

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 08-O-14509-LMA (09-O-10391;
	)	09-O-11249; 09-O-13664)
<b>MARIBEL NIETO</b>	)	
	)	<b>DECISION INCLUDING DISBARMENT</b>
<b>Member No. 219077</b>	)	<b>RECOMMENDATION AND</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar.	)	<b>ENROLLMENT ORDER</b>

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**I. INTRODUCTION**

In this disciplinary matter, Tammy M. Albertsen-Murray appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent MARIBEL NIETO did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and that she be ordered to make specified restitution.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed on November 30, 2009, and was properly served on respondent on that same date at her then-official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of

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<sup>1</sup> Future references to section are to the Business and Professions Code.

mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The NDC was not returned as undeliverable by the United States Postal Service.

On December 4, 2009, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on January 11, 2010.

Respondent did not appear at the January 11 status conference. On January 12, 2010, she was properly served with a status conference order at her official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On January 21, 2010, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that minimum discipline of disbarment would be sought if she was found culpable. Respondent did not respond to the motion.

On February 10, 2010, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. It was returned as undeliverable by the United States Postal Service marked "unclaimed – unable to forward."

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing on March 8, 2010.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The court's findings are based on the allegations contained in the NDC as they are

deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar,<sup>2</sup> rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on April 22, 2002, and has been a member of the State Bar at all times since.

**B. Case no. 08-O-14509 (The Flores Matter)**

**1. Facts**

On July 26, 2002, Antonia Flores hired respondent to represent her and her minor son in a personal injury case for injuries sustained in an automobile accident. The parties executed a written attorney-client fee agreement for a contingency fee.

On March 14, 2003, respondent filed suit on behalf of Flores but thereafter failed to pursue the complaint. (*Juan R. Flores, Juan R. Flores, Jr. and Antonia Flores vs. James Artizo Gloria, Jr., Rafael Marquez Perez, Mariah Echavarre, et al*, San Joaquin County Superior Court case no. SV241515.)

Respondent did not promptly serve the defendants in the suit. Pursuant to Code of Civil Procedure, section 583.210, she had three years to do so. On January 11, 2007, three years and ten months after filing the complaint, she served Echavarre and Artizo Gloria, Jr.

On April 7, 2007, those defendants filed a motion to dismiss the complaint for failure to serve the summons and complaint within three years. On June 25, 2007, the court granted the

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<sup>2</sup> Future references to Rules of Procedure are to this source.

motion. On February 13, 2008, the court dismissed the case against the third named defendant, Marquez Perez, for the same reasons. Respondent did not advise Flores that the court dismissed her lawsuit.

On February 18 and March 10, 2009, a State Bar investigator sent respondent letters asking her to respond to the State Bar's investigation of the Flores complaint. Although she received the letters, respondent did not answer them.

## **2. Conclusions of Law**

### **a. Count 1 - Rule of Professional Conduct,<sup>3</sup> Rule 3-110(A) (Competence)**

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not pursuing the Flores matter in a timely fashion and by not timely serving the defendants, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

### **b. Count 2 - Section 6068, subd. (m) (Communication)**

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not advising her client that the court dismissed the case, respondent did not keep Flores reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

### **c. Count 3 - Section 6068, subd. (i) (Not Participating in Investigation)**

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or

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<sup>3</sup>Future references to rule are to this source.

herself.

By not responding to the State Bar's letters of February 18 and March 10, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Flores case in wilful violation of 6068, subdivision (i).

**C. Case no. 09-O-10391 (The Salas Matter)**

**1. Facts**

On April 4, 2008, in case no. S160249 (State Bar Court case no. 07-H-13335), the California Supreme court entered an order, effective on May 4, 2008, suspending respondent from the practice of law for 30 days, among other things. On April 4, 2008, the Clerk of the Supreme Court properly served a copy of this order on the respondent at her State Bar membership records address. Respondent knew or should have known she was suspended from the practice of law from May 4 through June 3, 2008.

On April 14, 2008, Ricardo Salas hired respondent to represent him in his pending dissolution action. (*Maria B. Manzo vs. Ricardo Manzo Salas*, Sacramento County Superior Court case no. 08FL02295.) She did not advise him of her impending suspension. Salas found out about respondent's suspension during a court proceeding in December 2008.

