PUBLIC MATTER **FILED AUGUST 9, 2010**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **CHRISTIE BARA MITCHELL-GUTTMAN,** **Member No. 197975,** A Member of the State Bar.	)	Case Nos.: **07-O-12021-PEM** (07-O-12022-PEM; 07-O-12025-PEM; 07-O-14011-PEM; 09-O-10923-PEM; 09-O-11224-PEM) **DECISION**

I. Introduction

In this disciplinary proceeding, **CHRISTIE BARA MITCHELL-GUTTMAN** (respondent) is charged with multiple counts of misconduct in six client matters. The alleged misconduct includes (1) committing acts of moral turpitude; (2) failing to perform competently; (3) failing to refund unearned fees; (4) failing to account for client funds; (5) failing to release client files; (6) failing to respond to client inquiries; (7) failing to obey court orders; (8) failing to report judicial sanctions; (9) fabricating evidence; and (10) failing to cooperate in state bar investigations.

This court finds, by clear and convincing evidence, that respondent is culpable of two counts of misconduct, neither of which involves moral turpitude. In light of all the relevant factors, the court concludes that the appropriate discipline for the found misconduct is one year's stayed suspension and two year's probation with conditions, including a thirty-day suspension.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on August 27, 2009. On September 21, 2009, the proceeding was referred to the State Bar's Alternative Discipline Program. On October 5, 2009, respondent filed a response to the NDC. On November 10, 2009, after the parties were unable to reach a stipulation as to facts and conclusions of law (Rules Proc. of State Bar, rule 802), the proceeding was returned to this court for adjudication as a standard discipline proceeding.

A seven-day trial was held on March 16, 17, and 18; April 20, 21, and 22; and May 11, 2010. The State Bar was represented by Deputy Trial Counsel Mark Hartman, and respondent was represented by Attorney Michael Locks.

After closing arguments on May 11, 2010, the court took this case under submission for decision. Then, on July 12, 2010, respondent filed a request to take judicial notice of a petition for writ of mandate and alternative motion to set aside a sanctions order together with the supporting points and authorities and copies of the record, which respondent filed in the Sutter County Superior Court on July 8, 2010. The State Bar filed an opposition to respondent's request for judicial notice on July 22, 2010.[1] And respondent filed a reply to the State Bar's opposition on August 3, 2010. The court grants respondent's request for judicial notice.[2]

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[1] In its opposition, the State Bar does not request that the record be reopened so that it may cross-examine respondent if the court grants her request for judicial notice. Nor does the State Bar assert that it will be denied a fair hearing if the court grants the request for judicial notice. (Rules Proc. of State Bar, rule 214.)

[2] Of course, in taking judicial notice of these superior court pleadings, this court does not take judicial notice of the hearsay statements and allegations in the pleadings as being true. Courts "only take judicial notice of the *truth* of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments. [Citations.]" (*People v. Thacker* (1988) 175 Cal.App.3d 594, 599, italics original.)

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the parties' stipulation[3] and on the documentary evidence and testimony admitted at trial.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 3, 1998, and has been a member of the State Bar of California since that time.

B. Credibility Determinations

With respect to the credibility of the witnesses, the court has carefully weighed and considered each witness's demeanor while testifying; the manner in which each witness testified; each witness's interest (or lack of interest) in the outcome of this proceeding; and each witness's capacity to accurately perceive, recollect, and communicate the matters on which he or she testified. (See, e.g., Evid. Code, § 780 [lists of factors to consider in determining credibility].) In addition, the court carefully considered and weighed each witness's testimony in light of the entire record.

The court finds that respondent's testimony on many of the disputed facts in each of the six client matters is very credible. Moreover, in both the Harshbarger client matter and the Meek client matter, the court also finds that respondent's testimony is significantly more credible than that of the State Bar's witnesses.

C. The *Cahill* Dissolution Matter (Case Number 09-O-10923-PEM)

In early 2004, respondent represented Brian Cahill in his marital dissolution proceeding, which was pending in the Sutter County Superior Court (*Cahill* dissolution matter). Cahill

[3] The parties agreed that the facts contained in the stipulation constitute an admission of the facts.

retained respondent though ARAG (an employee assistance attorney panel that is prepaid). At that time, respondent's law office was located at 11140 Fair Oaks Boulevard #C-1, Fair Oaks, California (Fair Oaks address).

On January 3, 2005, respondent informed the superior court that her new address was 5050 Sunrise Boulevard, Suite C-1, Fair Oaks, California (Sunrise Address). And, on March 4, 2005, respondent changed her official State Bar membership records address to 8863 Greenback Lane #225, Orangevale, California (Greenback Lane address). Respondent did not file a change-of-address notice in the *Cahill* dissolution matter because she honestly and reasonably believed that she was no longer Cahill's attorney of record.

Respondent testified credibly that, in August 2005, she (1) determined that, in light of the fact that her client would not pay respondent for her long travel time from her office to the superior court and that she was dealing with serious personal issues (e.g., she was involved in her own juvenile dependency case in which she lost custody of one of her children), she could no longer represent Cahill and (2) discussed the matter with Cahill, who allowed her to withdraw from (substitute out of) the case. Melody Hendricks (respondent's law office administrator at the time) testified credibly that, in either August or September 2005, she (i.e., Hendricks) personally delivered, to Cahill, Cahill's client file and a substitution-of-attorney form in which respondent was "substituted out" as Cahill's attorney and in which Cahill was "substituted in" with the designation "Party is representing self." (See, e.g., ex. F, question no. 6.) For whatever reason, the substitution-of-attorney form was never filed with the superior court in the *Cahill* dissolution matter or, if it was filed, it never made it into the superior court case file. In any event, respondent honestly believed that it would be and was filed with the court.

On November 18, 2005, respondent did not appear at a hearing in the *Cahill* dissolution, and the superior court thereafter issued an order to show cause (OSC) requiring respondent to

appear in court on December 5, 2005, and show cause why she should not be sanctioned for not appearing in court on November 18, 2005. Respondent, however, did not appear in court on the OSC on December 5, 2005. The superior court, therefore, sanctioned respondent $500 and reset the OSC hearing for January 30, 2006. The record does not establish, by clear and convincing evidence, that respondent was given notice of or that she otherwise knew about the November 18, 2005 or the December 5, 2005 court proceedings in advance.

Also, on December 5, 2005, the superior court clerk mailed a copy of the December 5, 2005 court clerk minutes to respondent at her Sunrise Address even though respondent had not been at that address since March 2005. Those minutes recite that the superior court sanctioned respondent $500 for failing to appear on December 5 and reset the OSC hearing for January 30, 2006.

