartz's default. Needless to say, respondent's request was not entered by the superior court.

Schwartz timely filed an answer in the malpractice lawsuit on October 20. 2000. At that time, he also filed a cross-complaint against respondent. Respondent, however, never filed an answer to the cross-complaint. Thus, on about November 20, 2000, Schwartz filed a request for entry of respondent's default. Thereafter, the superior court clerk entered respondent's default on Schwartz's cross-complaint.

On about January 10 and 11, 2001, respondent received various discovery requests from Schwartz, including requests for admissions, interrogatories, and a notice of deposition. On about January 18, 2001, respondent sent Schwartz a letter claiming that his discovery requests and notice of her deposition were not valid and refusing to recognize the requests. Thereafter, Schwartz filed a motion to compel discovery and to have his requests for admissions deemed admitted against respondent.

On about April 12, 2001, which was only about six months after the superior court had unequivocally rejected her lack of jurisdiction claim, respondent filed a motion to vacate the superior court's October 10, 2000 order[9] granting Schwartz ten days in which to file his answer. In her motion to vacate, respondent repeated her meritless claim that the superior court lacked jurisdiction.

On about April 16, 2001, respondent filed an amended motion to vacate the court's October 10, 2000 order. Around that same time, respondent filed a special appearance to defendant Schwartz's motion to compel discovery. In her special appearance, respondent again repeated her meritless claim that the superior court lacked jurisdiction.

On about April 18, 2001, the superior court held a hearing on Schwartz' motion to compel discovery. Judge Ford presided over that hearing. At that hearing, respondent contended that she was making a special appearance to object to the court's jurisdiction and then proceeded to repeat her meritless claim that the superior court lacked jurisdiction. Judge Ford rejected respondent's claim for a second time and again ruled that the court had jurisdiction. In addition, Judge Ford ordered respondent to provide the requested discovery, to appear for her deposition, and to pay sanctions of $320 plus $170. After the conclusion of the April 18, 2001 hearing, respondent continued to argue with Judge Ford and had to be escorted out of the courtroom by the bailiff.

On about April 23, 2001, Schwartz filed an opposition to respondent's motion to vacate the court's October 10, 2000 order. In his opposition, Schwartz contended, inter alia, that respondent's motion was moot because Judge Ford had already ruled on jurisdiction and that respondent's only remedy was to appeal or take a writ to the Court of Appeal. On about April

[9] In the NDC, the State Bar repeatedly and erroneously refers to this order as the "court's October 10, 2001 order."

27, 2001, respondent filed a reply to Schwartz's opposition in which respondent continued to insist that the superior court lacked jurisdiction.

Also, on about April 27, 2001, respondent sent a letter to the court in which she requested that Judge Ford voluntarily withdraw from presiding over the malpractice lawsuit.[10] In her letter, respondent stated that there was an improper demeanor by Judge Ford; that Judge Ford prejudged respondent's motion to vacate based on her prior rulings; that there was an appearance of bias because of the alleged prejudgment; that Judge Ford had disregarded basic elements of due process by ruling in excess of her jurisdiction; and that Judge Ford repeatedly committed legal error. In addition, respondent wrote:

> I am cognizant that a judge is free to make not only correct rulings, but incorrect rulings while believing them to be correct [citations]. Your purposeful erroneous rulings on such fundamental and basic elements of civil procedure relating to service and proof of service [citations], resulting in lack of jurisdiction [citations], improper award of sanctions in a discovery proceeding [citations], and disregard of prima facie evidence of perjury, violates the canons of judicial ethics mandating compliance and maintaining competence in the law in a manner that promotes public confidence in the judiciary [citations].

On about May 1, 2001, the court issued a tentative ruling denying respondent's motion to vacate. On about May 2, 2001, respondent filed a notice of intent to contest the tentative ruling on motion to vacate. In that notice, respondent accused the court of prejudging the matter and wrote: "because [Judge Ford] predetermined that [Chang] was lose [on any possible motion to review her orders], [the reviewing court will] direct the presiding judge of the superior court to reassign the case to another judge for further proceedings [citations]."

