FILED MARCH 5, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: **11-O-10549-LMA (S201031)**
DOROTHY DAVIS GUILLORY,	)	**DECISION AND ORDER**
Member No. 114891,	)	
A Member of the State Bar.	)	

Introduction[1]

This matter involves a stipulation regarding facts, conclusions of law, and disposition that respondent DOROTHY DAVIS GUILLORY and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) entered into and which the State Bar Court approved in an order filed herein on January 23, 2012.[2] The matter, including the approved stipulation, was thereafter filed in the Supreme Court under case number S201031.

On August 27, 2012, the Supreme Court filed an order returning the matter to the State Bar "for further consideration of the recommended discipline in light of the applicable attorney discipline standards. [Citations.]"

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

[2] There is no notice of disciplinary charges in the present proceeding because the parties' January 23, 2012, stipulation was the initial pleading filed in the proceeding. Moreover, respondent did not admit the truth of the facts or culpability for the misconduct set forth in the stipulation; instead, she pleaded nolo contendere to the recited facts and misconduct as authorized by section 6085.5, subdivision (c) and Rules of Procedure of the State Bar, rule 5.56(A)(5)(b)&(B).

Upon further consideration of the recommended discipline, this court now concludes that the recommended discipline should be increased to three years' stayed suspension and four years' probation with conditions, including a two-year (actual) suspension that will continue until respondent (1) obeys a Superior Court order to disgorge a total of $60,000 in advanced fees that she was paid from a former client's trust and (2) establishes her rehabilitation, fitness to practice, and learning in the law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).[3]

Senior Trial Counsel Donald R. Steedman represented the State Bar. Attorney Samuel C. Bellicini represented respondent.

Significant Procedural History

After the Supreme Court returned the matter for further consideration, a trial was held on December 6, 2012. At trial, the parties were permitted to proffer evidence of relevant facts to supplement without contradicting the facts set forth in the parties' January 23, 2012, stipulation. (See State Bar Court order filed October 23, 2012.)

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar of California since that time.

Facts

In summer 2008, respondent represented and drafted estate planning documents for Sim Richardson, an elderly retired man. One of the documents that respondent drafted was a trust instrument creating the Sim Richardson Living Trust (Richardson Trust). Richardson executed that trust instrument on July 1, 2008. Richardson funded the Richardson Trust exclusively with

[3] All further references to standards are to this source.

his own assets. Those assets were to be held by the trust for the sole benefit of Richardson for as long as he lived and, upon his death, for the sole benefit of two of his named beneficiaries Sandra Smith and Lelma Williams, who are two of Richardson's daughters. Under the terms of the Richardson Trust, Richardson was the initial trustee of the trust, and in the event that Richardson became incapacitated, Ellen Brantley, his sister, was to become the successor trustee.

In another estate planning document, Richardson nominated Brantley to become the conservator of his person and estate should he ever become incapacitated.

In 2008, Richardson was not in good health. In early September 2008, Richardson had a stroke and was hospitalized for an extended period of time.

Following Richardson's stroke, Brantley and Richardson's daughter Lelma Williams unsuccessfully attempted to be appointed conservators of Richardson's person and estate. Respondent represented Brantley and Williams in those endeavors from about September 30, 2008, until about December 8, 2009. In December 2008, respondent filed petitions in the Alameda County Superior Court seeking to have Brantley and Williams appointed both as temporary conservators and then as permanent conservators of the person and estate of Richardson.

On December 22, 2008, the Superior Court appointed the Public Defender as Richardson's attorney. The next day, at a hearing on Brantley and Williams's petition for temporary conservatorship, the Superior Court denied Brantley and Williams's petition to be appointed temporary conservators and, instead, appointed the Alameda County Public Guardian as temporary conservator of the person and estate of Richardson. The Public Guardian was appointed to serve until further order of the court.

