PUBLIC MATTER

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FILED

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STATE BAR COURT
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LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of: JANE L. SCHOOLER, No. 131676, A Member of the State Bar.	Case No. 12-O-11554 NOTICE OF DISCIPLINARY CHARGES

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:

(1) YOUR DEFAULT WILL BE ENTERED;
(2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
(3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
(4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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The State Bar of California alleges:

JURISDICTION

1. Jane L. Schooler ("Respondent") was admitted to the practice of law in the State of California on December 14, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

GENERAL BACKGROUND ALLEGATIONS

2. On or about December 6, 1989, Rowena L. Schooler ("Rowena") and her husband Eugene Schooler ("Eugene") created the EUGENE B. SCHOOLER AND ROWENA SCHOOLER TRUST (the "Family Trust"). The Family Trust was an AB Trust whereby at the death of the first spouse, the trust corpus would be split into Trust A, the Survivor Trust, and Trust B, the Decedent Trust.

3. On or about August 20, 1996, Eugene predeceased Rowena and the Family Trust was split into Trust A and Trust B. Rowena's property was placed into Trust A and Rowena was a lifetime Trustee of both Trust A and Trust B.

4. On or about November 9, 1999, Trust A of the Family Trust was modified, amended and transformed into the ROWENA L. SCHOOLER TRUST OF 1999 (the "Rowena Trust") and all assets from Trust A of the Family Trust were transferred into the Rowena Trust.

5. Both the Family Trust and the Rowena Trust provided for the equal distribution of the assets of each of the trusts to each of the beneficiaries.

6. On or about November 9, 1999, Rowena also created the WILL OF ROWENA L. SCHOOLER dated November 9, 1999 (the "Rowena Will"). Article 4 of the Rowena Will provided in pertinent part:

> 4.1 Disposition to the Trust. I give all my interest in the residue of my estate, including all my intangible property and tangible personal property and my interest in my residences, to the Trustee of the Trust, to be held in Trust. All property passing to the Trustee of the Trust shall immediately be added to and merged with and into the Trust to the same effect as if the property were an asset of the trust at the time of my death. All property added to the Trust shall be held, administered, allocated and distributed according to its terms, including any amendments made to the Trust during my lifetime.

7. On or about October 27, 2004, Rowena passed away. At the time of her death, Rowena left behind Trust B of the Family Trust, the Rowena Trust and the Rowena Will. At the time of Rowena's death, Respondent became the Trustee of both trusts and the administrator of the Rowena Will.

8. Respondent and her four surviving siblings, Katherine Schooler Kerns ("Katherine"), Andrew Schooler ("Andrew"), John Schooler ("John") and Louis Schooler ("Louis"), were all equal beneficiaries of the Family Trust, the Rowena Trust and the Rowena Will (collectively the "beneficiaries"). (Andrew, John and Louis are collectively referred to herein as the "Schooler Brothers," except where it is necessary to reference an individual brother.)

9. Under the terms of the Family Trust, the Rowena Trust, and the Rowena Will, Respondent had a duty to distribute all assets within a reasonable time after Rowena's death. Moreover, upon Rowena's death, the Family Trust was to terminate and its assets were to be disbursed to each of the five beneficiaries, with the exception that Katherine's share of the assets from the Family Trust were to be placed in a sub-trust.

10. At the time of Rowena's death, the following assets were contained in the Family Trust:

A. An undivided 75% interest in three parcels of unimproved real property of 2 1/2 acres each, located in Las Vegas, Nevada, Assessor's Parcel Numbers ("APN" or "APNs") 123-28-601-022, 123-28-601-023, and 123-28-601-024, ("Las Vegas Parcels 22, 23 and 24");

B. 40 acres of unimproved real property in Reno, Nevada, APN 16-720-721 ("Reno Parcel 1");

C. Wells Fargo savings account with approximate balance of $31,400.98; and

D. 100% interest in Tierra Del Mar Corporation ("TDM"), which at all relevant times was a real estate holding company.

11. TDM owned the following real properties at the time of Rowena's death:

A. 25% interest in Las Vegas Parcels 22, 23 and 24;

B. 40 acres of unimproved real property in Reno, Nevada, APN 16-720-20 ("Reno Parcel 2.");

C. Approximately 9.92 acres of unimproved real property in Riverside, California, APN 360350015-7 ("Riverside Parcel");

D. Approximately 5 acres of unimproved real property in Primm, Nevada, APN 237-08-501-055 ("Primm Parcel");

E. Approximately 2 1/2 acres of unimproved real property in Las Vegas, Nevada, APN 123-28-601-025 ("Las Vegas Parcel 25"); and

F. Approximately 2 1/2 acres of unimproved real property in Las Vegas, Nevada, APN 123-28-601-008 ("Las Vegas Parcel 8").