In her notice, respondent also accused the court of judicial bias and wrote:

> Judge Ford's extant and persistent legal error, when she knew or should have known better, by making rulings in excess of jurisdiction by violating

[10] Respondent sent copy of this letter to Schwartz.

> legal precedent [citations] and federal and state constitutions [citations], where, under applicable standards of review and had she not disqualified herself as stated afore, could only rule one way and grant the relief sought in its entirety [citations].

On about May 3, 2001, Judge Ford presided over a hearing on respondent's motion to vacate order. At that hearing, respondent again contested the jurisdiction of the court. Judge Ford advised respondent that her motion to vacate was in the nature of a motion to reconsider. Respondent again argued that the court lacked jurisdiction. Respondent also indicated her intent to file a motion to disqualify Judge Ford, contending that there was a presence of judicial bias mandating disqualification. Judge Ford stated that "there's no basis for me to recuse myself. Ms. Chang, I can be fair and impartial in this case." Judge Ford then continued the matter to give respondent time to file a verified statement challenging the judge.

On about May 10, 2001, respondent filed a statement of disqualification for cause of Judge Ford. In her statement of disqualification, respondent contended that, because Judge Ford's "statements and conduct on the record, a person might reasonable [sic] entertain a doubt that Judge Ford would be able to be impartial in the foregoing case, and her disqualification is thereby mandated by governing law." Respondent also argued that Judge Ford was biased based on her rulings, requested that Judge Ford be disqualified, and requested that Judge Ford's prior rulings be vacated and reviewed de novo. Respondent filed the statement of disqualification even though she had no basis for such a request.

On about May 17, 2001, Judge Ford filed a verified answer to respondent's statement of disqualification. In that answer, Judge Ford denied that she had any feelings of personal bias or prejudice towards respondent. She also denied that she was unable to be impartial in the proceedings. Moreover, Judge Ford stated that, even though she issued a tentative ruling on

respondent's motion to vacate, she had "not ruled on plaintiff's Motion to Vacate. I am free of bias or prejudice. I have been and will remain impartial in my decision."

On about June 8, 2001, Schwartz made a motion for terminating sanctions based on respondent's failure to comply with his discovery requests.

On about June 22, 2001, Judge Franklin R. Taft, sitting on assignment, found that Judge Ford was not disqualified from presiding over the malpractice lawsuit. Judge Taft found that respondent provided no basis for concluding that Judge Ford's rulings were erroneous and, further, that erroneous rulings do not establish bias. Respondent did not seek appellate review of Judge Taft's findings.[11]

On about September 21, 2001, the superior court denied respondent's motion to vacate, noting that it had previously rejected respondent's lack of jurisdiction claim. Then, on about September 26, 2001, respondent dismissed the malpractice lawsuit with prejudice. Two days later, she filed an identical request to dismiss the lawsuit, stating that she was filing it Under Duress - - For Appeal.

On about October 3, 2001, respondent caused a letter addressed to Judge Ford to be hand delivered to the superior court clerk. Respondent sent a copy the letter to Schwartz. In that letter, respondent requested that Judge Ford disqualify herself in the malpractice lawsuit. In this October 3, 2001 letter, respondent repeated her previous claims that Judge Ford was disqualified and then accused Judge Ford of committing perjury in her May 17. 2001 verified answer to respondent's statement of disqualification. According to respondent, Judge Ford committed perjury because, in her verified answer, she denied that she had prejudged the case.

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[11] "The determination of the question of disqualification is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification." (Code Civ. Proc., § 170.3, subd. (d).)