With respect to the Superior Court conservatorship proceedings, the interests of Brantley and Williams, who were respondent's clients, were adverse to and actually conflicted with those

of Richardson, who was respondent's former client. For example, beginning in December 2008, after Richardson had partially recovered from his stroke, Richardson strenuously and repeatedly objected to Brantley and Williams being appointed as his conservators. Notwithstanding this direct conflict involving the subject matter of respondent's prior representation of Richardson, respondent continued to represent Brantley and Williams in the conservatorship proceedings without Richardson's consent.

Furthermore, after Richardson's stroke in September 2008, Brantley began acting as the successor trustee of the Richardson Trust. Respondent represented Brantley as the successor trustee from about September 30, 2008, until about December 8, 2009. On December 15, 2008, Brantley paid respondent $60,000 from the Richardson Trust as advanced attorney's fees to "defend" the trust, which Richardson's daughter Sandra Smith had questioned/challenged.

When respondent received the $60,000 in advanced fees from Brantley, respondent deposited the $60,000 into her client trust account. By the end of January 2009, respondent had withdrawn $43,568.34 of the $60,000. Thereafter, respondent withdrew the remaining $16,431.66 and used it for her own purposes.

With respect to the Richardson Trust, the interests of Brantley, who was respondent's client, were adverse to and actually conflicted with those of Richardson, who was respondent's former client. For example, on May 25, 2009, Richardson filed, in the Superior Court conservatorship proceedings, a motion under Probate Code section 17200 seeking, inter alia, a finding that the Richardson Trust was revoked. Attached to Richardson's May 25, 2009, motion was Richardson's declaration revoking the Richardson Trust. Notwithstanding this direct conflict involving the subject matter of respondent's prior representation of Richardson, respondent continued to represent Brantley without Richardson's consent. What is more,

respondent thereafter asserted in the Superior Court, as Brantley's attorney, that Richardson lacked both the capacity and the standing to revoke the Richardson Trust.

Moreover, the conflicting interests between Brantley and Richardson with respect to the Richardson Trust became even greater on July 1, 2009, when Richardson filed a petition in the Superior Court seeking (1) to compel Brantley to provide him with an accounting of the Richardson Trust's assets, (2) to compel respondent to refund, to the Richardson Trust, the $60,000 in advanced fees that Brantley paid respondent in December 2008, and (3) to revoke the Richardson Trust. Not even this conflict deterred respondent's resolve to represent Brantley against her former client Richardson, and respondent continued to represent Brantley in opposition to Richardson's July 1, 2009, petition.

On July 23, 2009, the Superior Court, on the motion of the Public Guardian, appointed a guardian ad litem for Richardson. On July 23, 2009, the Superior Court also issued an order requiring respondent and Brantley to appear in court and to show cause why respondent should not be required to refund the $60,000 in advanced fees and why the Richardson Trust should not be revoked.

Respondent never obtained Richardson's consent to her representing either Brantley or Williams with respect to their attempts to become Richardson's conservators. Nor did respondent ever obtain Richardson's consent to her representing Brantley as the successor trustee of the Richardson Trust.

In August and September 2009, Richardson's guardian ad litem, the Public Guardian, and the Public Defender each filed pleadings raising the issue of respondent's conflict of interest in representing Brantley and Williams in the conservatorship proceedings and the other proceedings involving the Richardson Trust, all of which were matters substantially related to respondent's former representation of Richardson. The pleading that the Public Defender filed raising the

conflict of interest issue included a request/motion to disqualify respondent from representing Brantley and Williams because of respondent's conflict of interest.

On December 8, 2009, the Superior Court filed an order granting the Public Defender's request to disqualify respondent because respondent violated rule 3-310(E) when she accepted employment from Brantley and Williams without obtaining Richardson's informed written consent. In its December 8, 2009, order the Superior Court also aptly ordered respondent to disgorge the $60,000 in advanced fees she received from the Richardson Trust.