On May 15, 2008, while respondent was actually suspended from the practice of law, she met with Salas and had him review and sign a response to the dissolution and a fee waiver application. She included this information in her declaration supporting a motion to set aside default judgment in the *Manzo* case which she filed on August 13, 2008.

On February 18 and March 10 and 24, 2009, a State Bar investigator sent respondent letters asking her to respond to the State Bar's investigation of the Flores complaint. Although she received the letters, respondent did not answer them.

## **2. Conclusions of Law**

### **a. Count 4 - Section 6068, subd. (a) (Unauthorized Practice of Law)**

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By meeting with Salas and having him review and sign court documents on May 15, 2008, respondent held herself out to Salas and the court as entitled to practice law and actually practiced law when she was not so entitled. In so doing, she violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

### **b. Count 5 - Section 6068, subd. (m) (Communication)**

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not advising her client that she was or was going to be suspended from the practice of law, respondent did not keep Salas reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

### **c. Count 6 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letters of February 18 and March 10 and 24, 2009,

respondent did not participate in the investigation of the allegations of misconduct regarding the Salas case in wilful violation of 6068, subdivision (i).

**D. Case no. 09-O-11249 (The Omar Matter)**

**1. Facts**

On November 10, 2008, respondent filed a complaint on behalf of the plaintiff in the matter entitled *Omar v. Robles*, San Joaquin County Superior Court case no. 39-2008-00 197448-CL-PA-STK.

During the course of the proceedings in the *Omar* matter, the court issued the following orders:

1) On January 30, 2009, the court issued an order to show cause (OSC) against respondent for her failure to file a proof of service of the complaint. The court set a hearing on the OSC for March 10, 2009 and ordered respondent to appear. On March 10, 2009, the court again ordered respondent to appear at an OSC set on April 9, 2009. On April 9, 2009, the court sanctioned respondent the sum of \$250.00 for her repeated failures to appear and ordered that she pay the sanctions to the court by May 11, 2009; and

2) On May 11, 2009, the court issued another OSC regarding why respondent should not be further sanctioned or the matter dismissed. The court set the OSC hearing for June 11, 2009 and ordered respondent to appear on that date. On June 11, 2009, the court sanctioned respondent the sum of \$250.00, payable to the court no later than July 13, 2009.

As to each of the court orders identified in the preceding paragraph, the court duly served respondent with written notice of the court's orders via United States mail, postage prepaid to respondent at the address respondent identified on the pleadings she filed on November 10, 2008. The court notices were not returned as undeliverable by the postal authorities.

Respondent received the court's orders and was aware of their contents. Although she

moved her law offices on February 13, 2009, without notifying the court, she made arrangements to receive mail from her former address.

Respondent did not appear in court on March 10, April 9 and June 11, 2009, even though she was ordered by the court to do so. She also did not pay the sanctions of \$250.00 ordered on April 9 and June 11, 2009.

On February 13, 2009, respondent changed her membership records address maintained by the State Bar pursuant to Business & Professions Code § 6002.1 to one in Ceres, California, but did not notify the court of her change of address.

Respondent did not file with the court a proof of service indicating that she had served a copy of the complaint on the defendants in the *Omar* matter.

On May 13 and June 10, 2009, a State Bar investigator sent respondent letters asking her to respond to the State Bar's investigation of the Omar complaint. Although she received the letters, respondent did not answer them.

## **2. Conclusions of Law**

### **a. Count 7 - Section 6103 (Violation of Court Order)**

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear an act connected with or in the course of his or her profession, which he or she ought in good faith to do or forbear.

By not appearing on the dates ordered by the court or paying the court-ordered sanctions, respondent wilfully disobeyed a court order in wilful violation of section 6103.



**b. Count 8 - Rule 3-110(A) (Competence)**

By not notifying the court of her change of address or filing with the court a proof of service that she had served the defendants in the Omar matter, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

**c. Count 9 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letters of May 13 and June 10, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Omar case in wilful violation of 6068, subdivision (i).

**E. Case no. 09-O-13664 (The Perez Matter)**

**1. Facts**

On October 12, 2006, client Maxmiliano Perez hired respondent to represent him in an ongoing personal injury matter. (*Maxmiliano Perez vs. William Hernandez Alna, et al.*, Stanislaus County Superior Court case no. 610485.) The parties executed a written contingency fee agreement.