Respondent's stated basis for this accusation was that Judge Ford, in denying her repeated contentions that the court lacked jurisdiction, had ruled that the court had previously rejected that argument. Respondent also contended that this showed Judge Ford's bias and judicial misconduct and, thus, made Judge Taft's findings and rulings void. Respondent also accused Judge Ford of having ex parte communications with Schwartz by holding a hearing at which respondent failed to appear because, according to respondent, a court clerk told her that she did not need to appear. Respondent accused Judge Ford of judicial misconduct based on this alleged ex parte communication and based on her September 21, 2001 ruling that those alleged ex parte communications were not improper.

Respondent's accusations against Judge Ford were false and were made either knowing they were false or with reckless disregard for the truth. These false accusations interfered with the administration of justice because they required additional judicial time and amounted to little more than improper attempts to vacate unfavorable rulings.

In her October 3, 2001 letter, respondent also wrote:

> Judge Ford, I urge you to take the prudent course of action herein requested and recuse yourself pursuant to the pertinent Code of Civil Procedure, sections 170, et seq., and the Code of Judicial Ethics, herein cited. This, at minimum, to qualify for any benefits that might possibly flow from the mitigating effects of such a thoughtful course of action should an investigation by the . . . Commission on Judicial Performance ensue and/or any subsequent hearings on said by the esteemed justices of our Supreme Court.
>
> Lastly you might find it of value, in this instance of your career, to know that the Alameda County Law Library offers information with respect to locating and procuring competent attorney services.

In about October 2001, respondent left several telephone messages with the superior court clerk asking if Judge Ford had received her October 3, 2001 letter. On about October 15, 2001, the court clerk returned the October 3, 2001 letter to respondent because, according to the

clerk, it was an ex parte communication.[12] The clerk informed respondent that the October 3, 2001 letter would not be considered by the court. On about October 24, 2001, a superior court executive officer sent respondent a letter informing respondent that it was improper to leave ex parte messages for a judge and that the court staff cannot respond to them. Respondent received that letter.

On about October 22, 2001, Schwartz filed a memorandum of costs in the malpractice lawsuit.

On about October 24, 2001, respondent left a message on Judge Taft's judicial assistant's voicemail in which respondent requested a calendaring of a motion to vacate Judge Taft's prior ruling re disqualification and motion re: contempt against Judge Ford. On about October 25, 2001, Judge Taft sent respondent a letter, with copies to Judge Ford and Schwartz. In that letter, Judge Taft denied respondent's request to calendar such a motion or motions because he was unaware of any grounds, legal or equitable, that would permit him to hear such a motion or motions more than four months after he found that Judge Ford was not disqualified. Respondent received Judge Taft's letter.

On about November 5, 2001, respondent filed a motion to strike costs. And, on about December 10, 2001, respondent appealed her lawsuit against Mr. Schwartz to the Court of Appeal.

On or about January 10, 2002, respondent filed an amended motion to strike costs.

On or about February 8, 2002, respondent filed a second statement of disqualification for cause of Judge Ford, which included an reaffirmance of respondent's first disqualification statement that was filed on May 10, 2001. This second statement was similar to respondent's

[12] It is unclear why the clerk concluded that the letter was an ex parte communication in light of the fact that respondent sent a copy of the letter to Schwartz.

first statement, which had been "denied." In her second statement, respondent again falsely accused Judge Ford of perjury, bias, and judicial misconduct. She continued to challenge the jurisdiction of the court. She claimed that by the court ruling that she had previously ruled on that challenge the court perjured itself when it stated it had not prejudged the matter. She also contended that the decision denying the motion to withdraw was void on its face and again asserting that there was an ex parte communication by the court holding a hearing at which she failed to appear. Respondent's second statement was frivolous, was essentially similar to the first motion, and was made without basis in fact or law.[13] Respondent's accusations against Judge Ford were false and made with knowledge of its falsity or reckless disregard for the truth.

On about February 8, 2002, Judge Ford properly struck respondent's second statement of disqualification because the motion on its face did not establish grounds for disqualification. (See Code Civ. Proc., § 170.4, subd. (b) [judge may strike a statement of disqualification if, on its face, it discloses no legal grounds for disqualification]; see also Code Civ. Proc., § 170.4, subd. (c)(3) [judge may strike repetitive statements of disqualification].)

