STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **KEVIN MICHAEL WHITE,** **Member No. 206704,** **KIMBERLY ALLYSON HANSEN,** **Member No. 167597** Members of the State Bar.	Case No.: **11-O-17873; 11-O-17874 YDR** **DECISION**

Introduction[1]

In this contested matter, Kevin Michael White ("Respondent White") and Kimberly Allyson Hansen ("Respondent Hansen") (collectively, "Respondents"), were charged with two counts of misconduct: 1) seeking to mislead a judge in violation of Business and Professions Code section 6068 subdivision (d) and 2) misrepresentations made to a court in violation of Business and Professions Code section 6106.

Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, the Court recommends that Respondent Hansen be suspended from the practice of law for two years, stayed, and a two year probation, subject to conditions, including 18 months actual suspension, in connection with her culpability for the violations charged in Count Two. This Court further recommends that Respondent White be suspended for one year, stayed, and placed on a two year probation, subject to conditions, for his culpability arising in connection with the violations charged in Count Two.

[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.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges ("NDC") on May 29, 2014. Respondent White filed an answer June 18, 2015 and Respondent Hansen filed a response to the NDC on June 26, 2014. The parties filed a Stipulation as To Undisputed Facts and Admission of Documents on April 28, 2015.

Trial was held April 28-29, 2015, May 7, 2015 and June 19, 2015. At the conclusion of trial, the Court dismissed with prejudice Count One (Business and Professions Code, section 6068(d) Seeking To Mislead a Judge) as to Respondent White and denied Respondent White's motion to dismiss Count Two (Business and Professions Code section 6106 Misrepresentation). The Court also denied Respondent Hansen's renewed motion to dismiss.

Closing argument briefs were filed July 15, 2015, and this matter was deemed submitted the same day.

Deputy Trial counsel Ross Viselman, Esq. and Ann J. Kim, Esq., represented the State Bar. Respondent White was represented by Edward O. Lear, Esq., of the Century Law Group and Respondent Hansen was represented by Kevin P. Gerry, Esq., of the Law Offices of Kevin Gerry.

Findings of Fact and Conclusions of Law

These findings of fact are based on the record, evidence admitted at trial and certain facts set forth by the parties in their factual stipulation.

Respondent White was admitted to the practice of law in California on June 1, 2000, and Respondent Hansen was admitted to the practice of law in California on December 10, 1993. Each Respondent has been a member of the State Bar of California at all times since Respondent's respective date of admission.

Respondent White has no prior record of discipline. As discussed below, Respondent Hansen has two prior records of attorney discipline.

Background Facts Regarding Respondent Hansen's Prior Discipline

Respondent Hansen's first discipline (Supreme Court case no. S193233, filed July 27, 2011), arose in connection with misrepresentations Respondent Hansen made to the United States Bankruptcy Court in a Chapter 7 bankruptcy petition that she and her husband jointly filed in December 2003. Respondent Hansen misrepresented the number and amount of encumbrances on her residence and subsequently stipulated to acts of moral turpitude in violation of Business and Professions Code section 6106. For this misconduct, Respondent Hansen received a one year stayed suspension, one year probation subject to conditions and, a thirty-day actual suspension.

Her second discipline (Supreme Court case no. S193233, filed September 25, 2012), resulted from Respondent Hansen's failure to comply with the disciplinary probation conditions attendant to the first discipline, including her failure to participate in her scheduled telephonic Office of Probation meeting, failure to provide proof of completion of six hours of certain MCLE-approved courses and her failure to timely submit her October 2011 quarterly report. As a result of her failure to participate in the probation revocation proceedings, Respondent Hansen was actually suspended from the practice of law for one year and she was placed on probation for two years, subject to conditions.