The Superior Court ordered respondent to disgorge the $60,000 because, even if respondent had earned it, she was not entitled to collect a fee from the Richardson Trust because she violated rule 3-310(E). The Superior Court also noted in its order that none of the $60,000 could be used to compensate respondent for the services she rendered in the conservatorship proceedings because respondent had not obtained a court order fixing and allowing her to be compensated as required by Probate Code section 2430.

Respondent received notice of the Superior Court's December 8, 2009, order soon after it was filed. Moreover, the Superior Court's order has remained in full force and effect since it was filed on December 8, 2009. Respondent, however, has never complied with the order.

In an order filed on April 9, 2010, the Superior Court found respondent in contempt of court for failing to disgorge the $60,000 in accordance with its December 8, 2009, order. Thereafter, in an order filed on May 14, 2010, the Superior Court ordered respondent to pay, as sanctions for the contempt, $1,000 to the Superior Court, $900 to the Public Defender, and $800 to the County Counsel of Alameda County. In its May 14, 2010, order, the Superior Court again ordered respondent to return to the $60,000 in advanced fees to the Public Guardian or, in the alternative, to provide an undertaking pursuant to Code of Civil Procedure section 917.1 no later

than July 22, 2010. The Superior Court ordered respondent to pay the foregoing sums no later than July 22, 2010.

Respondent received notice of the Superior Court's April 9, 2010, and May 14, 2010, orders soon after they were filed. Both of those orders have been in effect since they were filed. Respondent, however, failed to timely pay the sums as ordered or to provide an undertaking. Accordingly, on November 18, 2010, the Superior Court entered a judgment against respondent as follows: $60,000 payable to the Public Guardian, $1,000 payable to the Superior Court, $900 payable to the Public Defender, $800 payable to the County Counsel; and $40 in costs payable to the Public Guardian. The judgment also provided that interest accrued on the foregoing amounts at the judgment rate until paid.

Richardson died in May 2010. Thereafter, the Public Guardian properly assigned its $60,000 judgment against respondent to Richardson's daughters Sandra Smith and Lelma Williams.

Respondent finally paid $1,000 to the Superior Court on October 12, 2012. Respondent finally paid $800 to County Counsel on October 26, 2012. Respondent, however, failed to pay the Superior Court and the County Counsel interest in accordance with the Superior Court's November 18, 2010, judgment. Moreover, as of the December 6, 2012, trial in this disciplinary proceeding, respondent had not disgorged any portion of the $60,000; nor had respondent paid any portion of the Public Defender's $900 judgment against her.

Respondent failed to report the May 14, 2010, sanction order to the State Bar within 30 days after learning of the order.

Conclusions of Law

As noted *ante* in footnote 2, respondent pleaded nolo contendere to the facts and misconduct recited in the parties' January 23, 2012, stipulation in accordance with section

6085.5, subdivision (c) and Rules of Procedure of the State Bar, rule 5.56(A)(5)(b)&(B). Section 6085.5, subdivision (c) provides that a nolo contendere plea in an attorney disciplinary proceeding has the same *legal effect* as an admission of culpability and that, upon a plea of nolo contendere, the court must find the respondent attorney culpable.

Notwithstanding the seemingly mandatory language in section 6085, subdivision (c), before the State Bar Court may find a respondent attorney who has pleaded nolo contendere culpable of misconduct, the court must fulfill its independent duty to ensure that the factual record adequately supports the resulting admission of culpability by clear and convincing evidence. (Cf. *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 471; *Baker v. State Bar* (1989) 49 Cal.3d 804, 816; *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 407, 409, 410; *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 128 [State Bar Court must independently review stipulated conclusions of law].) To conclude otherwise would, inter alia, compel the State Bar Court to find an attorney who has pleaded nolo contendere culpable of misconduct even when the factual record does not establish the violation and the State Bar Court is, therefore, unable to make an appropriate discipline recommendation to the Supreme Court. Without question, such results would not further any recognized goal of attorney discipline.

