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STATE BAR COURT OF CALIFORNIA

**STATE BAR COURT
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REVIEW DEPARTMENT

IN BANK

In the Matter of

MARCIA JANA E MACHADO,

A Member of the State Bar, No. 231144.

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Case No. 12-C-10820

RECOMMENDATION OF SUMMARY
DISBARMENT

On November 15, 2016, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed a motion for summary disbarment based on respondent's felony conviction. Respondent filed a response in opposition on January 6, 2017. We grant the motion and recommend that respondent be summarily disbarred.

On January 21, 2016, respondent pled guilty to a violation of Penal Code section 550, subdivision (b)(1) (assist or conspire in insurance fraud). Effective August 8, 2016, respondent was placed on interim suspension from the practice of law. With its motion for summary disbarment, OCTC submitted evidence that the conviction had become final. Specifically, no party filed an appeal within 60 days after pronouncement of judgment. (Cal. Rules of Court, rule 8.308.)

After the judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).)

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The record of conviction establishes both criteria for summary disbarment. First, respondent was charged with and pled guilty to felony insurance fraud. (See also Bus. & Prof. Code, § 6102, subd. (b); Penal Code, §§ 17, 550.) Second, respondent's conviction necessarily involves the specific intent to defraud. (*People ex rel. Government Employees Insurance Company v. Cruz* (2016) 244 Cal.App.4th 1184, 1193 ["The elements generally necessary to find a violation of Penal Code section 550 are (1) the defendant's knowing presentation of a false claim, (2) with the intent to defraud"].) As such, her conviction establishes moral turpitude on its face (*In re Fahey* (1973) 8 Cal.3d 842, 849), and qualifies her for summary disbarment.

Respondent does not challenge that she has been finally convicted of a felony that involves moral turpitude as a matter of law. Instead, she contends that disbarment is not warranted due to a series of mitigating factors that she maintains caused or explain her criminal conduct. She also notes that her crime is a wobbler and that she is not precluded from seeking to reduce her conviction to a misdemeanor once she completes probation. When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), however, "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.) Thus, we do not consider the facts and circumstances surrounding the conviction, including any mitigating circumstances. Additionally, a crime is a felony for disciplinary purposes irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings. (Bus. & Prof. Code, § 6102, subd. (b),(c).)

We therefore recommend that respondent Marcia Janae Machado, State Bar number 231144, be disbarred from the practice of law in this state. We also recommend that she 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's order. Finally, we recommend 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 Business and Professions Code section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

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. 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 February 9, 2017, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED FEBRUARY 9, 2017

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

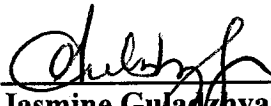
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROGER T. NUTTALL
NUTTALL & COLEMAN
2333 MERCED ST
FRESNO, CA 93721**

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ALLEN BLUMENTHAL, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 9, 2017.



Jasmine Guladzhyan
Case Administrator
State Bar Court