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Facts

At all times relevant to this matter, Respondents worked at the law firm of Stockwell, Harris, Woolverton & Muehl ("Stockwell"), a firm that specializes in workers' compensation defense. Respondent White has been employed as an associate at the Stockwell firm since April

2008. Respondent Hansen has worked at Stockwell since January 2002. At the time of the pending charges, Respondent Hansen was a partner at the Stockwell firm.

The charged misconduct subject of this proceeding, arose in connection with Stockwell and Respondents' representation of Zurich North America in a Workers Compensation Appeals Board ("WCAB") claim filed in *Louis Speight v. Vulcan Materials, et al.*, Case No. ADJ6551691 (the "*Speight* Matter"). The *Speight* Matter resulted from a workers' compensation claim submitted by Louis Speight ("Applicant"), against his employer, Vulcan Materials, for alleged injuries that occurred between March 10, 2007 and March 10, 2008.

On or about January 16, 2009, Zurich North America, Vulcan Materials' insurer, denied Applicant Louis Speight's claim for workers' compensation benefits. Subsequently, Respondent Hansen drafted and sent a letter to Applicant's Counsel[2] offering to utilize the services of an Agreed Medical Examiner ("AME") in the *Speight* Matter.

On February 13, 2009, Respondent Hansen drafted and submitted the first Request for Qualified Medical Evaluator Panel ("First QME Panel Request") to the Department of Industrial Relations Division of Workers' Compensation Medical Unit ("Medical Unit") requesting that the Medical Unit appoint a QME panel. [State Bar Exhibit ("SB Exh.") 07-001]. The Medical Unit's May 20, 2009, response to Respondent Hansen stated that it "was unable to process it [the First QME Panel Request], due to the lack of all necessary information". The Medical Unit requested that Respondent Hansen resubmit the request as soon as possible with all of the information and attachments, noting "[t]his request was submitted during the 10 day period referred to in Labor Code section 4062.2(b) in which the parties are to attempt to agree to an AME." [SB Exh. 8-001]

About one week later, Applicant's Counsel sent a letter to Respondent Hansen forwarding the May 19, 2009 report of Dr. Faramarz Payandeh, demanding settlement, and informing Respondent Hansen of Applicant's Counsel's intention to file a Declaration of Readiness to Proceed to trial. Respondent Hansen drafted and sent a letter to Applicant's

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[2] Applicant was represented in the *Speight* Matter by Perona, Langer, Beck and Serbin (aka The Law Offices of John A. Mendoza) ("Applicant's Counsel").

Counsel objecting to the May 19, 2009 report of Dr. Payandeh.

On June 5, 2009, Respondent Hansen drafted and submitted a Second QME panel request ("Second QME Panel Request") to the Industrial Medical Unit ("Medical Unit"), requesting that the Medical Unit appoint a QME panel. [SB Exh. 010-001] On July 22, 2009, the Medical Unit sent a notice to Respondent Hansen regarding the Second QME Panel Request. The Medical Unit notice stated it was unable to process the Second QME Panel Request because it lacked necessary information; specifically, the notice stated "[t]he AME offer letter must be included with your request for a panel and must name at least one physician to serve as an AME. The request for the panel may not be submitted until 10 days have passed since the date of the first valid, written AME offer letter." [SB Exh. 15-001]

On or about July 28, 2009, Respondent Hansen drafted and submitted a third QME panel request ("Third QME Panel Request") to the Medical Unit requesting appointment of a QME panel.

After Applicant's Counsel filed a Declaration of Readiness to Proceed to trial in the *Speight* Matter, Angela Seki ("Seki"), an attorney at Stockwell, drafted and filed a verified Objection to Declaration of Readiness to Proceed in the *Speight* Matter.

On August 19, 2009, Respondent White and Applicant's Counsel attended a mandatory settlement conference ("MSC") presided over by Judge John A. Siqueiros. Respondent White represented Vulcan Materials and Zurich North America; Respondent Hansen did not attend the MSC. On behalf of his clients, Respondent White objected to trial going forward however, Judge Siqueiros overruled the objection and set the matter for trial.