Respondent failed to appear at the January 30, 2006 OSC hearing. Therefore, on January 30, 2006, the superior court set the Cahill dissolution matter for another status conference on April 24, 2006. The superior court clerk mailed, to respondent at the Sunrise Address (but not the Greenback Lane address), a copy of the January 30, 2006 court minutes, which recite that a further status conference was set for April 24, 2006.

Even though it is not clear how respondent learned about the April 24, 2006 status conference, the record establishes that respondent was present during at least part of the conference.[4] At the April 24, 2006 status conference, the superior court set the matter: (1) for a status conference on May 15, 2006; (2) for a settlement conference on July 17, 2006; and (3) for a court trial on July 21, 2006. On May 15, 2006, even though respondent and Cahill were not

[4] Respondent insists that she did not appear at the April 24, 2006 status conference, but the superior court's docket indicates that she was present, and opposing counsel testified that she was there. It is plausible that respondent was in court on April 24, but honestly does not remember it. In a contentious family law case, there might be 20, 30, or more court hearings in a single year.

present in court, the court continued the matter until July 17, 2006, "by agreement."[5] (Ex. 8, p. 8.)

Then, on July 17, 2006, respondent failed to appear at the settlement conference, and the superior court, therefore, sanctioned her $1,000 for not appearing. The court also set the matter for a trial setting hearing on July 21, 2006.

On July 21, 2006, respondent failed to appear at the trial setting hearing; the superior court set the matter for a status conference on September 18, 2006; and the superior court clerk mailed and faxed copies of the July 21, 2006 court minutes to respondent at the Sunrise Address (but not the Greenback Lane address). A short time later, both the mailed copy and the faxed copy of the minutes were returned to the court undelivered. The United States Postal Service (Postal Service) returned as undeliverable, to the superior court, the mailed copy stamped:

Return to Sender
Not Deliverable as Addressed
Unable to Forward

The faxed copy of the minutes were returned to the superior court marked in bold black ink: "Not at this Fax # !!" (See ex. 8, pp. 16-17.)

On September 18, 2006, respondent failed to appear at the status conference; the superior court sanctioned respondent $1,000 for not appearing and set the matter for a status conference on December 11, 2006; and the clerk mailed and faxed copies of the September 18, 2006 minutes to respondent at both the Fair Oaks Address and the Sunrise Address (but not the Greenback

[5] The superior court's records do not identify the "parties" to this agreement. Thus, this court must presume that the agreement was between Cahill in propria persona and the attorney for Cahill's wife. (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563 ["All reasonable doubts must be resolved in [respondent's] favor . . . , and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt [must] be accepted [by the court]. [Citation.]"].)

Lane address). The Postal Service returned both of the mailed copies to the superior court bearing the postal mark:

Return to Sender
Not Deliverable as Addressed
Unable to Forward

At some point around mid-2006, if not before, Cahill consulted Attorney Robert Fruitman about the *Cahill* dissolution matter,[6] and like Cahill retained respondent, Cahill retained Attorney Fruitman through ARAG.

Cahill retained Attorney Fruitman to represent him and Attorney Fruitman began representing Cahill in the *Cahill* dissolution matter no later than September 28, 2006.[7] Yet, Fruitman waited until October 24, 2006, to send respondent a letter asking her to execute a substitution-of-attorney form. In his October 24 letter, which he sent to respondent at the Greenback Lane address (respondent's correct address), Fruitman also asked respondent for Cahill's file.

Respondent testified credibly that she promptly responded to Fruitman's letter by providing Fruitman with a signed substitution-of-attorney form. In fact, Melody Hendricks, respondent's office administrator, testified credibly that she personally delivered that substitution form to Attorney Fruitman's office. However, on November 29, 2006, Fruitman faxed a letter to respondent in which he again asked respondent to send him a substitution-of-attorney form and

[6] The court does not question the candor of Attorney Fruitman's testimony. But his demeanor while testifying and the substance of his testimony lead the court to find that his memory regarding the relevant events is not clear and accurate. Accordingly, his testimony was of little assistance to the court.

[7] In October 2006, Attorney Fruitman billed ARAG for legal services performed on the *Cahill* dissolution matter on September 28, 2006. And ARAG thereafter paid Fruitman $2,000 for those services. Both respondent and Attorney Joedy DeFrank, another ARAG attorney, testified credibly that ARAG never pays an attorney until the attorney submits a bill.

Cahill's file.[8] Respondent did not to respond to the November 29, 2006 letter presumably because Hendricks had already delivered a signed substitution form to Fruitman's office and because Hendricks had already given Cahill his complete file in August or September 2005.

For whatever reason, the substitution-of-attorney form that respondent provided to Attorney Fruitman was also never filed with the superior court or, if it was filed, it never made it into the court's case file. Thus, respondent remained incorrectly listed as Cahill's attorney of record in the *Cahill* dissolution matter.[9]

Respondent did not appear at a status conference in the *Cahill* dissolution matter on December 11, 2006. And on December 11, 2006, the superior court imposed sanctions of $1,000 for respondent's failure to appear at the status conference and reset the status conference for February 26, 2007. On that same date, the court properly served respondent at the Greenback Lane address (respondent's official membership records address) with the court clerk minutes indicating that the court imposed sanctions of $1,000 for respondent's failure to appear at the December 11, 2006 status conference, and that the superior court reset the status conference to February 26, 2007. Respondent testified credibly that she did not receive the December 11, 2006 minutes even though they were mailed to her at the Greenback Lane address.

On February 26, 2007, respondent again failed to appear at the status conference, and the superior court set the matter for a further status conference on May 7, 2007.

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[8] In the letter's "inside address," Fruitman listed both respondent's Greenback Lane address and her Fair Oaks address even though she had not been at the Fair Oaks address since January 2005.

[9] Without question, as Cahill's new attorney, Attorney Fruitman had a duty to promptly notify opposing counsel and the superior court of his new representation. Fruitman also had a clear duty to promptly file a motion to replace respondent as Cahill's attorney of record if Fruitman did not receive a signed substitution form from respondent as he asserts. His obvious failure to fulfill these duties, not only interfered with the proper administration of justice, but it has also given him, at least, some personal "interest" in the outcome of this disciplinary proceeding, which this court must consider in weighing his credibility as a witness. (Evid. Code, § 780, subd. (f).)

On March 11, 2007, the clerk properly served respondent at the Greenback Lane address with a copy of the February 26, 2007 court clerk minutes, which recite that the court set the matter for a further status conference on May 7, 2007. [10] On May 7, 2007, respondent failed to appear at the status conference and the superior court set the matter for a further status conference on May 21, 2007. On May 7, 2007, the superior court again sanctioned respondent $2,000 for failing to appear at the hearing and ordered her to pay it forthwith. It also ordered respondent to be present at the May 21, 2007 status conference or it would consider striking Cahill's response.

