

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.:10-C-01188; 10-C-01189;
)	10-C-01191; 10-C-04617;
ROSEMARY STATHAKIS-COOK,)	10-C-04618; 12-J-15789
)	(Cons)-DFM
Member No. 104143,)	
)	DECISION
A Member of the State Bar.)	
)	
)	

INTRODUCTION

Respondent **Rosemary Stathakis-Cook** is an accomplished attorney, who practices in Arizona but is also licensed in California. The instant proceeding results from (1) five alcohol-related driving convictions in Arizona, four of which occurred shortly after the suicide of her husband in March 2009; and (2) a disciplinary decision by the Arizona Supreme Court in December 2011, issued largely as a result of those criminal convictions and certain problems that developed in Respondent’s law practice while she was incarcerated. Each of those matters will be discussed more fully below.

The issues in the criminal conviction proceedings are whether the facts and circumstances surrounding Respondent’s convictions involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, what the appropriate level of discipline to be imposed should be.

The issues regarding the disciplinary decision by the Arizona Supreme Court are governed by Business and Professions Code section §6049.1 and are limited to: (1) whether the Arizona proceeding lacked fundamental constitutional protection; (2) whether, as a matter of law, Respondent's culpability in the Arizona proceeding would not warrant the imposition of discipline in California under applicable California laws and rules; and (3) the degree of discipline to be imposed on Respondent in California. (Bus. & Prof. Code, § 6049.1, subd. (b).) The burden of proof with regard to the first two issues is on Respondent. (Bus. & Prof. Code, § 6049.1, subd. (b).)

PERTINENT PROCEDURAL HISTORY

This proceeding results from (1) the referral by the review department of this court to the hearing department in November and December of 2011 of the five Arizona criminal conviction matters for a determination of whether the facts and circumstances surrounding those convictions involved moral turpitude or other misconduct warranting discipline; and (2) the filing by the State Bar of disciplinary charges based on the discipline of Respondent by the Arizona Supreme Court in December 2011. Because of the criminal convictions, Respondent has been on interim suspension since October 1, 2011, as ordered by the Review Department.

Because Respondent was incarcerated at the time of the initiation of these proceedings, all of the matters were ordered abated until Respondent was released from prison and able to participate in them. Once this court was notified that Respondent had been released from her incarceration, the order of abatement was lifted on April 12, 2013, and a status conference was held on May 13, 2013. At that time, all of the matters were consolidated and ordered to commence trial on July 24, 2013.

Trial was commenced and completed at that time and the consolidated matters were then submitted for decision. The Office of the Chief Trial Counsel of the State Bar of California

(State Bar) was represented at trial by Deputy Trial Counsel William Todd. Respondent represented herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on a stipulation of undisputed facts filed by the parties and on the evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on October 26, 1982, and has been a member of the State Bar at all relevant times.

Background Facts

Respondent has practiced law for more than 30 years in Arizona, where she maintains her office. She is a prominent employment law lawyer and has been responsible for obtaining a number of significant decisions expanding the legal rights of employees. Although she has been admitted to practice in California since 1982, she rarely handles any matters in this state.

Respondent was married to her first husband for 24 years, when he left her and moved to another city. As a result of her emotional upset over the loss of her marriage, Respondent began to drink at night. However, after the divorce was finalized, she “cleaned up” her drinking habits and generally stopped drinking.

In November 2007, Respondent married for a second time. Unbeknownst to her at the time, her new husband was bipolar.

On August 19, 2008, Respondent had an emotional meeting during the day with her first husband, resulting in her drinking three glasses of wine. This conduct was aberrational for her at the time. Unfortunately, as she was driving away from the meeting at approximately 4:00 p.m., she was distracted by her cell phone, looked away from the road, and collided head-on with

another car. The driver of the other car said at the time of the accident that she was not seriously injured, but subsequently discovered that she had a broken bone in her hand.

Field sobriety tests were conducted after the accident, and Respondent was arrested by a Phoenix Police Department officer on suspicion of driving under the influence (DUI). Respondent's blood was drawn a short time later, and her blood alcohol concentration was 0.20%. Respondent was later released.

From the date of that incident in August 2008 until late-March 2009, Respondent maintained her general practice of abstaining from drinking. Unfortunately, on March 21, 2009, Respondent's second husband sought to commit suicide by shooting himself in the head. Although he survived for four days, on March 25, 2009, he died as a result of the gunshot wound.