Respondent White sought relief from Judge Siqueiros' order by drafting a Petition for Removal Pursuant to Labor Code section 5310 ("Removal Petition"), which was filed September 8, 2009. In the Removal Petition, Respondent White argued that the *Speight* Matter should not proceed to trial on all issues because additional discovery was needed "to rebut the findings of the [A]pplicant's primary treating physician and to substantiate defendant [Vulcan Materials'] position that [A]pplicant's claim is not compensable." [SB Exh. 018] Respondent White further

argued that without the Qualified Medical Exam panel, defendant Vulcan Materials would experience extreme prejudice and violation of its due process rights. According to Respondent White, "the Industrial Medical Unit did not issue the Qualified Medical Evaluator panel in a timely manner", notwithstanding the fact that "defendant [Vulcan Materials] followed the procedures outlined in the California Labor Code for obtaining a Qualified medical Evaluator panel" by submitting requests for a QME panel on February 13, 2009 and on June 5, 2009.[3]

Respondent White not only stated "the Industrial Medical Council never issued the [QME] panel," he neglected to mention in the Removal Petition that the Medical Unit had responded to the first two QME requests and, due to deficiencies in each request, the Medical Unit refused to issue the QME panel.

Respondent White urged the Workers' Compensation Appeals Board to order the Industrial Medical Unit to issue a QME panel and to vacate Judge Siqueiros' order requiring the matter to proceed to trial on all issues. [4]

Judge Siqueiros filed a Report and Recommendation on Petition for Removal in response to Respondent White's Petition for Removal. [SB Exh. 19] While Judge Siquerios' September 21, 2009 Report recommended denying defendant Vulcan Materials' request for removal on the grounds that defendant failed to show "it would suffer . . . substantial prejudice or irreparable injury if the petition were not granted", Judge Siquerios noted "[D]efendant does not say whether the Medical Unit has responded at all to its requests, and if so, what concerns it had in not issuing a panel of QMEs." [*Id.* At 019-001] Judge Siquerios also declined to grant removal based on the alleged conflict between the Medical Unit's regulations and the Labor Code.

On September 28, 2009, the Medical Unit issued a QME panel in response to the Third QME Panel Request. [SB Exh. 021]

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[3] Respondent White also argued that a conflict existed between the California Code of Regulations, section 30 and Labor Code section 4060 or 4062.2 regarding the method of obtaining medical examinations to resolve issues arising out of a denied workers compensation claim.

[4] On September 8, 2009, Lisa Hanhart ("Hanhart"), an attorney at Stockwell, signed, verified and filed the Petition for Removal that Respondent White drafted.

By order filed-stamped December 21, 2009, the WCAB granted Respondent White's Petition for Removal. [SB Exh. 022] The WCAB subsequently issued a March 9, 2010 order in which it concluded that defendant [Vulcan Materials] was entitled to an order directing the Medical Director to issue a QME panel. Accordingly, the WCAB "ordered the Medical Director to issue a QME panel in accordance with defendant's February 13, 2009 and June 5, 2009 requests." [*Id.* at 023-007.]

On March 30, 2010, the attorney for the Medical Director filed a verified Petition for Reconsideration and Petition to Reopen the Record and an Offer of Proof stating, among other things, that the Medical Unit responded to all three of Respondent Hansen's QME panel requests and that a QME panel was issued in response to the Final QME Panel Request. [SB Exh. 24] The Medical Director petitioned the WCAB to vacate the earlier order on the grounds that "a) the Order to the Medical Director was procured by defendant by fraud; b) the evidence does not justify the findings of fact; c) the findings of fact do not justify this Order; d) the Board acted without and in excess of its powers by issuing an Order procured by fraud and unsupported by the true facts." [SB Exh. 024-002]. In addition, the Medical Director's Petition For Reconsideration alleged that Respondent Hansen committed fraud by filing a Removal Petition which contained facts she knew to be false in order to obtain the removal.