On May 11, 2007, the superior court properly served respondent at the Greenback Lane address with a copy of the court clerk minutes dated May 7, 2007, indicating that the court set the matter for a further status conference on May 21, 2007; that respondent was ordered to pay the $2,000 in sanctions forthwith; and that respondent was ordered to be present at the May 21, 2007 status conference or the court would consider striking Cahill's response.

Thereafter, respondent failed to pay the sanctions and failed to appear at the May 21, 2007 status conference. On May 23, 2007, respondent provided Fruitman with another executed substitution-of-attorney form, which Attorney Fruitman filed with the superior court on the same day.

According to Attorney Fruitman, the *Cahill* dissolution proceeding remains unresolved to this day, which is more than three years after he formally substituted into that case, and which is more than three and one-half years after he was paid by ARAG to resolve the case.

Noticeably absent from the State Bar's case with respect to counts one(A) through one(E) is the testimony of Cahill. (See, generally, *Breland v. Traylor Engineering & Manufacturing Co.*

[10] On April 17, 2007, opposing counsel was still sending mail in the *Cahill* dissolution matter to respondent at the Fair Oaks Address. In fact, it was not until May 7, 2007, that opposing counsel sent anything to respondent at the Greenback Lane address (her membership address).

(1942) 52 Cal.App.2d 415, 426 ["A defendant is not under a duty to produce testimony adverse to himself, but if he fails to produce evidence that would naturally have been produced he must take the risk that the trier of fact will infer, and properly so, that the evidence, had it been produced, would have been adverse."]; Evid. Code, §§ 412, 413.)

Count One(A): Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))[11]

In count one(A), the State Bar charges that respondent willfully violated rule 3-110(A), which provides that an attorney must "not intentionally, recklessly, or repeatedly fail to perform legal services with competence." The record fails to establish a violation of rule 3-110(A) by clear and convincing evidence.

Respondent testified credibly that she did not receive the court's notices regarding hearings she did not attend and the sanctions for a number of reasons, including the fact that the court sent notices to the wrong address, that an abusive ex- husband who spent a year in the county jail for spousal abuse had access to her mail and stole and tampered with her mail for vindictive reasons, and that she had trouble with the her Greenback Lake address as it was a post-office box. This court finds that respondent was not given or did not receive notice of the hearings she "missed" or the sanctions imposed on her in the *Cahill* dissolution proceeding and did not otherwise have knowledge of them until April 2009 when the State Bar notified her that she had been sanctioned $5,501 by the superior court.[12]

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[11] Unless otherwise noted, all further references to rules are to these Rules of Professional conduct.

[12] The court's finding is supported by, inter alia, the credible testimony of respondent and Hendricks; the fact that the superior court sent many notices to the wrong address; the fact that Cahill's wife's attorney sent mail to respondent at the wrong address. Also, the court finds that respondent's abusive ex-husband burglarized her home and took many of her court files and computer in 2006. And that, as late as 2009, this ex-husband wrongfully had access to her *post* office box. Moreover, Superior Court Judge Thomas Cecil testified respondent frequently appeared in his court and did a very good job advocating for her clients.

Respondent's representation of Cahill is not a model to which one should aspire. But, at most, the record establishes is that respondent was negligent (e.g., she did not make sure that Cahill filed the substitution-of-attorney form that respondent's administrator took to Cahill in August or September 2005). And, as the review department has repeatedly held, negligence, "even that amounting to legal malpractice, does not establish a rule 3-110(A) violation." (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) Accordingly, count one(A) is dismissed with prejudice.

Count One(B): Failure to Return Client File (Rule 3-700(D)(1))

In count one(B), the State Bar charges that respondent willfully violated rule 3-700(D)(1), which requires an attorney whose employment has terminated to promptly release to the client, at the client's request, all of the client's papers and property. The record establish that respondent released to Cahill his complete client file in either August or September 2005 when he authorized her to withdraw from employment. Thus, when Attorney Fruitman requested Cahill's client file from respondent in October and November 2006, respondent had nothing to send him. The record does not establish that respondent violated rule 3-700(D)(1), and count one(B) is dismissed with prejudice.

Count One(C): Failure to Obey Court Order (Bus. & Prof. Code, § 6103)[13]

In count one(c), the State Bar charges that respondent violated section 6103, which provides that an attorney's willful "disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

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

Before an attorney may be disciplined for violating a court order under section 6103, the State Bar must prove, by clear and convincing evidence, that there was a *final, binding court order* requiring the attorney to act or to forbear from acting with respect to act connected with or in the course of his. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 787-788.) The State Bar must prove that the order was final and binding because, in California, an attorney cannot be disciplined for violating a court order issued without or in excess of the court's jurisdiction. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 604-605.) Moreover, respondent's failure to challenge the superior court's sanctions orders when they were issued does not preclude her from asserting the invalidity of them in this court. (*Ibid.*; *id.* at pp. 606-607 (conc. opn. of Obrien, P. J.).) In fact, because respondent did not challenge those orders before the trial in this disciplinary proceeding, this court has duty to determine the validity of the superior court's orders. (*Id.* at p. 606 (conc. opn. of Obrien, P. J.), citing *People v. Gonzalez* (1996) 12 Cal.4th 804, 820-822.)

Moreover, the State Bar must establish, by clear and convincing evidence, the subjective requirement of section 6103 (i.e., that the designated act was an act that the attorney *ought in good faith* do or refrained from doing). To conclude otherwise would render parts of section 6103 meaningless.

Finally, the State Bar must establish, by clear and convincing evidence, that the attorney had actual knowledge of the court order before he or she disobeyed it. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at p. 787.) "Such knowledge is an essential element to establishing that an attorney wilfully disobeyed or violated it in violation of section 6103. [Citations.]" (*Ibid*.) In the present proceeding, the State Bar failed to establish, by clear and convincing evidence, that respondent had actual knowledge of the superior court's orders directing her to appear in court in advance of the times she was to have appeared. Accordingly,

that portion of the count one(C) charging respondent with violating section 6103 "By failing to appear at the February 26, 2007, May 7, 2007 and May 21, 2007 status conferences" is dismissed with prejudice.