On about February 11, 2002, the superior court filed an order denying respondent's motion to strike costs. On about February 27, 2002, the superior court entered judgment against respondent in favor of Schwartz and awarded Schwartz filing fees and motions of $262 and deposition costs of $147, for a total of $409. Thereafter, respondent filed an ex parte motion for clarification. On about March 14, 2002, the superior court issued an order denying without prejudice respondent's ex parte motion for clarification subject to her bringing a noticed motion.

On about March 22, 2002, respondent filed yet a third statement of disqualification against Judge Ford. This third statement was similar to respondent's first two statements and

[13] "A party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed." (Code Civ. Proc., § 170.4, subd. (c)(3).)

attempts to obtain Judge Ford's removal. In fact, respondent wrote that her third statement serves as a reaffirmative of her first statement of disqualification and submits that her first statement remains legally effective, unchallenged, responded to, and is deemed consented to by Judge Ford. She also incorporated her second statement of disqualification and stated that her second statement remains fully operative, as Judge Ford improperly and ineffectively attempted to strike respondent's second statement of disqualification by passing on the sufficiency, in law and fact, of the second statement. She stated this even though she had not sought review of Judge Ford's order striking respondent's second statement of disqualification. Respondent stated that Judge Ford knowingly and unethically acted in excess of jurisdiction and that the court's rulings supported her claim of disqualification. She made these accusations even though it is well established that rulings, even if erroneous, are not a basis for disqualification.

Respondent also stated in her third statement of disqualification that "Judge Ford, by means of physical impairment (arising from mental shock manifesting as a physical symptom) makes her unable to properly perceive the evidence or unable to properly conduct the proceedings in this case before her. [Code Civ. Proc. §170.1(a) (7)]" This statement was false and made with reckless disregard for the truth.

Respondent again accused Judge Ford of making a perjured verified answer to her first statement of disqualification, of judicial misconduct, bias, and of obstruction of justice. All of these statements were false and made with reckless disregard for the truth.

Respondent also accused Judge Taft of preventing the submission of legal or equitable grounds for his determination; of abdicating and refusing to perform his judicial duties; of prejudgment and bias; and of extrinsic fraud. This too was false. Respondent made these statements knowing that they were false or with reckless disregard for the truth. They interfered with the administration of justice.

Respondent's third statement of disqualification was frivolous, essentially similar to respondent's first and second statements, and made without basis in fact or law. Accordingly, on about March 22, 2002, Judge Ford properly struck respondent's third statement of disqualification because on its face it did not establish legal grounds for disqualification. (See Code Civ. Proc., § 170.4, subd. (b); see also Code Civ. Proc., § 170.4, subd. (c)(3).)

On about April 10, 2002, respondent filed a second appeal with the Court of Appeal in which she challenged (1) Judge Ford's February 8, 2002 order striking respondent's second statement of disqualification; (2) the February 11, 2002 order denying respondent's motion to strike costs; (3) the February 27, 2002 cost judgment; (4) the March 14, 2002 order denying respondent's ex parte motion for clarification; and (5) the March 22, 2002 order striking respondent's third statement of disqualification.

On about May 6, 2002, respondent's first appeal was dismissed by the Court of Appeal because of respondent's failure to file an opening brief and she had been given three extensions of time to file her opening brief. On about July 10, 2002, the remittitur in respondent's first appeal was issued.