On or about April 26, 2010, Respondent Hansen drafted and filed Defendant's Answer to Petition for Reconsideration in response to the Medical Director's Petition for Reconsideration ("the Answer"). Respondent Hansen's Answer accused counsel for the Medical Director of failing to read the Removal Petition and of "unjustly and recklessly" accusing defendant Vulcan Materials and its attorney of fraud. Respondent Hansen contended that defendant's Removal Petition did not fraudulently misstate material facts because rather than stating that the Medical Unit had not responded to defendant's requests for the appointment of a panel, Hansen stated that "the Industrial Medical Council never issued the panel". [SB Exh. 26-003-004].

Respondent Hansen acknowledged that her client had submitted the First QME and the Second QME Panel Requests in February 2009 and June 2009, respectively. Respondent

Hansen's Answer also disclosed that the Medical Unit appointed a panel of Qualified Medical Examiners on September 28, 2009. However, Respondent Hansen's Answer did not disclose to the WCAB that the Medical Unit had responded to each of the first two deficient QME requests she prepared. [SB Exh. 26] Nor did Respondent Hansen subsequently advise the WCAB when the Medical Director issued the QME.

On August 12, 2010, the WCAB filed an Opinion and Decision after Removal and Notice of Intent to Impose Sanctions, which, among other things, rescinded the March 9 Order and reinstated the August 19, 2009 Order of Judge Siqueiros setting the matter for trial. Further, the WCAB gave notice of its intent to impose sanctions, attorney fees, and costs against Respondents, Seki, and Hanhart. [SB Exh. 27]. Respondents, Seki, and Hanhart drafted, signed and filed a Verified Reply to the Notice of Intent to Impose Sanctions in response to the WCAB's Opinion and Decision after Removal and requested a hearing. The September 1, 2010, Verified Reply asserted a number of arguments, most of which addressed the interpretation of Labor Code section 4060 and whether Rule 30(d)(3) barred defendant from obtaining a QME panel. Respondents, Seki and Hanhart argued that the timing of the QME panel requests was not at issue at the Mandatory Settlement Conference and if it had been, Respondent "White would have freely admitted that both requests were returned with additional information requested from the Medical Unit." [SB Exh. 28-016]

On November 9, 2010, Respondents, Seki, and Hanhart appeared at an informal meeting with the three commissioners of the WCAB to explain their thinking and legal factual basis supporting the arguments made in the various pleadings they filed and at the MSC with Judge Siqueiros.

The WCAB's August 23, 2011 order rejected counsel's repeated argument that the reason the panel requests were not processed was immaterial. The WCAB also chastised counsel, stating "[j]ust as their misleading descriptions continue to sanitize their own past conduct, defense counsel also continue their pattern of blaming their misfortunes on other parties. In their Reply, and in all previous filings, they admit no error on their part, but, instead, with selective

omission of material detail, cast blame on applicant's attorney, the WCJ, the DWC Medical Unit, the Medical Director's counsel, and the Appeals Board." [SB Exh. 29-007-8] The WCAB further stated "[d]efense counsel maintain that they did not *intend* to mislead us but, it was apparent from our March 9, 2010 Opinion and Decision After Removal that we had been misled. (emphasis in original). In that opinion, we speculated as to all the conceivable reasons for the DWC Medical Unit's failure to appoint a panel. We then explained why each of those reasons was invalid. Based on that analysis and defendant's 'verified allegations', we took the extraordinary action of ordering the Medical Director to issue a panel. It would have been obvious to defense counsel, who knew the real reasons the panel had not been appointed, that our speculations were baseless and that our opinion rested on faulty premises; but they took no steps to enlighten us. Remarkably, they responded with hostility when the Medical Director exposed our error in her petition for reconsideration." [SB Exh. 20-010-11]

The WCAB's August 23, 2011 order stated that in order to maintain the Appeals Board's ethical standards in practice, it must order Respondent Hansen to pay sanctions of $2,500; Respondent White to pay sanctions of $1,000; Hanhart to pay sanctions of $750, and Seki to pay sanctions of $500.