In the present proceeding, the State Bar also failed to establish, by clear and convincing evidence, that the superior court's sanction orders are final, binding court orders. In California, superior courts do not have the inherent authority to impose the sanctions or to discipline attorneys. (*Clark v. Optical Coating Laboratory, Inc*. (2008) 165 Cal.App.4th 150, 168, rehearing denied, review denied.) The superior courts have jurisdiction to impose sanctions only when expressly authorized to do so by statute (or rule of court). Thus, to establish that validity of a superior court sanction order, the State Bar must establish (1) the statute or rule of court under which the superior court issued its order and (2) that the superior court complied with any statutory procedural requirements and with basic procedural due process. All sanction orders/awards must comply with the basic procedural due process requirements of notice and an opportunity to be heard in a meaningful manner at a meaningful time. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 652; *Bergman v. Rifkind & Sterling, Inc*. (1991) 227 Cal.App.3d 1380, 1387.)

On March 24, 2008, and again on June 4, 2008, the superior court ordered respondent to pay $3,150 of the $5,501 of the previously ordered sanctions directly to Attorney Eleanor Frank Bordsen forthwith. The record establishes that the superior court issued those two orders on the motion of Attorney Bordsen, which sought sanctions against respondent under the authority of Family Code section 271. Therefore, respondent's failure to pay $3,150 of the $5,501 sanctions cannot establish a section 6103 violation.

First, Attorney Bordsen never even served a copy of her motion for sanctions on respondent. She served a copy only on Attorney Fruitman. Second, a sanction under Family

Code section 271 can be imposed only on a party and not an attorney.[14] (Fam. Code, § 271, subds. (b), (c); 3 Raye & Pierson, Cal. Civ. Practice, Family Law Litigation (Thomson West 2003) § 10:14, citing *In re Marriage of Daniels* (1993) 19 Cal.App.4th 1102, 1110.)

The record fails to establish by what authority the superior court imposed the remaining $2,351 ($5,501 less $3,150) in sanctions on respondent. Moreover, the State Bar failed to establish that respondent was afforded basic procedural due process (i.e., notice and an opportunity to be heard in a meaningful manner at a meaningful time) before the superior court sanctioned her. In sum, respondent's failure to pay the remaining $2,351 of the $5,501 in sanctions cannot establish a section 6103 violation.

Count one(C) is dismissed with prejudice.

Count One(D): Failure to Report Judicial Sanctions (§ 6068, subd.(o)(3))

The State Bar charges respondent with violating section 6068, subdivision (0)(3), which requires an attorney "to report to the [State Bar], in writing, within 30 days of the time the attorney has knowledge of . . . [¶] The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000)."

As noted *ante*, the court finds that respondent was not given or did not receive notice of the hearings she "missed" or the sanctions imposed on her in the *Cahill* dissolution proceeding and did not otherwise have knowledge of them until April 2009 when the State Bar notified her that she had been sanctioned $5,501 by the superior court. Thus, no violation of section 6068, subdivision (0)(3) is shown.

[14] Moreover, attorneys were once subject to sanctions under Code of Civil Procedure section 128.5. However, section 128.5 was repealed for actions filed on or after January 1, 1995. (*Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal.App.4th 150, 164-165, rehearing denied, review denied.) Thus, the superior court's sanctions could not have been authorized by section 128.5.

Count One(E): Moral Turpitude – Fabrication of Evidence (§ 6106)

The record does not establish that respondent fabricated evidence in willful violation of section 6106. Respondent did not intend to mislead the State Bar and, in fact, the State Bar was not misled when she wrote "October 26, 2006" on the substitution-of-attorney form that she sent to the State Bar. Accordingly, count one(E) is dismissed with prejudice.

D. The *Harshbarger* Dissolution Matter (State Bar Court Case Number 09-O-11224-PEM)

Before November 2008, Corrie Harshbarger represented herself in her marriage dissolution proceeding, which was pending in the Placer County Superior Court (*Harshbarger* dissolution matter). Then, on November 5, 2008, Harshbarger employed respondent to complete the matter and paid respondent an advanced fee of $1,000, which was to be applied to respondent's hourly rate of $200.

On November 16, 2008, Harshbarger sent respondent an email rescheduling her appointment with respondent for November 18, 2008. On November 18, 2008, respondent met with Harshbarger, and they filled out a number of forms, including income and expense disclosures.

On December 8, 2008, after receiving an email from Harshbarger inquiring as to whether her husband had been sent copies of the paperwork they had filled out, respondent sent an email to Harshbarger stating that the paperwork had been sent to Harshbarger's husband, but that there might be a problem with the address. On December 9, 2008, Harshbarger and respondent exchanged emails regarding the correct address of Harshbarger's husband. Then, on December 18, 2008, respondent sent an email to Harshbarger in which respondent told Harshbarger "I need you to come in and sign the final declaration of disclosure, and I will need updated pay-stubs."

On December 30, 2008, respondent met with Harshbarger again and drafted default and final disclosure pleadings. After Harshbarger returned home after meeting with respondent,

Harshbarger sent respondent an email in which she expressed guilt over their not sending her husband a courtesy copy of the pleadings they completed earlier that day. Later that evening, respondent sent Harshbarger an email in which respondent stated "I have to send [your husband] a copy of everything, before I file it." Thus, it is clear that Harshbarger knew that, as of December 30, 2008, respondent had not filed anything with the superior court.

On January 7, 2009, Harshbarger terminated respondent's employment because respondent was allegedly negligent in not filing her paperwork on November 18, 2008. In addition, Harshbarger requested that respondent refund the entire $1,000 advanced fee as Harshbarger did not believe that respondent had earned any of the fee.

On February 14, 2009, Harshbarger received a refund from respondent of $497.75. And, on February 15, 2009, Harshbarger informed respondent that she was not satisfied with the refund respondent provided. Respondent did not refund the remaining $502.25 to Harshbarger, and Harshbarger refused to go to arbitration.

Count Two(A): Failure to Perform with Competence (Rule 3-110(A))

The record does not establish, by clear and convincing evidence, that respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence. Even if respondent were negligent as Harshbarger alleged on January 7, 2009, it is clear that negligence, "even that amounting to legal malpractice, does not establish a rule 3-110(A) violation." (*In the Matter of Torres, supra*, 4 Cal. State Bar Ct. Rptr. at p. 149.) Accordingly, count two(A) is dismissed with prejudice.

Count Two(B): Failure to Communicate (§ 6068, subd. (m))

The record does not establish, by clear and convincing evidence, that respondent failed to promptly respond to any *reasonable* status inquiry made by Harshbarger or that respondent failed to inform Harshbarger of any *significant* development in the *Harshbarger* dissolution

matter. Respondent represented Harshbarger for less than two months, and Harshbarger terminated respondent's employment before respondent could serve and file the necessary pleadings. The default pleadings were from the fact that Harshbarger had filed the dissolution matter in propria persona, and her husband had not filed a response to the petition. Count two(B) is dismissed with prejudice.