12. At the time of Rowena's death, the following assets were in the Rowena Estate:

A. A family beach house consisting of a duplex residence with an attached studio rental, located at 1715-1717 Coast Boulevard, Del Mar, California, APN 299-231-04 (the "Del Mar Beach House");

B. Promissory Note dated May 24, 1968 in the amount of $6,765.94 from payors Lawrence R. King and Jo Ann King;

C. 500 shares of Daou Systems stock worth approximately $100.00 total;

D. Personal belongings valued at approximately $3,000.00; and

E. Washington Mutual checking/savings accounts with balance of approximately $320.00.

13. At the time of Rowena's death, the following assets were in the Rowena Trust:

A. Eve Mezy loan note dated November 9, 1999, in the amount of $10,209.69;

B. 5% interest in 19.65 acres of vacant land located at 1091 Sierra Linda Drive, Escondido, California, APN 272-300-13 (the "Escondido Parcel"); and

C. New York Life Insurance Policy proceeds valued at $5,529.65.

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14. In or about 2002, the Del Mar Beach House, which had previously been an asset of the Rowena Trust, was removed from the Rowena Trust when Rowena executed a promissory note secured by a deed of trust against the Del Mar Beach House in the amount of $170,000.00 in favor of Washington Mutual Bank. Pursuant to the promissory note, Rowena was required to make monthly payments to Washington Mutual in the amount of $700.00 per month. Thereafter, Rowena mistakenly overlooked the need to have the Del Mar Beach House transferred back into the Rowena Trust again prior to her death. Respondent could have remedied this problem and avoided the need and costs of probate proceedings by filing a *Heggstad* motion to have the Del Mar Beach House transferred into the Rowena trust, but she failed to do so.

COUNT ONE

Case No. 12-O-11554
Business and Professions Code, section 6106
[Moral Turpitude – Breach of Fiduciary Duties as Trustee and Personal Representative]

15. Respondent willfully violated Business and Professions Code, section 6106, by committing acts involving moral turpitude, dishonesty or corruption, as follows:

16. The General Background Allegations are incorporated by reference.

17. Between in or about October 2004 and in or about July 2011, Respondent repeatedly breached her fiduciary duties as personal representative of the Rowena Estate and as trustee of the Rowena Trust and the Family Trust by placing her interests ahead of those of her siblings, and by attempting to keep the Del Mar Beach House for her own personal use. Between in or about October 2004 and in or about July 2011, the fair market value of the Del Mar Beach House fluctuated between approximately $1.7 million and $4 million. Respondent repeatedly breached her fiduciary duties by failing to marshall and distribute the trust property and the Del Mar Beach House to the five beneficiaries. The Schooler Brothers repeatedly requested that Respondent sell and distribute the assets of the trusts and the Rowena Estate between October 2004 and July 2011, but Respondent failed to do so.

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18. At the time of Rowena's death, both Respondent and Andrew were occupying the Del Mar Beach House rent free with Rowena, and third party tenants were also renting a portion of the property for which they were paying $2,200.00 per month.

19. In or about the beginning of 2005, Respondent represented to Andrew that he needed to move out of the Del Mar Beach House so that she could make repairs, paint and place the house on the market by December 2005. Respondent represented to the Schooler Brothers that she intended to sell the Del Mar Beach House, to marshall the assets of the trusts and the Rowena Estate, and to distribute the proceeds to herself and the four siblings in five equal portions. Respondent also told the Schooler Brothers that the tenants who were renting a portion of the bottom floor of the Del Mar Beach House needed to vacate the premises so that the Del Mar Beach House could be sold. The tenants had been paying $2,200.00 per month in rent and would have continued to pay $2,200.00 per month in rent if Respondent had not asked them to vacate the premises.

20. After Andrew and the tenants moved out of the Del Mar Beach House, Respondent occupied the house solely for her own use, changed the locks and installed a privacy gate prohibiting her siblings from enjoying equal access to the Del Mar Beach House.

21. On or about June 3, 2005, Respondent petitioned the court for probate and was appointed executor of the Rowena Estate in San Diego Superior Court case number PN28646 (the "probate action").

22. In the latter part of 2005, when Respondent had still not sold the Del Mar Beach House, the Schooler Brothers requested a family meeting. During the meeting, the Schooler Brothers requested Respondent sell all properties in the trusts and the Rowena estate and disburse the assets in equal amounts to each of the five beneficiaries. During the meeting, Respondent told the Schooler Brothers that she intended to live in the Del Mar Beach House, pay herself a good salary, and use the Del Mar Beach House and other trust assets for her retirement. She told Andrew not to count on getting any money from the Del Mar Beach House, and if he "got one cent it was more than [he] deserved."

23. Between and including in or about January 2005 and in or about June 2006, Respondent did not pay any rent for the Del Mar Beach House, which she was exclusively occupying.