Conclusions

Count One – Business & Professions Code § 6068 (d) [Seeking to Mislead a Judge]

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. In Count One, the State Bar charges that in willful violation of section 6068, subdivision (d), Respondents misled the Worker Comp judge or judicial officer by knowingly representing to the court that their client had repeatedly requested that the Medical Director of the Division of Workers' Compensation, appoint a qualified medical evaluator panel but that such requests were ignored when, due to deficiencies, Respondents' first two requests were denied in writing.

Hansen and White violated section 6068, subdivision (d) by concealing material facts from Judge Siquieros and the WCAB. However, as set forth below, the same facts that underlie the section 6068, subdivision,(d) violation (Count One) constitute a violation of section 6106. Thus, Count One is dismissed as duplicative. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissing section 6068, subd. (d) charge on finding of violation of section 6106].)

Count Two – Business & Professions Code § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption, constitutes cause for suspension or disbarment. In Count Two, the State Bar charges that between June 2009 and September 2010, Respondents committed acts involving moral turpitude or dishonesty by knowingly or being grossly negligent in representing to judicial officers that their client's requests for a qualified medical evaluator panel had been ignored by the Medical Director of the Division of Workers' Compensation when, in actuality, their client's requests had been denied in writing due to defects.

It is well established that acts of moral turpitude include an attorney's false or misleading statements to a court or tribunal. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855). No intent to deceive is necessary; "a finding of gross negligence in creating a false impression is sufficient for violation of section 6106." (*In The Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786)(citing *In the Matter of Moriarity* (Review Dept. 1994) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91).

Moreover, acts of moral turpitude include concealment as well as affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Indeed, "no distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citations omitted]".

(*In the Matter of Chesnut*, *supra,* 4 Cal. State Bar Ct. Rptr. at p. 174.) Also, it is not necessary that the respondent actually succeed in perpetrating a fraud on the court. (See, e.g., *Bach v. State Bar*, *supra*, 43 Cal.3d 848, 852-853, 855.)

Here, the State Bar established by clear and convincing evidence that during the course of the *Speight* Matter, both respondents misled the Worker Compensation judicial officers by telling half-truths and failing to be fully candid about material facts regarding the Medical Unit's responses to Respondent Hansen's two deficient QME requests. Respondent White was not candid when, in seeking to delay the trial for the purported purpose of obtaining much needed discovery, he drafted a Removal Petition that specifically and pointedly mentioned his client's two QME requests but failed to advise the judicial officer that no QME panel had been ordered due to deficiencies in each request.[5]

Respondent Hansen, the partner and attorney primarily responsible for the handling of the *Speight* Matter, drafted all three QME requests and saw (or was grossly negligent if she didn't see), the Medical Director's written QME responses contained in Respondent Hansen's *Speight* file, which she maintained. Having received and reviewed all three of the Medical Unit responses, Respondent Hansen knew that it took seven months to obtain approval for the QME panel not due to procrastination by the Medical Director but, due to deficiencies in each of the first two QME requests she submitted to the Medical Unit. Yet, Respondent Hansen's pleadings contained half-truths which implied that the Industrial Medical Council had been remiss in not

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[5] Respondent White testified he did not mention the QME responses because he had not extensively reviewed the file and was not aware of the two Medical Unit responses. Respondent White also contends that the responses were not material because his argument at the mandatory status conference and in the Removal Petition, focused on his perceived conflict between retroactive application of California Code of Regulations, rule (30)(d)(3) and Labor Code section 4062 and 4062.2, which addressed the method by which medical examinations were to be obtained. However, as the WCAB noted, Respondent White's "retroactivity issue was nothing but a red herring. " (See WCAB Orders Imposing Sanctions, Exh. 29, pg. 5)

promptly issuing the panel of Qualified Medical Evaluators, notwithstanding her requests that it do so.