Count Two(C): Moral Turpitude – Misrepresentation (§ 6106)

The record does not establish, by clear and convincing evidence, that respondent made a misrepresentation to Harshbarger. Accordingly, count two(C) is dismissed with prejudice.

Count Two(D): Failure to Refund Unearned Fees (Rule 3-700(D)(2))

On January 7, 2009, respondent terminated respondent's services and requested a full refund from respondent. On January 31, 2009, respondent sent Harshbarger a bill for $502.25 and a refund of $497.75 ($1,000 less $502.25). Without question, Harshbarger was not satisfied with the refund respondent provided. But that does not establish that respondent failed to earn the $502.25 she charged Harshbarger.

The court finds that respondent earned fees and incurred clerical costs for which she was entitled to charge Harshbarger at least $502.25. (See, e.g., ex. 22.) This finding is consistent with the evidence indicating that Harshbarger actually used the pleadings/forms that respondent prepared to complete her divorce. " '[A] disciplinary proceeding is seldom the proper forum for attorney fee disputes.' " (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 237.) Count two(D) is dismissed with prejudice.

E. The *Meek* Custody Matter (State Bar Court Case Number 07-O-14011-PEM)

Some time before April 2006, Ailan Meek (Ms. Meek) employed respondent to represent her in an extremely contentious child-custody matter and restraining order, which were pending in the Sacramento County Superior Court (*Meek* custody matter). Ms. Meek's ex-husband was

apparently extremely abusive and sent harassing emails to Ms. Meek. Thus, the superior court ordered that respondent to be sent copies of all emails.

Ms. Meek's present husband, David Meek (Mr. Meek), agreed to pay for respondent's services in the Meek custody matter. (See, e.g., ex. 28.) Ms. Meek's understanding was that all the bills for the proceedings would go to Mr. Meek.

On April 3, 2006, respondent properly billed Mr. Meek $960 for the services she provided between March 15, 2006, and April 3, 2006. And, on April 14, 2006, respondent received Mr. Meek's payment of $960.

On May 31, 2006, respondent billed Mr. Meek $1,280, which properly charged Mr. Meek $320 for the services that respondent provided in the *Meek* custody matter between April 18, 2006, and May 30, 2006, but which erroneously charged him again for the $960 in services respondent provided between March 15, 2006, and April 3, 2006, for which Mr. Meek had already paid respondent. In other words, the May 31, 2006 bill failed to give Mr. Meek credit for the $960 that he paid respondent on April 14, 2006.

On June 26, 2006, respondent received Mr. Meek's payment of $1,280. Shortly thereafter, Mr. Meek realized that he had overpaid respondent. Mr. and Ms. Meek decided to leave the $960 overpayment with respondent since they anticipated further services with respondent. (See ex. 70.) But, on September 6, 2006, Ms. Meek terminated respondent's employment.

On September 15, 2006, respondent billed Mr. Meek $1,520, which properly charged Mr. Meek $240 for services respondent provided in the *Meek* custody matter between June 15, 2006, and September 6, 2006, but which erroneously charged him again $960 for the services respondent provided between March 15, 2006, and April 3, 2006, and $320 for the services that

respondent provided between April 18, 2006, and May 30, 2006, for which Mr. Meek had already paid respondent.

On September 22, 2007, and October 2, 2007, Mr. Meek sent respondent letters requesting that respondent refund $720 ($960 overpayment less the $240 in new charges) plus interest. According to Ms. Meek, respondent did not respond to those letters. Nonetheless, at some point, the parties' fee dispute went to fee arbitration, and respondent participated in the arbitration.

Count Three(A): Failure to Refund Unearned Fees (Rule 3-700(D)(2))

The record does not indicate why it took the Meeks more than a year to ask respondent for a refund of the $720 in overpayments he made to respondent in the *Meek* custody matter. The court concludes that the Meeks had agreed that the overbalance was to be applied to other services that respondent rendered to the Meeks. Also, there was a fee arbitration proceeding in the *Meek* custody matter. In that fee arbitration proceeding, respondent asserted that she had earned the $720 in overpayments because she read all of the emails that Ms. Meek's ex-husband sent to Ms. Meek. Notably, the arbitration judge did not award anything to either respondent or the Meeks.

Respondent testified credibly that she did not receive Mr. Meek's October 2, 2007 letter, which he mailed to respondent's post office box and for which someone signed. Respondent does not recognize the signature on the receipt. It is not respondent's signature. Nor is it the signature of Melody or Buffy (her sister). Whether or not respondent actually received Mr. Meek's October 2 letter is of little consequence in light of the facts that the matter went to fee arbitration and that the arbitration judge did not award the Meeks any additional refund. In short, the record does not establish that respondent failed to refund an unearned fee in the Meek custody matter. Thus, count three(A) is dismissed with prejudice.

Count Three(B): Moral Turpitude –Conversion (§ 6106)

The record does not establish, by clear and convincing evidence, that respondent misappropriated or converted any funds in the Meek custody matter. Thus, count three(B) is dismissed with prejudice.

Count Three(C): Failure to Cooperate (§ 6068, subd. (i))

On October 15, 2007, the State Bar opened an investigation in the Meek custody matter. On March 6, 2008, a State Bar investigator wrote to respondent regarding her conduct in the Meek custody matter. The letter requested that respondent respond in writing, no later than March 20, 2008, to specified allegations of misconduct being investigated by the State Bar in the Meek custody matter. On March 28, 2008 , the State Bar investigator wrote respondent another letter regarding respondent's conduct in the Meek custody matter. In her March 28, 2008 letter to respondent, the investigator notified respondent that "the State Bar may consider your failure to cooperate as a separate and additional violation of section 6068[, subdivision] (i) if your written response [to my March 6, 2008 letter] and the documents requested are not received by April 6, 2008."

On April 4, 2008, respondent wrote and delivered to the State Bar's San Francisco office a letter addressed to the investigator. In that letter, responded gave the investigator a brief "preliminary" response and then explained that, because the Meek custody matter had been closed for more than 18 months and archived, respondent needed at least 30 more days to respond. Respondent credibly testified that the investigator failed to either approve or reject respondent's request for a 30-day extension of time or to otherwise communicate with respondent again.

Respondent also credibly testified that she did not further respond to the investigators inquires into her conduct in the Meek custody matter because she expected the investigator to

give her another deadline and then hoped that the investigator's lack of communication meant something good (e.g., that the investigation had been dropped or that the complaining witness withdrew his or her complaint). Moreover, respondent "fully" responded to State Bar investigation inquires in all of the other client matters in this proceeding. In sum, the record does not contain clear and convincing evidence that respondent willfully violated her duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations.