Furthermore, even when a respondent attorney has pleaded nolo contendere, the State Bar Court must still resolve all reasonable doubts in proving a charge of misconduct in the respondent's favor (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55, citing *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291). In sum, even when a respondent attorney pleads nolo contendere to the charged or stipulated misconduct, the State Bar Court "cannot surrender its duty to see that the [decision it files] is a just one, nor is the court to act as a mere puppet in the matter." (*City of Los Angeles v. Harper* (1935) 8 Cal.App.2d 552, 555.)

Count One – Rule 3-310(C)(2) (Representing Clients with Conflicting Interests)

Under count one, the parties stipulate that, by accepting representation of Brantley and Williams and by continuing to represent them in the conservatorship proceedings and the proceedings involving the Richardson Trust, respondent accepted or continued representation of more than one client in a matter in which the interests of the clients actually conflicted without the informed written consent of each client in willful violation of rule 3-310(C)(2). The court rejects the stipulated violation of rule 3-310(C)(2).

At the time respondent represented Brantley and Williams, Richardson was one of respondent's former clients; accordingly, respondent's representation of Brantley and Williams vis-à-vis Richardson was *successive*. Rule 3-310(E), not rule 3-310(C)(2), deals with successive representations.

Rule 3-310(C)(2) applies only when an attorney represents two or more clients whose interests actually conflict *in the same matter/proceeding/enterprise* (i.e., *concurrent representation* of conflicting interests). Again, respondent did not represent Richardson in either the conservatorship proceedings or the proceedings involving the Richardson Trust. In those proceedings, respondent represented only Brantley and Williams, and Brantley's and Williams's interests did not conflict. Accordingly, respondent did not violate rule 3-310(C)(2) by representing Brantley and Williams.

However, as discussed *post* under the heading "Aggravation," respondent willfully violate rule 3-310(E) when she accepted representation of Brantley and Williams without Richardson's consent because the representation of Brantley and Williams was adverse to Richardson. Because the parties did not stipulate to respondent's rule 3-310(E) violation, the court considers the rule 3-310(E) violation only for purposes of aggravation under standard 1.2(b)(iii) (other violations). (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36

[uncharged misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].)

Count Two – Rule 4-200(A) (Unconscionable Fee)

Under count two, the parties stipulated that "By charging, receiving, collecting, and removing the $60,000 from the trust, respondent entered into an agreement for, charged, and collected an unconscionable fee" in willful violation of rule 4-200(A). The court, however, rejects the stipulated violation of rule 4-200(A) because the record does not contain sufficient facts to support that legal conclusion.

There are only two statements in the stipulation that are relevant to the unconscionable fee conclusion. The first relevant statement is that "Respondent's fee was unconscionable, under the factors set forth in Rule 4-200(B)." That statement, however, is itself a legal conclusion, which is not supported by any stipulated facts or other evidence. Moreover, that statement does not indicate the amount of respondent's fee (i.e., the amount respondent actually charged for the legal services she actually performed). The parties' failure to indicate the amount of respondent's fee effectively precludes a finding that the fee was unconscionable under the factors set forth in rule 4-200.

The second relevant statement is that "Sim Richardson himself never agreed to pay respondent the $60,000 advanced fee." That statement's relevance is limited because, when respondent received the $60,000 in advanced fees, Richardson was not her client – Brantley, the successor trustee, was respondent's client and there is nothing to suggest that Brantley lacked the authority to act as the successor trustee or violated her fiduciary duties in paying the advanced fees to respondent.

/ / /

/ / /

Count Three – § 6103 (Failure to Obey a Court Order)

Under count three, the parties stipulate that respondent willfully violated section 6103, which provides, in pertinent part, that an attorney's willful violation or disobedience of a court order that requires the attorney to do or forbear an act connected with or in the course of his or her profession, which the attorney ought in good faith do or forbear constitutes cause for the attorney's suspension or disbarment. The record clearly supports the stipulated violations of 6103 based on respondent's failure to obey the Superior Court's December 8, 2009, order to disgorge the $60,000 in advanced fees and on respondent's failure to obey the Superior Court's May 14, 2010, contempt/sanctions order.