By Respondent's own description, her life fell apart at that time and she began to drink to excess. She "didn't care anymore."

Unfortunately, she also continued to practice law and drive. By the end of 2009, she had been arrested four more times for driving while under the influence of alcohol, although thankfully there had been no other collisions with other vehicles. In addition to Respondent's misconduct with her driving, on two occasions she had appeared at judicially-supervised settlement conferences while under the influence of alcohol.

On February 6, 2010, Respondent voluntarily admitted herself into a medically monitored intensive inpatient treatment facility, Cottonwood Tucson. None of the criminal cases had yet been resolved at that time, and Respondent remained released on her own recognizance. At the rehabilitation facility, Respondent actively participated in a comprehensive program that included chemical dependency, relapse prevention, 12-step and Narcotics Anonymous process meetings, experiential therapy and recreational therapy. Respondent completed an

individualized treatment program under medical supervision along with an interdisciplinary team of healthcare professionals and was discharged on March 3, 2010.

After being released from Cottonwood Tucson, Respondent contacted the Arizona State Bar, met with a representative, and put together a contract for her with the equivalent of its Lawyer's Assistance Program "to provide structured monitoring for her so that she could, in fact, recover." (Ex. BB.)

However, on March 10, 2010, just a week after Respondent's release from the rehabilitation program, she was arrested and taken into custody for the automobile accident that had occurred on August 19, 2008, more than a year earlier. Because the driver of that other vehicle had complained now about the broken bone in her hand, Respondent was now being charged with felony assault with a deadly weapon, and she placed in jail, where she was ordered to be held without bond.

Respondent eventually pleaded guilty in each of the criminal cases. As a result of the five arrests and then subsequent convictions, she remained incarcerated for nearly three years, until February 27, 2013. Each of these cases is discussed separately below.

Case No. 10-C-01189

Less than two weeks after her husband's suicide, on April 6, 2009, at 5:55 p.m., the Salt River Police Department observed Respondent's failure to remain in one lane while driving her vehicle at the intersection of North Country Club Road and State Route 202 in Scottsdale, Arizona. A traffic stop was initiated and field sobriety tests were conducted. A breath test was also conducted which yielded estimate blood alcohol concentrations of 0.223% and 0.208%. Respondent was arrested on suspicion of DUI with blood alcohol concentration of 0.08% or above, extreme DUI for blood alcohol concentration of 0.15% or above and super extreme DUI of 0.20% or above, as well as a failure to drive in a single lane. Respondent was later released.

On April 26, 2011, while she was incarcerated on other charges, Respondent pleaded guilty to the charge of misdemeanor DUI as described by A.R.S. 28-1381(A)(1) in Maricopa County case No. TR2009-126713, and was sentenced to 45 days' jail to run concurrently to another sentence Respondent was serving. Respondent was also ordered to pay a sanction of \$1,480 and was ordered to install an ignition interlock device in her vehicle.

Case No. 10-C-01191

On July 24, 2009, at 7:48 p.m., a Phoenix Police Department officer conducted a traffic stop of Respondent's vehicle after a witness reported a vehicle with a description matching Respondent's vehicle as weaving through lanes and striking a curb. Respondent was the driver of the described vehicle when the traffic stop occurred. Respondent was arrested on suspicion of DUI with a blood alcohol concentration of 0.08% or above, extreme DUI for blood alcohol concentration of 0.15% or above and super extreme DUI of 0.20% or above. Respondent was later released.

On April 2, 2010, while she was incarcerated on other charges, Respondent pleaded no contest to the charge of misdemeanor DUI with blood alcohol concentration of 0.20% or more as described by A.R.S. 28-1381(A)(1-2) as well as 28-1382(A)(1-2) in City of Phoenix Municipal Court case No. 13793189. Respondent was sentenced to 45 days' jail with credit for 25 days served, and was ordered to pay \$5,070 in fines and assessments.

Case No. 10-C-01188

On November 4, 2009, at 4:06 p.m., Respondent was driving her vehicle on Van Buren Street in Phoenix, Arizona when a pair of Phoenix Police Department officers initiated a traffic stop. The officers had Respondent complete a set of field sobriety tests and also determined that Respondent was driving despite an implied consent license suspension. The officers ultimately arrested Respondent on suspicion of DUI and for driving with a suspended license. A blood

draw taken at the police precinct to which Respondent was transported revealed a blood alcohol content of 0.21%.