And, in any event, the record does not establish the charged violation of section 6068, subdivision (i). In count three(C), the State Bar charges only that respondent received the investigator's March 28, 2008 letter, but failed to respond to it. As detailed *ante*, respondent responded to the investigator's March 28 letter on April 4, which was two days before the April 6, 2008 response deadline set forth in the investigator's letter. Count three(C) is dismissed with prejudice.

F. The *Hettich* Dissolution Matter (State Bar Court Case Number 07-O-12021-PEM)

On November 11, 2004, Pamela Hettich employed respondent to file a petition for the dissolution of her marriage and to thereafter represent her in that proceeding. On November 22, 2004, respondent filed a marital dissolution petition for her in the Sacramento County Superior Court (*Hettich* dissolution matter)

After respondent filed the petition, Hettich was unavailable to respondent. Hettich readily testified that she was unavailable because she did not have the time or the energy to move her divorce forward. When respondent filed the petition in the *Hettich* dissolution matter, respondent was employed by Transpac Financial and Legal LLC and was paid for representing Hettich by ARAG.[15]

[15] Respondent and Attorney Joedy DeFrank both testified credibly that, under ARAG, an attorney is never paid before (and until) the attorney submits a bill to ARAG.

On January 11, 2006, respondent sent Hettich an email in which respondent stated that she would like to finalize Hettich's divorce and that she needed some documents from Hettich to do so. Then, on February 10, 2006, respondent sent Hettich another email in which respondent stated that she would like to close Hettich's file because Hettich did not appear to want to move forward with the divorce and because Hettich's dissolution matter was preventing respondent from taking other cases.

On March 13, 2006, respondent sent Hettich an email replying to some questions Hettich had asked of her.

Hettich credibly testified that she was completely satisfied with respondent's work and with respondent's answers to her questions until April 2006. In April 2006, Hettich, motivated by the feeling that she wanted to move on with her life, sent respondent the documents that respondent needed to finalize Hettich's divorce.

On May 4, 2006, respondent sent Hettich an email in which she stated: "Well as soon as I finish the MSA…and it is submitted to the court…you will be divorced. I did receive the paperwork, and I am preparing everything in final." (Ex. 36, original multiple periods.) On May 17, 2006, respondent and Hettich exchanged emails.

On June 19, 2006, respondent sent Hettich an email indicating that she was sending Hettich the necessary papers the following day as she had been without a secretary for quite some time. On June 20, 2006, respondent sent Hettich an email stating that "As soon as I finish the documents…[they] will be mailed to you for signature..and it's about 3 weeks until final."[16] (Ex. 38, original multiple periods.)

[16] Presumably, "it's" means that the divorce will be final three weeks after the signed documents are filed in court.

On July 17, 2006, Hettich sent respondent an email informing her that she had not received any paperwork as indicated in her last email. On July 27 and on August 9, 23, and 28, 2006, Hettich sent respondent emails asking the status of her paperwork. Finally, on August 29, 2006, respondent replied to Hettich's emails with an email in which respondent stated: "I sent you an email that I needed the APN number for the house, the legal description and how much was paid out for the inter-spousal transfer. That's basically it." (Ex. 42.)

On September 5, 2006, Hettich sent respondent an email stating that she had returned respondent's voicemail that had asked for some clarification regarding assets. On September 14, 2006, respondent provided Hettich with a draft MSA. Also, in September 2006, ARAG terminated its contract with respondent, and by September 30, 2006, respondent was barred from working on any cases under contract with ARAG.[17]

On October 18, 2006, Hettich sent respondent an email stating that she had a conversation with respondent and that, when the draft MSA was sent, she was on vacation and that her husband had been on vacation shortly after that. Hettich explained that she and her husband had read the draft MSA and now had a few questions. (Ex. HH.)

In November 2006, Hettich sent respondent a series of emails asking respondent to get in touch with her so the divorce could be finalized. Respondent did not answer these emails.

Finally, on December 11, 2006, Hettich sent respondent a letter terminating respondent's employment and asking respondent to forward her file to her address. (Ex. 47.) Thereafter, on January 26, 2007, Hettich told respondent that she had hired Attorney Daniel Allen and asked respondent to execute a substitution-of-attorney form. Even though respondent received

[17] The court believes that respondent was no longer representing Hettich after the contract with ARAG was terminated and that Hettich was unwilling to pay respondent for services after the ARAG contract was terminated due to the fact that respondent had failed to finalize the divorce by October 2006.

Hettich's request to execute a substitution of attorney, respondent did not sign and return the substitution of attorrney to either Hettich or Attorney Allen.

On April 13, 2007, the State Bar notified respondent that Hettich had filed a complaint against her alleging that respondent refused to execute a substitution of attorney. Then, on June 7, 2007, respondent returned the signed substitution of attorney to Attorney Allen.

Count Four(A): Failure to Perform with Competence (Rule 3-110(A))

The record clearly establishes that respondent recklessly and repeatedly failed to perform competently in willful violation of rule 3-110(A). Respondent admitted in her pretrial statement that she did not complete the papers necessary to finalize Hettich's divorce between May 4 and December 11, 2006. Also, respondent did not return the executed substitution of attorney to Attorney Allen until June 7, 2007.

Count Four(B): Failure to Communicate (§6068, subd. (m))

The record does not establish, by clear and convincing evidence, that respondent failed to respond promptly to Hettich's reasonable status inquiries. There was significant contact between respondent and Hettich from June through October 2006. In addition, there are no significant developments other than those already encompassed within the charged failure to perform in count 4(A), *ante*. Accordingly, count four(B) is dismissed with prejudice.

Count Four(C): Failure to Return Client File (Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

The record does not establish, by clear and convincing evidence, that respondent wilfully violated rule 3-700(D)(1) by not releasing Hettich's client file. Although Hettich testified that she never received her file from respondent, Attorney Allen admitted that he does not remember if he received the file from respondent. It appears that the State Bar investigator only wrote to respondent about the substitution of attorney, not the returning of the file. Also, respondent credibly testified that she returned Hettich's file to ARAG in accordance with ARAG's contract. Further, when Attorney Allen asked respondent to sign and return the substitution-of-attorney form, Allen never made mention that he wanted or needed Hettich's file from respondent. (See, e.g., ex. 66.) The plausible inference being that he already had it. Thus, count four(C) is dismissed with prejudice.

G. The *Munoz* Dissolution Matter (State Bar Court Case Number 07-O-12022-PEM)

On June 23, 2006, Shirley Munoz employed respondent to represent her in a dissolution matter and paid respondent an advanced fee of $1,500. And, on August 24, 2006, respondent filed a petition for dissolution of marriage on behalf of Munoz in the Sacramento County Superior Court.