Respondent Hansen argues that *she* wasn't involved in the preparation or filing of the September 8, 2009, Removal Petition which was drafted by her associate, Respondent White. Hansen contends she didn't mislead the WCAB or Judge Siquieros because she made no affirmative misrepresentations and filed no pleadings in the *Speight* Matter until she filed the April 24, 2010 Answer to Petition For Reconsideration and later, the September 1, 2010 Reply to Notice of Intent to Impose Sanctions. And, that is the point.

For over a year, Respondent Hansen allowed Judge Siquieros and the WCAB to be misled and to adjudicate matters based on the misstatements contained in the Removal Petition. Even when she did file post-Removal Petition pleadings in the *Speight* Matter, Respondent Hansen did not correct material misstatements regarding the QME requests and the Medical Unit responses. Instead, Hansen concealed material facts and continued a pattern of telling half-truths regarding the two deficient QME panel requests by stating that the Medical Unit did not *immediately* issue the QME panel.[6] Finally, as the WCAB noted, the entire Rule 30(d)(3).

Though their *Speight* Matter involvement differed, the Court concludes that the State Bar established by clear and convincing evidence that both Respondents were culpable of moral turpitude, in violation of section 6106.

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[6] Respondent Hansen also focused on inaccuracies in the Medical Director's counsel's Petition for Reconsideration which erroneously alleged that Hansen signed the verified Removal Petition. Understandably, Respondent Hansen was concerned about the allegation that she (rather than Respondent White), filed the Removal Petition containing "fraudulent" misrepresentations based upon which their client, defendant Vulcan Materials, obtained the trial continuance. (See Defendant's Answer To Petition For Reconsideration.) Yet, Hansen did not seize the opportunity to correct Respondent White's misstatements while pointing out the Medical Director's counsel's misstatements. (Id.)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,[7] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Discipline (Respondent Hansen Only)

As discussed above, Respondent Hansen has a record of two prior disciplines, which are aggravating factors.[8] (Std. 1.6 (a)) It is of concern to this Court that although the misconduct occurred over 10 years ago, one of the prior disciplines also involved a misrepresentation to a judicial tribunal.

Significant Harm (Respondents Hansen and White)

Respondents' misconduct significantly harmed the administration of justice. (Std.1.5(j).) As set forth by the WCAB's August 23, 2011 order, Respondents misled Judge Siquieros and the WCAB in a manner which resulted in an unnecessary waste of judicial resources.

Lack of Insight and Remorse (Respondent Hansen)

Respondent Hansen has demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. Even at trial, Respondent Hansen failed to appreciate that asserting half-truths, concealing material facts and failing to correct the record regarding the Medical Unit's responses constitute misconduct. Such a lack of insight into her misconduct raises this Court's concern that the misconduct will recur. (Std. 1.5(k).)

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[7] All further references to standard(s) or std. are to this source. While the State Bar has adopted new standards effective July 1, 2015, the court applies to this decision the standards in effect from the filing of the NDC through the submission of this matter for decision.

[8] Respondent Hansen objects to introduction of State Bar aggravation exhibits 30 and 31 which are State Bar Court records relating to Hansen's prior disciplinary matters. This Court takes judicial notice of exhibits 30 and 31 and deems both exhibits admitted into evidence.

Mitigating Circumstances

Each Respondent bears the burden of proving their respective mitigating circumstances by clear and convincing evidence. (Std.1.6.) The court finds the following with regard to mitigating factors.

No Prior Discipline (Respondent White)

Respondent White has practiced law in California for 9 years prior to the commencement of the instant misconduct. During that period, Respondent had no prior record of discipline. Nine years of discipline-free practice entitles Respondent White to some mitigation. (See *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 116 [mitigating credit given for nine years of practice with no prior record of discipline.]