On June 11, 2007, respondent substituted into the case on Perez' behalf but thereafter did not appear at case management conferences including, but not limited to, those scheduled on June 11 and July 23, 2007; May 27, July 28 and December 15, 2008. As to each of these, respondent was duly notified by the court and/or the defense counsel regarding the hearing date, and respondent received notice of the hearing date.

On July 23, 2007, and May 27, 2008, respectively, the court sanctioned respondent \$350.00 for not appearing at the July 23, 2007, and May 27, 2008 case management conferences.

Respondent did not respond to discovery in the case. On March 28, 2008, the defense served respondent with a first set of form and special interrogatories and a demand for production of documents. Respondent received the discovery documents but did not respond or

otherwise participate in discovery in the case. On May 1, 2008, the court imposed \$290.00 in discovery sanctions against respondent and ordered her to answer the discovery.

Respondent did not respond to a motion for terminating sanctions filed on December 12, 2008, as a result of her failure to respond to discovery. She was served with the motion and received it, but did not file a response. Respondent did appear at the hearing on the motion on January 22, 2009, however, when the court granted the motion, dismissed her client's case and imposed a sanction of \$1,120.00 jointly against respondent and her client, Perez, payable to the defense as attorney fees.

As to each of the aforementioned orders, the court, and/or the defense counsel, duly notified respondent of the orders of the court by sending her notices by United States mail, postage prepaid to the address she identified for herself on her pleadings. The notices were not returned as undeliverable by the postal authorities. Although respondent moved her law office on February 13, 2009, without notifying the court, she made arrangements to receive, and did receive, mail from her former address. Respondent received the orders of the court and was aware of their contents. She did not pay any of the court-ordered sanctions nor did she abide by the court's order compelling her to respond to discovery or appear at the case management conferences as ordered. She also did not advise her client, Perez, that she missed the aforementioned five case management conferences; or about the discovery; or about the court's order granting the motion to compel discovery; or about the court-imposed sanctions, including the sanctions ordered payable jointly by Perez; or about the motion for terminating sanctions; or about the dismissal of the case.

On July 10, 2009, the defense obtained a judgment in the case for \$1,120.00 against Perez. The defense served respondent with a copy of the judgment. She did not advise Perez about the judgment.

Perez made several appointments to meet with respondent in person to discuss the status of his case on the following dates: July 20, 2006 at 3 p.m.; August 8, 2006 at 1 p.m.; May 12, 2009 at 6 a.m.; July 20, 2009 at 3 p.m.; July 25, 2009 at 3 p.m.; and November 10, 2009 (time not specified). Respondent did not show for any of the appointments. Perez was unable to see respondent on the appointed date and time.

On August 4 and 17, 2009, a State Bar investigator sent respondent letters asking her to respond to the State Bar's investigation of the Perez complaint. Although she received the letters, respondent did not answer them

## **2. Conclusions of Law**

### **a. Count 10 - Rule 3-110(A) (Competence)**

By not appearing at five court-ordered case management conferences; not responding to the defense discovery, resulting in terminating sanctions; and not filing a response to the motion to terminate, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

### **b. Count 11 - Section 6103 (Violation of Court Order)**

By not appearing at the case management conferences; not paying the court-ordered sanctions; and not abiding by the court's order to compel, respondent wilfully disobeyed a court order in wilful violation of section 6103.

### **c. Counts 12 & 13 - Section 6068, subd. (m) (Failure to Communicate)**

By not keeping six appointments to meet with Perez to discuss the status of his case, respondent did not respond promptly to Perez's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

By not advising her client of the missed case management conferences; the discovery and motion and order to compel discovery; the various court-ordered sanctions; the motion for terminating sanctions; the dismissal of the case; and the judgment, respondent did not keep her client reasonably informed of significant developments in a matter in which she had agreed to provide legal services, respondent did not keep Perez reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

**d. Count 14 - Section 6068, subd. (i) (Not Participating in Investigation)**

By not responding to the State Bar's letters of August 4 and 17, 2009, respondent did not participate in the investigation of the allegations of misconduct regarding the Perez case in wilful violation of 6068, subdivision (i).