On March 30, 2011, while she was incarcerated on other charges, Respondent pleaded guilty to a felony charge of aggravated DUI as described by A.R.S. 28-1381(A)(1), 28-1383(A)(1), 28-3001, 28-3304, 28-3305, 28-3315, 28-1383(J), 28-1444, 28-1461, 13-701, 13-702 and 13-801 in Maricopa County case No. CR2009-048841-001. Respondent was sentenced to four months in county jail, with the sentence to run concurrent to other pending criminal matter. Respondent was also ordered to pay \$4,000 in fees and assessments.

Case No. 10-C-04618

On December 22, 2009, at 4:36 p.m., Respondent was driving her vehicle on West Glendale Avenue in Phoenix, Arizona when she was stopped by Phoenix Police Department officers responding to reports of a vehicle traveling in the wrong direction at the intersection of Black Canyon Highway and West Glendale Avenue. Field sobriety tests were conducted, as was a preliminary breath test. The breath test estimated Respondent's blood alcohol concentration at 0.373%, and Respondent was arrested for suspicion of DUI. Respondent was later released.

On March 30, 2011, while she was incarcerated on other charges, Respondent pleaded guilty to a felony charge of aggravated DUI as described by A.R.S. 28-1381(A)(1), 28-1383(A)(1), 28-3001, 28-3304, 28-3305, 28-3315, 28-1383(J), 28-1444, 28-1461, 13-701, 13-702 and 13-801 in Maricopa County case No. CR2010-113138-001. Respondent was sentenced to four months in county jail, with the sentence to run concurrent to other pending criminal matter. Respondent was also ordered to pay \$4,000 in fees and assessments.

Case No. 10-C-04617

This is the only arrest and conviction resulting from any misconduct prior to Respondent's husband's suicide in March 2009. As noted above, the conviction results from the

head-on collision on August 19, 2008, when Respondent was driving after drinking wine while meeting with her former husband.

On March 30, 2011, Respondent pleaded guilty to the charge of felony aggravated assault as described by Arizona Revised Statutes (A.R.S.) sections 13-203(A)(1), 13-204(A)(2) and (B), 28-3304, 28-3305, 28-335, 13-604, 13-701, 13-702, 13-702.01 and 13-704 in Maricopa County case No. CR2010-005647. This is a “non-dangerous and non-repetitive class 3 felony.” Respondent was sentenced to three and one-half years in prison beginning May 3, 2011, with 419 days of presentence incarceration credit. Respondent was ordered to pay \$4,395 in restitution to the injured victim with payments due monthly. This sentence was set to run concurrent with two other criminal matters pending before the court in cases CR2009-048841-001 and CR2010-113138-001.

As part of the sentencing hearing that took place in that criminal proceeding, the director of the Arizona State Bar appeared as a witness and provided the following testimony:

I met Ms. Cook a couple of years ago, there was a lot of talk about her and problems with alcohol and I heard you mention all the CR numbers of the cases, it supported exactly what I have known now for a couple of years is that her primary issues involved result of her addition to alcohol.

On top of that, there was a – this was exacerbated by depression she was also experiencing. All the while trying to end and according to what we just heard, actually running a thriving and effective law practice. I think what led to a lot of this issue is the untimely death and tragic death of her second husband.

And all of this was hidden by this concept of denial. And as we have heard, she voluntarily checked herself into an inpatient rehab center at great expense to herself and started on the road toward recovery and accepted responsibility and accountability for what she has done.

And upon her release from that institution, she contacted me immediately and we put together a contract for her to provide structured monitoring for her so that she could, in fact, recover. Obviously, that has been interrupted by the proceeding here.

I have spoken with Ms. Cook, she has corresponded by letter to me and we stand ready, that is the state bar member [assistance] program stands ready to support her once released from prison.

(Ex. BB.)

Conclusions re Criminal Cases

The court finds that the facts and circumstances surrounding Respondent's five convictions involved other misconduct warranting discipline, but not moral turpitude.

Case No. 12-J-15789

On December 15, 2011, the Presiding Disciplinary Judge of the Arizona Supreme Court issued a Final Judgment and Order suspending Respondent for four years, retroactive to October 19, 2010.¹ This judgment was based on an Agreement for Discipline by Consent, executed by Respondent on December 6, 2011, while she was still in prison.