Cooperation (Respondents Hansen and White)

Both Respondents are entitled to some mitigation for cooperating with the State Bar by entering into an extensive stipulation of facts which assisted the State Bar in prosecution of this case. (Std. 1.6(e)). However, as most, if not all, of the stipulated facts were easily provable, the Court affords both Respondents only limited mitigation. (*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 to those who admit to culpability as well as facts].)

Character Evidence (Respondents White and Hansen)

Respondent White presented character testimony from nine witnesses, including five attorneys.[9] Respondent White is entitled to significant mitigation credit for the character

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[9] Of Respondent White's 9 witnesses, 5 were attorneys who attested to Respondent White's good character. Overall, the Court gives significant weight to Respondent White's character evidence, however, the Court does not consider the testimony of the two Stockwell character witness attorneys who were involved or had a stake in the *Speight* Matter: Angela Seki and Edward Muehl. As noted above, Ms. Seki was sanctioned by the WCAB for her role in the *Speight* Matter and Mr. Muehl was the Managing Attorney of the Stockwell office in which Respondents worked.

witnesses as they represented a wide range of references from the legal and general communities who were aware of the full extent of Respondent White's misconduct, as required by standard. (Std. 1.6(f)). (See *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Rptr. 297, 305).

Respondent Hansen presented character testimony from five witnesses, all of whom are attorneys. In general, all five attorneys basically stated that Respondent Hansen is an honest, highly capable, organized and knowledgeable attorney. Respondent Hansen is entitled to limited mitigation credit for this good character evidence[10], the weight of which is reduced however, by the fact that only two of her character witnesses seemed to be aware of the full extent of the misconduct charged against Respondent Hansen (Std. 1.6(f); *In Re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct]), and the remaining witnesses were not from a wide range of references in the legal and general communities. (See *In the Matter of Myrdall*, 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references].)

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

[10] Ms. Tran, a Stockwell associate who works with and reports to Respondent Hansen on certain matters, didn't know the details of the charged misconduct. The parties stipulated to admission into evidence Keith More,Esq.'s declaration in which he stated he was "somewhat" aware of the pending matters that are subject of the State Bar action in this matter, including the imposition of sanctions by the WCAB in the underlying matter". (See Respondent's Exh. 1005). As stated above, Mr. Muehl was the managing attorney of the Stockwell office in which Respondents worked, which could have affected the impartiality of his testimony.

professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *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 1095, 1090.) The court then looks to the decisional law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) The California 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. (*Silverton, supra,* 36 Cal. 4th at pp. 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190).

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.)

Standard 1.7 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. Here, standard 2.11 applies with respect to both Respondents. Standard 2.11 provides that disbarment or actual suspension is the presumed sanction for act(s) of moral turpitude, dishonesty, fraud, intentional or grossly negligent misrepresentation or concealment of a material fact.

The State Bar contends that the appropriate discipline for Respondent White is 90 days actual suspension, one year suspension, stayed and two years probation. Respondent White acknowledges he was negligent but contends his unintentional failure to closely review the file and/or to check with Respondent Hansen regarding the Medical Unit responses was simple, rather than gross negligence. Respondent White urges the Court to recommend a public reproval as the appropriate discipline for his misconduct.

Based in large part on his credible testimony, the Court finds Respondent White's misconduct to have been unintentional yet grossly negligent. Respondent White has accepted responsibility for his misconduct. As such, after carefully considering the facts of this case and balancing Respondent White's single aggravating factor with his significant mitigating factors, this Court recommends a discipline for Respondent White which veers from the presumed sanctions set forth in standard 2.11. This Court recommends that Respondent White be suspended for one year, stayed and shall be placed on two years probation, subject to conditions.