**F. Case nos. 09-O-10391; 09-O-11249; 09-O-13664 (The Probation Matter)**

**1. Facts**

As previously noted, on April 4, 2008, in case no. S160249 (State Bar Court case no. 07-H-13335), the California Supreme Court entered an order, effective on May 4, 2008, actually suspending respondent from the practice of law for 30 days and placing her on probation for two years, subject to conditions, among other things. Respondent signed the stipulation upon which the Supreme Court's order was based on October 28, 2007, agreeing to two years of probation and the conditions attendant thereto, among other things.

On April 4, 2008, the Clerk of the Supreme Court properly served a copy of this order on the respondent at her State Bar membership records address. Respondent knew or should have known she was suspended from the practice of law from May 4 through June 3, 2008 and that her probationary period commenced on May 4, 2008 and continued until May 4, 2010.

Respondent's probation conditions included the requirement that she must comply with the provisions of the State Bar Act and Rules of Professional Conduct during her probationary

period. By committing the violations of which she was found culpable in counts three through fourteen as set forth above, respondent violated a condition of her probation.

## **2. Conclusions of Law**

### **a. Count 15 - Section 6068, subd. (k) (Noncompliance with Probation Conditions)**

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By not complying with the provisions of the State Bar Act and the Rules of Professional Conduct as set forth above, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k).

## **IV. LEVEL OF DISCIPLINE**

### **A. Aggravating Circumstances**

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct<sup>4</sup>, std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).) In State Bar Court case no. 05-O-2174, respondent stipulated to a private reproof for misconduct in two client matters, violations of rules 3-110(A) and 4-100(A) (one count each) and two counts of violating section 6068, subdivision (i). In aggravation, there was client harm. In mitigation, there were family problems and remorse.

As previously noted, on April 4, 2008, in case no. S160249 (State Bar Court case no. 07-H-13335), the California Supreme Court entered an order actually suspending respondent from the practice of law for 30 days and placing her on probation for two years, subject to conditions,

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<sup>4</sup>Future references to standard or std. are to this source.

among other things. She was charged with and stipulated to noncompliance with conditions attached to a reproof. The court notes that, in the present matter, she was charged with and was found culpable of noncompliance with probation conditions, similar misconduct. In aggravation, she had one prior instance of discipline. Family problems were a mitigating factor.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Flores' and Perez's cases were dismissed. Perez had sanctions and a judgment issued against him due to respondent's misconduct.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter her default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

### **B. Mitigating Circumstances**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

### **C. Discussion**

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of

imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Moreover, if an attorney has two prior instances of discipline, the degree of discipline shall be disbarment unless the most compelling mitigating circumstances clearly predominate. (Std. 1.7(b).)

Standards 2.4(b) and 2.6 also apply in this matter. The most severe sanction is found at standard 2.6 which recommends, in relevant part, suspension or disbarment for violations of sections 6068, 6103, 6125 and 6126, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar recommends disbarment or, at minimum, actual suspension for two years.

In four client matters, respondent has been found culpable of not performing or communicating (three counts each), not complying with court orders (two counts), not participating in the State Bar’s investigation of misconduct (four counts), engaging in the unauthorized practice of law and not complying with probation conditions (one count each). In aggravation, the court found two prior instances of discipline and client harm. There were no mitigating circumstances in this default matter.

Lesser discipline than disbarment is not warranted because there are no extenuating

circumstances that clearly predominate in this case. (Std. 1.7(b).) The serious, repeated and unexplained nature of the misconduct and the lack of participation in these proceedings suggest that she is capable of future wrongdoing and raise concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the prior instances of discipline have not served to rehabilitate respondent or to deter her from further misconduct. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

#### **V. DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent MARIBEL NIETO be DISBARRED from the practice of law in the State of California and that her name be stricken from the rolls of attorneys in this state.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Maxmiliano Perez in the amount of \$1,120 plus 10% interest per annum from January 22, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Maxmiliano Perez, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date



of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing her compliance with said order.

#### **VI. 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.

#### **VII. ORDER REGARDING INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: June \_\_\_\_\_, 2010

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LUCY ARMENDARIZ  
Judge of the State Bar Court