To the extent that respondent contends her alleged lack of ability to refund the $60,000 in advanced fees or to pay the sanctions is a defense to violating section 6103, the court rejects it. Even if respondent lacked the ability to refund the advanced fees or pay the sanctions, it would not be a defense or an impediment to discipline because respondent failed to establish that she sought relief from the Superior Court orders based on an inability to pay. Moreover, assuming arguendo that respondent actually lacked the ability to refund the advanced fees or to pay the sanctions, she is not being disciplined merely for not paying. Instead, she is being disciplined for not paying the sanctions without first attempting to be relieved from the obligations to pay in whole or in part based on an inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

***Count Four – §* 6068, subdivision (o)(3) (Failure to Report Sanctions)**

Under count four, the parties stipulate that respondent wilfully violated section 6068, subdivision (o)(3), which requires, within 30 days of knowledge, that an attorney report, in writing to the State Bar, the imposition of judicial sanctions against the attorney of $1,000 or more which are not imposed for failure to make discovery. The record clearly supports the

stipulated violation of section 6068,subdivision (o)(3) because respondent failed to report the Superior Court's May 14, 2010, sanction order to the State Bar in writing within 30 days of the time respondent had knowledge of the sanctions.

Aggravation

Significant Harm – Standard 1.2(b)(iv)

The parties appropriately stipulated that respondent's misconduct caused significant harm because respondent has still not refunded the $60,000 in advanced fees in accordance with the Superior Court's December 8, 2009, order.

Uncharged Violation of Rule 3-310(E) – Standard 1.2(b)(iii)

Rule 3-310(E) provides, in relevant part, that "A member shall not, without the informed written consent of the … former client, accept representation adverse to the … former client where, by reason of the former representation of the … former client, the member has obtained confidential information material to the [new] employment." This court, like the Superior Court, finds that respondent willfully violated rule 3-310(E).

Respondent's representation of Brantley as the successor trustee was adverse to Richardson under rule 3-310(E) because Brantley sought to replace Richardson as the trustee of the Richardson Trust. Likewise, Brantley and Williams's attempts to be appointed conservators of the person and estate of Richardson were adverse to Richardson under rule 3-310(E) because Brantley and Williams sought to assert control over Richardson. Presumably, the inherent adverse nature of the conservatorship proceedings alone justified the Superior Court's appointment of a guardian ad litem for Richardson on July 23, 2009.

Rule 3-310(E) provided Richardson the right to preclude respondent from disclosing or otherwise using any confidential information that he provided to her in the summer 2008 against

him in the conservatorship or the trust proceedings by requiring that respondent obtain his written informed consent to her representation of Brantley and Williams.

Clearly, an attorney must comply with rule 3-310(E) if a substantial relationship exists between a prior representation and a new representation. (Cf. *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 747.) Thus, in the context of a motion to disqualify an attorney from representing a party, if a substantial relationship exists between the prior representation and the new representation, the rights of the former client will prevail, conflict will be presumed, and disqualification will be ordered in the new representation. (*Rosenfeld Const. Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 575.)

Successive representations are substantially related "when the evidence before the trial court supports a rational conclusion that information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues." (*Jessen v. Hartford Casualty Insurance Company* (2003) 111 Cal.App.4th 698, 712.) Many times, the "evaluation of whether . . . two representations are substantially related centers precisely upon the factual and legal similarities of the two representations. (*Id*. at pp. 709-710.) Here the factual and legal similarities of the two representations clearly establish that the two representations are substantially related in that both representations involve Richardson and his right to control his person and property and the trust instrument that respondent drafted creating the Richardson Trust.

Accordingly, respondent willfully violated rule 3-310(E) when she accepted employment to represent Brantley and Williams without first obtaining Richardson's written informed consent. To the extent that Richardson was, in fact, incompetent at the time respondent accepted employment to represent Brantley and Williams such that Richardson was incapable of providing

his informed consent, then respondent's representation of Brantley and Williams was precluded, and she never should have undertaken to represent them in the first instance.