During briefing in her second appeal, respondent submitted to the Court of Appeal an application for extension of time to file her opening brief. On about June 7, 2002, the Court of Appeal issued an order granting respondent an extension of time to file her opening brief, but stating that respondent may not use this second appeal as a vehicle to challenge rulings made before September 21, 2001. The Court of Appeal filed this order because several statements on respondent's application for an extension of time to file the opening brief suggested respondent intended to brief issues pertinent only to the underlying matter, and thus part of her first appeal, which had been dismissed. The court stated that respondent may not challenge rulings underlying the September 21, 2001 judgment because her right to challenge such rulings was

terminated when the court dismissed her first appeal. It held that the cost judgments and rulings directly underlying it are the only subjects of this appeal. The court ordered that respondent may only raise issues relating to the court's February 11, 2002 and February 27, 2002 judgment awarding $409 in costs. The court admonished respondent that if her brief strays from the subject matter of the appeal without good cause the court may impose sanctions.

On or about September 16, 2002, respondent filed a 39-page opening brief. Despite the Court of Appeal's order and admonition that respondent may only raise issues relating to the Superior Court's February 11, 2002 and February 27, 2002 judgment awarding $409 in costs, respondent spent only 2 of the 39 pages in her opening brief addressing the orders after the September 2001 judgment. Instead, respondent spent considerable effort in the brief challenging the orders of the superior court made in October 2000, April 2001, and September 2001, which, among other things, allowed Schwartz time to answer the complaint and denied respondent's statement of disqualification. But, as the Court of Appeal's June 7, 2002 order made clear, the Court of Appeal lacked jurisdiction to pass on the propriety of those orders in respondent's second appeal. The dismissal of the first appeal operated as an affirmance of the September 2001 judgment and the Court of Appeal's jurisdiction on that judgment and issues ceased when the remittur issued. Moreover, respondent could not use an appeal from post judgment orders to litigate issues that pertain to the underlying judgment and, thus, should have been raised in the previous appeal. Respondent's opening brief violated the court's June 7, 2002 order and raised issues that were not appropriate for the appeal by presenting a voluminous record and a lengthy brief consisting almost entirely of arguments attacking the judgment the Court of Appeal previously affirmed.

On about March 3, 2003, the Court of Appeal notified respondent that it was considering the imposition of sanctions against respondent and providing respondent an opportunity to respond as to why sanctions should not be awarded.

On about March 28, 2003, the Court of Appeal issued an opinion in respondent's second appeal in which it affirmed the superior court's orders striking respondent's motions to disqualify, denying her motions to strike costs, and requiring her to pay costs in the amount of $409. On the same day, the Court of Appeal also filed an imposing sanctions of $1,500 against respondent because she addressed in her opening brief issues the court specifically ordered and admonished her not to address and which were beyond the court's jurisdiction. The court had previously warned respondent that sanctions would likely result if she attempted to address issues not before the court. Respondent received a copy of this opinion and order of sanctions on about April 7, 2003.

Respondent failed to report the sanctions to the State Bar within 30 days after the time she had knowledge of the Court of Appeal's sanction order. Moreover, the order of sanctions required that respondent pay the $1,500 to the Clerk of the Court of Appeal within 60 days (i.e., May 27, 2003). Respondent, however, has never paid any portion of the $1,500 in sanctions.

**Count 1 – Maintain Only Just Actions (Bus. & Prof. Code, § 6068, subd. (c))**[14]

The record clearly establishes that respondent willfully violated her duty, under section 6068, subdivision (c), to maintain only those actions that appear to her to be legal or just when she repeated her meritless contention that the superior court lacked jurisdiction; she repeated her meritless contention that the superior court should have entered a default judgment against Schwartz; she improperly requested the entry of Schwartz's default only one day after the

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

superior court granted him 10 days to file an answer; she repeatedly filed baseless, frivolous, and false statements of disqualifications against Judge Ford; and she briefed issues in her second appeal that the Court of Appeal had already ruled were not part of the second appeal and were beyond its jurisdiction.

**Count 2 – Failure to Report Sanctions (§ 6068, subd. (o)(3))**

The record clearly establishes that respondent willfully violated her duty, under section 6068, subdivision (o)(3), to report to the Court of Appeal's $1,500 sanctions order to the State Bar in writing within 30 days after her knowledge of that order.