Thereafter, on November 20, 2006, Munoz sent respondent an email notifying respondent that she no longer intended to proceed with the dissolution matter and asking respondent to keep the retainer fee as Munoz had another legal matter pertaining to the guardianship of her disabled adult son that she thought respondent might be able to do for her in the near future. Munoz's email does not mention how much money is remaining on the retainer.

Respondent sent an email to Munoz on November 22, 2006, stating that she had finished the disclosures regarding the dissolution and was waiting for Munoz to update her to proceed. She told Munoz that she was keeping the account open and would work off the remaining

retainer. Respondent offered to discuss the guardianship in the near future and informed Munoz that the filing fee for guardianship was $320.

Munoz sent respondent an email requesting that respondent provide her with an accounting and refund all unearned fees on January 18, 2007. The email also notified respondent that Munoz no longer required respondent's services for the matter regarding her disabled son as her son had found another attorney to do the paperwork.

On January 18, 2007, respondent responded to Munoz's January 18 email and agreed to provide Munoz with an accounting.

On February 10 and 21, 2007, and March 1, 2007, Munoz sent respondent emails requesting that respondent provide her with an accounting and refund the unearned fees. Respondent received the email messages.

On March 8, 2007, Munoz sent respondent a letter requesting that respondent provide her with an accounting and refund the unearned fees. Respondent received the letter. Although respondent received the email messages and the March 8, 2007 letter, respondent failed to provide Munoz with an accounting and did not refund any funds to Munoz.[18] The court finds credible Munoz's testimony that she did not receive an accounting.

Sometime before March 27, 2008, Munoz employed Attorney John Angerer to represent her in her dissolution matter. At the time that Munoz employed Angerer, respondent was still Munoz's attorney of record in the matter. On April 15, 2008, Angerer sent respondent a letter enclosing a substitution-of-attorney form and requested that respondent execute it and return it to him. Respondent failed to respond to Angerer's letter and failed to return the substitution-of-attorney form. On May 15, 2008, Angerer filed a substitution-of-attorney form that did not have respondent's signature on it.

[18] See exhibits QQ and LL (ex. 56). Munoz testified that she had never seen exhibit LL.

Count Five(A): Failure to Account (Rule 4-100(B)(3))

By failing to provide Munoz with an accounting, respondent failed to render an appropriate accounting to a client regarding all funds coming into respondent's possession. The court believes that respondent prepared an accounting for Munoz, but finds that respondent did not send or otherwise give that accounting to Munoz.[19] Accordingly, the record clearly establishes that respondent willfully violated rule 4-100(B)(3) by failing to give the accounting to Munoz.

Count Five(B): Failure to Refund Unearned Fees (Rule 3-700(D)(2))

The evidence does not show, by clear and convincing evidence, that Munoz was entitled to a refund of fees. What is clear is that respondent did legal work for Munoz—she filed the petition and filled out a number of forms for Munoz based on information she received from Munoz. Munoz testified that she has no idea of how much money she was owed as a refund. She also testified that she was not dissatisfied with the work that respondent performed for her; rather, she was dissatisfied with the lack of communication from respondent after October 2006. Therefore, based on the lack of clear and convincing evidence that Munoz was owed a refund in this matter, the court does not find respondent culpable on count five(B), and it is dismissed with prejudice.

Count Five(C): Failure to Respond to Client Request for Information (Rule 3-500)

The court finds no clear and convincing evidence that respondent failed to keep Munoz reasonably informed of significant developments relating to her representation or employment,

[19] Respondent believes that she gave Munoz an accounting in February 2007. Respondent testified that on December 6, 2006, her abusive ex-husband burglarized her house and took her computer. As a consequence of the burglary, respondent had to prepare the accounting from a case memo. However, Munoz testified that she had not received an accounting from respondent, and the court accepts Munoz's testimony on this issue as being more credible.

including promptly complying with reasonable information requests and copies of significant documents when necessary to keep the client informed. As such, count five(C) is dismissed with prejudice.

H. The *Feasal* Custody Matter (State Bar Court Case Number 07-O-12025-PEM)

The State Bar did not call any witnesses in the Feasal custody matter. Thus, count six is dismissed with prejudice.

IV. Aggravating & Mitigating Circumstances

A. Aggravating Circumstances

There are no aggravating circumstances.

B. Mitigating Circumstances

1. No Prior Record (Std. 1.2(e)(i))

Respondent has no prior disciplinary record. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std 1.2(e)(i).) However, respondent had only been admitted to the practice of law for seven years prior to her first act of misconduct. As such, only minimal weight in mitigation is given to such evidence. (See Kelly v. State Bar (1988) 45 Cal.3d 649, 658 [seven and one-half years "not especially commendable"].)

2. Extreme Emotional Difficulties (Std. 1.2(e)(iv))

Respondent lost custody of her daughter in 2004, because her then-husband, Daniel O'Keefe, was convicted of felony child abuse against his own son. She did not regain custody of her own child until 2005. This is the primary reason she withdrew from the *Cahill* matter, as she had to go through a six-month trial in the dependency courts where she lost custody of her child.

On four occasions beginning in 2006, respondent was the victim of spousal abuse. The District Attorney actually filed criminal complaints as to two of these incidents. Respondent's then-husband was convicted of felony spousal abuse in 2006 and was in jail from January 2007-

September 2007. In light of the fact that respondent had testified against her then-husband, he had her falsely arrested and taken into custody in December 2006. While she was in custody over the false arrest, he looted her home office and took all her computer files except for one hard drive. Until he was incarcerated, respondent was under total duress. He threatened her with bricks and gave her a black eye. The last incident of spousal abuse was on January 18, 2008, after her then-husband got out of jail.

Respondent began going to counseling in 2004 when she lost custody of her child. When she regained custody, she was no longer in counseling; however, she began counseling again when she was assaulted by her husband in 2006. Respondent belongs to two groups for victims of domestic abuse, one of which is Peace for Families. She was also referred to the Domestic Intervention Center (the Center) in Citrus Heights, California. She began going every Wednesday night to a support group.

3. Pro Bono Work (Std. 1.2(e)(vi))

For two years, respondent volunteered at the Center from 1:00 - 3:00 p.m. helping other victims of spousal abuse. She helped battered women fill out restraining orders and other victim assistance forms. She also did work as a support person and worked at the Center's self-help clinic and safe house. She stop volunteering in 2009 because in 2008 she went through a very difficult pregnancy. To date, however, she does about 30-40 hours a year of pro bono work for women who are the victims of spousal abuse.