As to Respondent Hansen, the State Bar seeks her disbarment. Respondent Hansen, on the other hand, contends the State Bar has not presented clear and convincing evidence that she engaged in any misrepresentation(s) to or before the WCAB court or any judicial officer. Respondent Hansen seems to ignore the fact that she misrepresented and concealed material facts in her communications with each of these tribunals. Yet, the case law is clear, whether grossly or intentionally negligent, a respondent that learns of the misrepresentation of material facts to a judicial tribunal and then not only fails to rectify the misrepresentation but, also conceals material facts, that respondent is culpable of moral turpitude in violation of Business and Professions code section 6106. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156) ["The Supreme Court has held that such concealment of a material fact 'misleads the judge as effectively as a false statement.... No distinction can therefore be drawn

among concealment, half-truth, and false statement of fact'")(quoting *Grove v. State Bar* (1965) 63 Cal.2d 312, 315].)

Accordingly, based on the facts of this case, the case law, standard 2.11 and Respondent Hansen's aggravating and mitigating circumstances, this Court recommends that Respondent Hansen be placed on two years suspension, stayed, two years probation, subject to conditions, including eighteen (18) months actual suspension. (Std. 1.7(c) [if the net effect of mitigating and aggravating circumstances "demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline... it is appropriate to . . . recommend a lesser sanction that what is otherwise specified in a given Standard"].)

Recommendations (Respondent White)

It is recommended that Respondent Kevin Michael White, State Bar No. 206704, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent White be placed on probation[11] for a period of two years subject to the following conditions:

1. Respondent White must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

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

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent White's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent White must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

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[11] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (*See* Cal. Rules of Court, rule 9.18)

4. During the probation period, Respondent White must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent White must state in each report whether Respondent White has complied with the State Bar Act, the Rules of Professional Conduct, and all of Respondent White's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Respondent White must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with Respondent White's probation conditions.

6. Within one year after the effective date of the discipline herein, Respondent White must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent White will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. At the expiration of the probation period, if Respondent White has complied with all conditions of probation, Respondent White will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that Respondent White be ordered to take, pass and provide satisfactory proof of passage of the Multistate Professional Responsibility Examination ("MPRE") within one year after the effective date of the Supreme Court order imposing discipline in this matter. Respondent White's proof of passage shall be provided to the State Bar's Office of Probation in Los Angeles.

Costs

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

Recommendations (Respondent Hansen)

It is recommended that Respondent Kimberly Allyson Hansen, State Bar No. 167597, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, that Respondent Hansen be actually suspended from the practice of law for eighteen (18) months and, that Respondent Hansen be placed on probation[12] for a period of two years subject to the following conditions:

1. Respondent Hansen must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

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

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent Hansen's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent Hansen must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. During the probation period, Respondent Hansen must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, Respondent Hansen must state in each report whether Respondent Hansen has complied with the State Bar Act, the Rules of

[12] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (*See* Cal. Rules of Court, rule 9.18)

Professional Conduct, and all of Respondent Hansen's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Respondent Hansen must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether respondent is complying or has complied with Respondent Hansen's probation conditions.

6. Within one year after the effective date of the discipline herein, Respondent Hansen must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent Hansen will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. At the expiration of the probation period, if Respondent Hansen has complied with all conditions of probation, Respondent Hansen will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that Respondent Hansen be ordered to take, pass and provide satisfactory proof of passage of the Multistate Professional Responsibility Examination ("MPRE") during the period of her actual suspension. Respondent Hansen's proof of passage shall be provided to the State Bar's Office of Probation in Los Angeles.

California Rules of Court, Rule 9.20

It is further recommended that Respondent Hansen be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and, that she be ordered to perform the acts specified in subdivisions (a) and (c) of rule 9.20 within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

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

Dated: October 13, 2015

YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 14, 2015, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

KEVIN P. GERRY
711 N SOLEDAD ST
SANTA BARBARA, CA 93103

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROSS E. VISELMAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 14, 2015.

Johnnie Lee Smith
Case Administrator
State Bar Court