**Count 3 – Failure to Obey Court Order (§ 6103)**

The record clearly establishes that respondent willfully violated her duty, under section 6103, to obey court orders requiring her to do or forbear an act connected with or in the course of her profession, which she ought in good faith to do or forbear by failing to pay the $1,500 sanctions as ordered by the Court of Appeal.[15]

**Count 4 – Failure to Maintain Respect for Judicial Officers (§ 6068, subd. (b))**

The record clearly establishes that respondent willfully violated her duty, under section 6068, subdivision (b), to maintain the respect due judicial officers when she continued to argue with Judge Ford after the April 18, 2001 hearing on Schwartz's motion to strike, which required that the bailiff escort her out of the courtroom and when she threatened Judge Ford with

[15] The court dismisses with prejudice the other alleged violations of section 6103 that are set forth in count 3 because they are duplicative of the misconduct charged and found under various other counts. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148 ["appropriate level of discipline for an act of misconduct does not depend upon how many rules of professional conduct or statutes proscribe the misconduct"].)

proceedings before the Commission on Judicial Performance and the California Supreme Court.[16]

**Count 5 – Threatening Charges to Gain Advantage (Rules Prof. Conduct, rule 5-100(A))**

In count 5, the State Bar charges that respondent violated her duty, under Rules of Professional Conduct, rule 5-100(A), not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute. However, in count 4, the State Bar charged and the court found that respondent willfully violated section 6068, subdivision (b) when she threatened Judge Ford with proceedings before the Commission on Judicial Performance and the California Supreme Court. Accordingly, the court dismisses count 5 with prejudice. (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148.)

**Count 6 – Moral Turpitude (§ 6106)**

In count 6, the State Bar, in effect, charges that, when respondent's acts of misconduct in (1) falsely accusing Judge Ford of bias, judicial misconduct, perjury, ex parte communications, purposeful erroneous rulings, and physical impairment; (2) threatening Judge Ford with proceedings before the Commission on Judicial Performance and the Supreme Court; and (3) filing a request for the entry of Schwartz's default just one day after respondent heard Judge Ford grant Schwartz 10 days to file an answer are viewed collectively, they clearly establish that respondent's misconduct involves moral turpitude in willful violation of section 6106. The court agrees. (Cf. *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 936; see also *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 520 [it is not duplicative to find that an attorney's violation of a Rule of Professional Conduct also

[16] The court dismisses with prejudice the other alleged violations of section 6068, subdivision (b) that are set forth in count 4 because they are duplicative of the misconduct charged and found under various other counts. (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 148.)

violates section 6106 when the rule violation is so egregious that it rises to the level of an act involving moral turpitude].)

## MITIGATING/AGGRAVATING CIRCUMSTANCES

### Factors in Mitigation

According to the State Bar, there are no mitigating circumstances in this proceeding. The court, however, takes judicial notice of respondent's official State Bar membership records and finds that respondent has no prior record of discipline. Accordingly, the court holds that she is entitled to mitigating credit for her 10 years of discipline free practice from her admission in June 1990 until October 2000, when the present misconduct first began. (Rules Proc. of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i) [all further references to standards are to this source].)

### Factors in Aggravation

Respondent's misconduct in this proceeding involves multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent's failure to file a response to the NDC in this proceeding, which allowed her defaults to be entered, is an aggravating circumstances. (Std. 1.2(b)(vi).)

Respondent's failure to pay the $1,500 in sanctions that the Court of Appeal imposed on her demonstrates indifference towards rectification of the consequences of her misconduct and indicate that she fails to appreciate the seriousness of her misconduct. These, of course, are also aggravating circumstances. (Std. 1.2(b)(v).)

## V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.3, which applies to respondent's willful violation of section 6106. Standard 2.3 provides:

> Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The generalized language of standard 2.3, however, provides little guidance. (Cf. *In re Morse* (1995) 11 Cal.4th 184, 206.)