Mitigation

No Prior Records of Discipline – Standard 1.2(e)(i)

The parties appropriately stipulate that respondent is entitled to significant mitigation based on her more than 23 years of misconduct free practice even though the present misconduct is serious. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 and *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [noting that, under standard 1.2(e)(i), the Supreme Court has repeatedly given mitigation for no prior record of discipline in cases in which the misconduct was serious].)

Discussion

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

The applicable standard is standard 2.6, which provides that respondents' culpability for violating sections 6068 and 6103 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3." Standard 1.3 provides:

> The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the

> imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

Unfortunately, the generalized language of standard 2.6 provides little guidance to the court in this proceeding. (*In re Morse* (1995) 11 Cal.4th 184, 206.) "The imposition of attorney discipline does not issue from a fixed formula but from a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316.)

The court finds *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 instructive on the issue of discipline. In *Davis*, the attorney was placed on four years' stayed suspension and four years' probation on conditions, including a two-year (actual) suspension that continued until the attorney (1) paid $29,875.89 in restitution for misappropriated funds and (2) established his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii). In *Davis*, in a single client matter, the attorney improperly withdrew disputed funds from his client trust account in violation of rule 4-100(A)(2); failed to account for the improperly withdrawn funds in violation of rule 4-100(B)(3); and misappropriated $29,875.89 in client funds in violation of section 6106. Moreover, the court in *Davis* found, as serious aggravation, that the attorney should not have represented the client in the first instance because the representation involved conflicting interests and because the attorney failed to comply with the informed written consent requirements in rule 3-310(B)&(C). (See *id*. at pp. 593- 594.) In further aggravation, the court found significant client harm, overreaching, and indifference toward rectification. In mitigation, the court in *Davis* found no prior record of discipline in twelve years of practice, good character evidence, and community service which were afforded great weight.

"The Supreme Court many years ago articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310:

> By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent. [Citation].

[Citation.] To here condone respondent's conduct would greatly diminish this important policy." (*In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. at p. 593.) Even though the misconduct in *Davis* was greater than that in the present proceeding in that *Davis* involved the deliberate misappropriation of client funds, the mitigation in *Davis* was also much greater than in the present proceeding in that *Davis* involved very strong good character evidence and community service which were afforded great weight. Of course, respondent has 23 years of misconduct free practice, while the attorney in *Davis* had only 12 years.

On further consideration on the issue of discipline, this court now concludes that, on balance, the appropriate level of discipline for respondent's misconduct is three years' stayed suspension and four years' probation on conditions, including a two-year suspension that will continue until respondent complies with the Superior Court's orders to disgorge the $60,000 in advanced fees by satisfying the Superior Court's November 18, 2010, judgment with respect to the $60,000 in advanced fees (1) by paying restitution in the amount of $30,000 together with 10 percent interest thereon from January 7, 2010,[4] until paid to Richardson's daughter Lelma Williams and (2) by paying restitution in the amount of $30,000 together with 10 percent interest thereon from January 7, 2010, until paid to Richardson's daughter Sandra Smith.

/ / /

[4] January 7, 2010, is 30 days after respondent was first directed to disgorge the $60,000 in the superior court's December 8, 2009, order.

Recommendations

Discipline

The court recommends that respondent DOROTHY DAVIS GUILLORY, State Bar Number 114891, be suspended from the practice of law in California for three years, that execution of the three-year suspension be stayed, and that she be placed on probation for four years subject to the following conditions:

1. Dorothy Davis Guillory is suspended from the practice of law in California for the first two years of her probation and until she

    a. makes restitution to Lelma Williams in the amount of $30,000 plus 10 percent interest per year from January 7, 2010 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Lelma Williams, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles;

    b. makes restitution to Sandra Smith in the amount of $30,000 plus 10 percent interest per year from January 7, 2010 (or reimburses the Client Security Fund, to the extent of any payment from the fund to Sandra Smith, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles; and

    c. provides proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and present learning, and ability in the general law in accordance with Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).