In the consent agreement, Respondent agreed that she should be disciplined based on her misconduct resulting in the five criminal convictions. In addition, Respondent also agreed that she should be disciplined for problems that occurred in the continued operation of her law practice after she was incarcerated on March 10, 2010. In the agreement, it was stated that she had continued to employ certain named employees in her law firm and had directed them to perform various tasks related to the operation of her law firm and representation of her clients.

Among other things, Respondent had directed these employees

“to contact the various courts in which her clients had cases pending to request the continuance of hearings and the extension of deadlines so she could notify her clients and prospective clients that (a) she could no longer represent them, (b) was looking for another attorney to handle their cases, and (c) could not accept any new client matters. Despite Respondent's instructions, [the employees] failed to promptly inform Respondent's

¹ The State Bar had a conservator named for Respondent while she was incarcerated. The October 19, 2010 date is based on the fact that the conservator's designees 'retrieved all of the Respondent's client files on October 18, 2010, and there was no evidence that Respondent held herself out as an attorney after that date. (Ex. 13, p. 32.)

clients that Respondent could no longer represent them and failed to contact all of the courts in which Respondent's clients had cases pending. Respondent's non-lawyer assistants also failed to communicate with clients and, on occasion, made unauthorized statements."

The consent agreement further provided, "Respondent was unable to properly supervise her non-lawyer staff after being incarcerated, in part because she could not freely communicate with them or review their work to ensure they were undertaking the tasks she directed them to undertake." Eventually, the Arizona State Bar took over Respondent's practice by placing Respondent on interim suspension and having a conservator appointed to protect her clients.

The bulk of the agreed misconduct consisted of instances where Respondent's staff members had either acted inappropriately while Respondent was incarcerated, without Respondent's knowledge or consent, or had failed to perform the assignments given to them by Respondent. In those instances, the State Bar and Respondent agreed that Respondent had failed to supervise her staff adequately and that she had been negligent in the operation of her firm. "Although Respondent's intentions were honorable, she was unable to properly supervise her staff because she was incarcerated."

There were, however, several instances where Respondent's misconduct was unrelated to her incarceration.

- On several instances in late 2009, Respondent had attended settlement conferences with a court magistrate, where she was observed to be under the influence of alcohol.
- In 2006, she had allowed a case to be dismissed, after the process server served the wrong party; the court granted Respondent's motion for an extension of time; and then the same court determined that it did not have jurisdiction to grant the extension of time.

- In late 2008, Respondent had filed a dismissal of an action after her client terminated Respondent as counsel in the matter. The agreement to dismiss the action had been reached while Respondent was still representing the client.
- In 2008, Respondent had been unable to locate a client's "right-to-sue" letter.

This court finds that the Arizona proceeding did not lack fundamental constitutional protection and that Respondent's culpability in the Arizona proceeding would warrant the imposition of discipline in California under applicable California laws and rules. (See, e.g., Rules of Professional Conduct, rules 3-110(A); 3-700(A)(2); and 4-100(B); and Bus. & Prof. Code, §§ 6104 & 6068, subs. (m) & (b).)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)² The court finds the following with regard to aggravating factors.

Prior Record of Discipline

Respondent has no prior record of discipline as an attorney in California. However, the Arizona consent agreement indicates that she had a prior history of a reprimand and probation in Arizona. That prior record of discipline was treated by the Arizona authorities to be an aggravating factor in determining the appropriate level of discipline in that state.

Significant Harm

Respondent's criminal conduct caused harm to the driver of the other car in the August 2008 collision.

² All further references to standard(s) or std. are to this source.

With regard to the professional misconduct, the parties agreed that the conduct caused “potential injury” to Respondent’s clients, but there was no finding of actual injury. Nor was there any additional evidence of such injury produced by the State Bar here.

Multiple Acts of Misconduct

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

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with regard to mitigating factors.