To support its contention that a 120-day suspension is the appropriate level of discipline in this proceeding, the State Bar cites to some 15 cases without any meaningful analysis or discussion.[17] Notably, the State Bar has not cited and discussed any prior case dealing with substantially similar misconduct as that in the present proceeding.

In the court's view, the gravamen of respondent's misconduct is her abusive conduct

[17] Furthermore, in its brief on discipline, the State Bar initially states (without any analysis and a citation only to *In re Silverton* (2005) 36 Cal.4th 81, 92) that "respondent's discipline would range between one-year actual suspension and disbarment." Then, without explanation, the State Bar states in its conclusion that respondent should be suspended not for one year, but for only 120 days. The State Bar's briefing added little to the appropriate adjudication of this proceeding.

towards Judge Ford, which this court has found to involve moral turpitude. In *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, the attorney violated his duty to bring only such actions and proceedings as are just and not to commence or continue an action from any corrupt motive or interest when he sued a court reporter who had reported a deposition taken by one of the attorney's associates. The attorney and associate misused the process of the courts to pursue and continue a lawsuit against the court reporter to redress a $45.00 fee dispute. Because of the attorney's spite and vindictiveness in pursing that lawsuit, the court reporter was forced to pay more than $4,000 in legal fees and costs to defend herself against the attorneys' claims. For that misconduct, the attorney was placed on one year's stayed suspension, two years' probation, and thirty days' actual suspension. In addition, he was ordered to pay the court reporter $4,375 in restitution. Respondent's misconduct, however, is more egregious than that of the attorney in Sorensen primarily in that respondent's misconduct involved moral turpitude.

On balance, the court concludes that the appropriate level of discipline to recommend in this proceeding is a two-year stayed suspension and a ninety-day suspension. What is more, the court independently concludes that, as a condition precedent to terminating her 90-day suspension, respondent should be required to make restitution to Schwartz for the $409 in costs (plus interest) that were awarded to him in the superior court's February 27, 2002 judgment in the malpractice lawsuit. (Cf. *Sorensen v. State Bar, supra*, 52 Cal.3d at pp. 1044-1045.)

Finally, the court independently concludes that, as another condition precedent to terminating her 90-day suspension, respondent should be required to obey the Court of Appeal's March 28, 2003, sanction order by paying the Clerk of the Court of Appeal $1,500 (plus interest). (Cf. *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 869.)

## RECOMMENDED DISCIPLINE

The court recommends that respondent **TE JUNG CHANG** be suspended from the practice of law in California for two years and that execution of the two-year period of suspension be stayed subject to the following conditions:

1. Te Jung Chang is suspended from the practice of law for a minimum of 90 days, and she will remain suspended until the following requirements are satisfied:

    i. She makes restitution to Attorney Justin Schwartz in the amount of $409 plus 10 percent interest from February 27, 2002 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Attorney Justin Schwartz, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles.

    ii. She pays sanctions to the Clerk of the Court of Appeal of the State of California, First Appellate District, in the amount of $1,500 plus 10 percent interest from May 27, 2003, and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles.

    iii. The State Bar Court grants a motion to terminate her suspension pursuant to rule 205 of the Rules of Procedure of the State Bar. Te Jung Chang must comply with the conditions of probation, if any, imposed by the State Bar Court as a condition for terminating her suspension.

    iv. If she remains suspended for two years or more as a result of not satisfying the preceding conditions, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)

## MPRE & RULE 9.20

It is also recommended that Te Jung Chang be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the discipline imposed herein or during the period of her actual suspension, whichever is later, and to furnish satisfactory proof of such to the State Bar's Office of Probation within that same time period.

It is further recommended that Te Jung Chang 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 days, respectively, after the effective date of the Supreme Court order herein. **Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.** (Cal. Rules of Court, rule 9.20(d).)

## COSTS

The court recommends 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.

Dated: April 17, 2009.

**PAT E. McELROY**
Judge of the State Bar Court