4. Good Character Evidence (Std. 1.2(e)(vi))

Respondent presented the testimony of several witnesses with respect to her good moral character. Most of these witnesses were former clients. The court gives some mitigating weight to this favorable evidence. However, based on the nature of the evidence; the fact that the witnesses have only known respondent for a short time mainly as in a professional relationship;

and the lack of evidence that all the witness were fully aware of the charges against respondent, the court does not give significant mitigating weight to this character evidence.

A. Joedy DeFrank: Mr. DeFrank has been an attorney since 1982. He practices in the areas of family, probate and juvenile law. Mr. DeFrank represented respondent in a contentious legal matter. He understands the nature of the disciplinary charges against respondent. According to Mr. DeFrank, he would recommend respondent as an attorney.

B. Michael Ritter: Mr. Ritter is an insurance agent and is going to school to be a certified personal fitness trainer. He has known respondent since 2005 when she represented him in a custody and visitation matter. Mr. Ritter was completely satisfied with respondent's representation. Respondent was always truthful with Mr. Ritter. Without question, he would refer others to her. Mr. Ritter read the Notice of Disciplinary Charges in this matter.

C. Leanne Webster Ritter: Ms. Ritter has known respondent since 2005. Respondent represented Ms. Ritter in a matter, and Ms. Ritter was completely satisfied with respondent's representation. Ms. Ritter has referred many clients to respondent. Respondent has been honest with Ms. Ritter.

D. Tami Landrum: Ms. Landrum is a part-time secretary. Respondent represented Ms. Landrum in January 2008 in a custody battle. Ms. Landrum was satisfied with respondent's representation. She believes respondent is honest, and she would refer others to respondent.

E. Craig Remington: Mr. Remington is a retired highway patrol officer. He met respondent is 2005. Respondent represented Mr. Remington in a very contentious custody matter. Respondent was very honest with Mr. Remington and never missed court appearances. Mr. Remington would refer others to respondent. He has read the charges against respondent.

F. Cheryl Hickock: Ms. Hickock works for a biodata medical laboratory. She first met respondent in 2007. Respondent is a volunteer at the Domestic Violence Center. Respondent helped with the dissolution and custody matters of both Ms. Hickock's daughters. Respondent provided services for no charge. Ms. Hickock was aware of the charges against respondent. Ms. Hickock described respondent as a giving, honest person. She has referred several clients to respondent and would refer other matters to her.

G. Sabrina Donelli: Ms. Donelli is familiar with the charges against respondent. Respondent represented Ms. Donelli in a legal matter, and she was completely satisfied with respondent's service. Respondent was highly recommended to her by a co-worker. She has known respondent since 2007, and respondent remains her attorney.

H. Daniel Cashman: Respondent represented Mr. Cashman in his divorce case. According to Mr. Cashman, respondent did a superb job in that matter. Mr. Cashman first met respondent in December 2008. He hired respondent in December 2008 through a referral from a friend. He has ongoing contact with respondent, as she is representing Mr. Cashman and his son in court. Mr. Cashman also has a professional relationship with respondent. He does some filings for her, but is not paid by her.

V. Discussion on Discipline

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; *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 Taylor* (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 2.4(b), which provides:

> Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The discipline for failing to perform competently or for client abandonment in a single client matter, where the attorney has no prior record of discipline, ranges for no actual to 90 days' actual suspension. (*In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196, 206.)

In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the attorney, with five years of practice, failed to perform services for a client, but without causing substantial harm. The Supreme Court imposed no actual suspension. In *Layton v. State Bar* (1990) 50 Cal.3d 889, involving an attorney with 30 years of practice without prior discipline, the Supreme Court imposed 30 days' actual suspension. The attorney, acting as attorney for a trust and an estate for which he was also the executor, failed through neglect and inattention to fulfill important and material requirements of his office as executor for over five years, which ultimately resulted in his removal from office by the probate court. In *Wren v. State Bar* (1983) 34 Cal.3d 81, the attorney was suspended for two years, stayed, with two years of probation and 45 days of actual suspension for failing to perform in one client matter over a two-year period and for misrepresenting the status of the case to the client. The attorney had no prior discipline in 22 years of practice and participated in the disciplinary proceeding but attempted to mislead the State Bar by giving false and misleading testimony. In *Harris v. State Bar* (1990) 51 Cal.3d 1082, the Court imposed a 90-day actual suspension for protracted inattention to a client's case, resulting in a large financial loss to the client's estate. Aggravating factors included lack of candor to her client and lack of remorse and

insight. In mitigation, she had approximately 10 years of practice with no prior discipline. Also, her illness with typhoid fever after the misconduct commenced was considered. The attorney participated in the proceedings.

On balance, the court concludes that, in light of all the relevant factors, the appropriate discipline for the found misconduct is one year's stayed suspension and two year's probation with conditions, including a thirty-day suspension and the development of a law office management plan approved by the Office of Probation within the first six months of her probation.

VI. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **CHRISTIE BARA MITCHELL-GUTTMAN**, State Bar Number 197975, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that she be placed on probation for a period of two years subject to the following conditions:

1. Respondent Christie Bara Mitchell-Guttman is suspended from the practice of law for the first 30 days of probation.[20]

2. Respondent must also comply with the following additional conditions of probation:

    a. Respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

    b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

[20] The probation period and these probation conditions will commence on the effective date of the Supreme Court order imposing discipline in this matter (see Cal. Rules of Court, rule 9.18).

c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. Respondent must promptly meet with the probation deputy as directed and upon request.

d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period.

e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions.

f. Within the first six months of probation, Mitchell-Guttman must develop a law office management/organization plan *and* have it approved by the State Bar's Office of Probation in Los Angeles. At a minimum, the plan must include procedures: (1) to send periodic reports to clients; (2) for documenting telephone messages received and sent; (3) for maintaining client files; (4) for calendaring all court hearings and filing deadlines; (5) for meeting deadlines; (6) to withdraw both when the attorney of record and when not the attorney of record and when the client can be located and when the client cannot be located; (7) in a court proceeding and when not the attorney of record, both when the client can be located and when the client cannot be located; and (8) for training and supervising support personnel.

g. Within one year after the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of her attendance at a session of State Bar Ethics School, and of her passage of the test given at the end of that session.

3. At the expiration of the period of probation, if Christie Bara Mitchell-Guttman has complied with all conditions of probation, then one-year period of stayed suspension will be satisfied and that suspension will be terminated.

VII. MPRE

It is further recommended that respondent Christie Bara Mitchell-Guttman be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and to provide proof of passage to the Office of Probation, within one year after the effective date of the Supreme Court's disciplinary order in this matter. Failure to pass the MPRE within the specified time results in actual suspension until passage, without further hearing. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 321(a)(1)&(3).)

VIII. Costs

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

Dated: August 9, 2010.

PAT McELROY
Judge of the State Bar Court