Cooperation

Respondent entered pleas of guilty or no contest in all of the five criminal matters and consented to culpability and discipline in the Arizona disciplinary proceeding. In this proceeding, she also entered into a stipulation as to the facts and the admissibility of documents. For such conduct, Respondent is entitled to mitigation credit. (Std. 1.2(e)(v); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Remedial Steps re Substance Abuse

Substance abuse and emotional problems may be considered mitigating where it is established that they were responsible for the attorney’s misconduct and if the respondent has established clearly and convincingly that she no longer suffers from such difficulties. (*In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702; *In the Matter of Deierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560-561.) Such is the case with regard to Respondent’s depression and alcohol-related criminal convictions. In the Arizona

disciplinary matter, it was stipulated that Respondent's emotional upset caused by the suicide of her husband and her related problems with alcoholism were mitigating factors.

In addition, since February 2010, Respondent has been seeking and receiving therapy related to her prior substance abuse, and there is no evidence that she has had any relapse with substance abuse since being released from prison. Such evidence indicating that prior misconduct will not recur in the future is a mitigating factor. (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 412.)

Character Evidence

Respondent presented good character testimony from six individuals, including attorneys from Arizona and New York and representing a wide range of references. Respondent is entitled to mitigation for this good character evidence. (Std. 1.2(e)(vi).)

Community Service

Respondent regularly performed services as a pro tem judge for the Arizona courts prior to the onset of her problems. This court accords some mitigation credit for her efforts. (*In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126.)

DISCUSSION

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

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*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.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The Arizona Supreme Court ordered in December 2011 that Respondent be suspended from the practice in that state for four years, with credit being given for her period of ineligibility dating back to October 2010.³ Viewed prospectively, the duration of the additional suspension ordered by the court was slightly less than a three years. Respondent will be eligible to resume practicing in Arizona in 2014.

Using that discipline as a guide, it is this court's conclusion that Respondent should remain actually suspended for a minimum period of two years and until she presents proof to the satisfaction of this court of her rehabilitation, fitness to practice and learning and ability in the general law, in accordance with standard 1.4(c)(ii). While this minimum period of suspension will last until a date later than imposed in Arizona, the period of suspension and probation will allow the California State Bar adequate time to monitor her condition.

The State Bar contends that standards 2.6, 3.2, and 3.4 apply and argues that Respondent should be disbarred to protect the public. This court disagrees. Instead it agrees with the Arizona Supreme Court that disbarment is neither necessary nor appropriate.

As both this court and the Arizona consent agreement expressly stated, the purpose of these disciplinary processes, both here and in Arizona, is not to punish, but rather to protect the public, the courts, and the legal profession. The risk of harm from misconduct by Respondent,

³ It did not impose a clear requirement that Respondent demonstrate her rehabilitation to the satisfaction of that court or the Arizona State Bar before she would again be eligible to practice. However, there were indications in the consent decree that Respondent had already contractually agreed to monitoring by the authorities of the Arizona State Bar.

both in the past and in the future, is far greater in Arizona than it has ever been in California. All of Respondent's misconduct, including her past drunk driving and professional misconduct, occurred solely in Arizona and involved violations of the laws and rules of that state. All of the misconduct that is now before this court was considered by the Arizona Supreme Court and by the Arizona State Bar in the prior disciplinary proceeding. Those authorities were obviously much closer to the facts surrounding the misconduct and were far more familiar with Respondent and her problems. Based on that record, the Arizona Supreme Court and the Arizona State Bar concluded that Respondent needed only to be suspended and did not need to be disbarred.

The California State Bar has offered no reason in this proceeding why discipline greater than even that administered by the Arizona authorities is required to protect the public, the courts, or the legal profession in California from any possible future misconduct by Respondent. None of the standards cited by the State Bar mandate disbarment; none of her misconduct occurred here; the events that caused her depression and problems with alcohol happened many years ago, and there is no reason to believe that such problems will be repeated; Respondent has actively sought remedial help for her prior personal problems; and, most significantly, she is an infrequent practitioner in this state.

DISCIPLINE RECOMMENDATION

Recommended Probation/Actual Suspension

For all of the above reasons, it is recommended that **Rosemary Stathakis-Cook**, Member No. 104143, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for four years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first two years of probation and she will remain suspended until she provides proof to the

State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law. (Std. 1.4(c)(ii).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, her current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.
4. 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 and must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).⁴ However, if Respondent's probation

⁴ To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

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

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.
7. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This

condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
9. At the termination of the probation period, if Respondent has complied with all of the terms of her probation, the three-year period of stayed suspension will be satisfied and the suspension will be terminated.

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of her suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁵

⁵ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: October _____, 2013

DONALD F. MILES
Judge of the State Bar Court