2. Dorothy Davis Guillory is to comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar, and all of the conditions of this probation.

3. Within 30 days after the effective date of the Supreme Court order in this proceeding, Dorothy Davis Guillory must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with her assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Dorothy Davis Guillory must meet with the probation deputy either in-person or by telephone. Thereafter, Dorothy Davis Guillory must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. Dorothy Davis Guillory is to maintain, with the State Bar's Membership Records Office in San Francisco and Office of Probation in Los Angeles, 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)(1)). In addition, Dorothy Davis Guillory is to maintain, with the State Bar's Office of Probation, her current home address

and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Dorothy Davis Guillory's home address and telephone number are not to be made available to the general public unless her home address is also her official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Dorothy Davis Guillory must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.

5. Dorothy Davis Guillory is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10, and October 10 of each year. Under penalty of perjury under the laws of the State of California, Dorothy Davis Guillory must state in each report whether she has complied with the State Bar Act, the Rules of Professional Conduct of the State Bar, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

   In addition to the quarterly reports, Dorothy Davis Guillory is to submit a final report containing the same information during the last 20 days of her probation.

6. Subject to the assertion of any applicable privilege, Dorothy Davis Guillory is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to her, whether orally or in writing, relating to whether she is complying or has complied with the conditions of this probation.

7. Within the period of her suspension, Dorothy Davis Guillory is to attend and satisfactorily complete the State Bar's Ethics School; and to provide satisfactory proof of her successful completion of that program to the State Bar's Office of Probation. The program is offered periodically at either 180 Howard Street, San Francisco, California 94105-1639 or at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Dorothy Davis Guillory's Minimum Continuing Legal Education ("MCLE") requirements; accordingly, she is ordered not to claim any MCLE credit for attending or completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)

8. Within the period of her suspension, Dorothy Davis Guillory is to pay the Alameda County Superior Court interest on $1,000 at the judgment rate from November 18, 2010, until October 12, 2012, in accordance with the Alameda County Superior Court's November 18, 2010, judgment in case number RP09455907 and to furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles.

9. Within the period of her suspension, Dorothy Davis Guillory is to pay the County Counsel of Alameda County the interest on $800 at the judgment rate from November 18, 2010, until October 26, 2012, in accordance with the Alameda County Superior Court's November 18, 2010, judgment in case number RP09455907 and to furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles.

10. Within the period of her suspension, Dorothy Davis Guillory is to pay the Alameda County Public Defender $900 plus interest thereon at the judgment rate from November 18, 2010, in accordance with the Alameda County Superior Court's November 18, 2010, judgment in case number RP09455907 and to furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles.

11. Within the period of her suspension, Dorothy Davis Guillory is to pay the Alameda County Public Guardian $40 plus interest thereon at the judgment rate from November 18, 2010, in accordance with the Alameda County Superior Court's November 18, 2010, judgment in case number RP09455907 and to furnish satisfactory proof thereof to the State Bar's Office of Probation in Los Angeles.

12. This probation will commence on the effective date of the Supreme Court order in this proceeding. At the expiration of the period of this probation, if Dorothy Davis Guillory has complied with all the terms of probation, the order of the Supreme Court suspending her from the practice of law for three years will be satisfied and that suspension will terminate.

Professional Responsibility Examination

The court further recommends that Dorothy Davis Guillory be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within the period of her suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same time period. 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; see also Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court further recommends that Dorothy Davis Guillory be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c)

/ / /

/ / /

of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.[5]

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order

The court orders that its January 23, 2012, order approving the parties' stipulation regarding facts, conclusions of law, and disposition is VACATED.

Dated: March 5, 2013

LUCY ARMENDARIZ
Judge of the State Bar Court

[5] Guillory is required to file a rule 9.20(c) compliance 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.) At least in the absence of compelling mitigating circumstances, an attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)