24. On or about July 21, 2005, Respondent, acting as President of TDM, sold Las Vegas Parcel 25 for approximately $520,000.00. TDM netted approximately $463,049.67 from the sale. Respondent did not advise the beneficiaries of the sale of the property and did not disburse any portion of the funds from the sale of Las Vegas Parcel 25 to the beneficiaries. Respondent did not provide any accountings to the beneficiaries showing the sale of Las Vegas Parcel 25.

25. On or about March 3, 2006, attorney Chad Ruyle ("Ruyle") sent a letter to Respondent's attorney, Fred Vandeveer ("Vandeveer"), on behalf of the Schooler Brothers attempting to obtain information concerning the Family Trust, the Rowena Trust and the Rowena Estate. Vandeveer received the letter and Respondent had actual knowledge of the contents of the letter.

26. On or about April 5, 2006, Ruyle sent a letter to Vandeveer confirming the Schooler Brothers' ongoing requests that the Del Mar Beach House be sold (not objecting to a sale of the beach house to Respondent for the fair market value), and demanding that the assets of the Family Trust and the Rowena Trust be distributed as required by the trusts and that there be an accounting done with respect to the Family Trust, the Rowena Trust and the Rowena Estate.

27. On or about April 21, 2006, Vandeveer replied to Ruyle's April 5, 2006 letter with Respondent's knowledge and authority. Vandeveer represented that the probate action was expected to be closed "very soon." In the letter, Vandeveer and Respondent disclosed that Respondent had paid herself $25,000.00 in trustee's fees to manage the Family Trust, $20,000.00 in trustee's fees to manage the Rowena Trust, and a salary of $15,000.00 per year from TDM. In the April 21, 2006 letter, Vandeveer proposed with Respondent's knowledge and authority that Respondent receive an additional $2,000.00 per month for her services as trustee and manager of TDM, with an incentive of an additional $2,000.00 per month on the successful sale of TDC or Family Trust assets. In the April 21, 2006 letter, Vandeveer offered with Respondent's

knowledge and authority for Respondent to purchase the Schooler Brothers' 60% combined interest in the Del Mar Beach House based upon the Estate appraisal value of $1,700,000.00, plus costs expended by the Family and Rowena Trusts for improvements, or alternatively based on a new appraised valuation which would not reimburse the cost of improvements. In the letter, Vandeveer and Respondent offered to purchase the Schooler Brothers' interest in the property on an installment loan basis, and offered to pay the loan with Respondent's share of the monies from the sale of other assets from the Family Trust and the Rowena Trust.

28. As of on or about April 21, 2006, Respondent had unilaterally paid herself $25,000.00 in trustee's fees to manage the Family Trust, $20,000.00 in trustee's fees to manage the Rowena Trust, and a salary of $15,000.00 per year from TDM, even though the assets of the Family Trust, the Rowena Trust, the Rowena Estate and TDM consisted of the Del Mar Beach House (over which Respondent had exclusive use and control) and primarily unimproved raw land.

29. On or about April 26, 2006, Ruyle sent a letter to Vandeveer rejecting Respondent's offer to purchase the Del Mar Beach House on the terms proposed in Vandeveer's April 21, 2006 letter. At that time, the Schooler Brothers had obtained a valuation of the Del Mar Beach House in the approximate range of $3,500,000.00 to $4,000,000.00. Ruyle demanded on behalf of the Schooler Brothers that Respondent list the Del Mar Beach House for sale since the real estate market appeared to be declining and agreed that Katherine and/or Respondent could have a right of first refusal to purchase the Del Mar Beach House following any legitimate offer. Ruyle also demanded on behalf of the Schooler Brothers that Respondent move out of the Del Mar Beach House. In the April 26, 2006 letter, Ruyle also conveyed the Schooler Brothers' objection to further compensation to Respondent because the assets of the Rowena Estate, the Family Trust and the Rowena Trust consisted of only the Del Mar Beach House (which Respondent was exclusively living in) and cash and unimproved raw land. Vandeveer received the April 26, 2006 letter. Respondent had knowledge of the contents of the April 26, 2006 letter that Ruyle had sent to Vandeveer.

30. Respondent did not list the Del Mar Beach House for sale, and she did not move out of the Del Mar Beach House.

31. On or about May 12, 2006, Vandeveer sent a letter to Ruyle including the Rowena Estate tax return and a draft first and final account for the Rowena Estate, which was incomplete and not filed with the court in the probate action.

32. On or about May 30, 2006, Vandeveer sent a letter to Ruyle with Respondent's knowledge and authority again offering for Respondent to purchase the Del Mar Beach House at an increased price of $2,000,000.00. Through Vandeveer's letter, Respondent offered that she and Katherine would use their share of a pending sale of a Las Vegas lot (approximately $100,000.00 each payable in sixty days) as a "down payment" with a "balloon" payment in three years. Respondent proposed a plan of liquidation to sell assets of the Family Trust. As of on or about May 30, 2006, Respondent was willing to liquidate trust assets for the purpose of permitting her to pay the "balloon payment" so long as the Schooler Brothers agreed to sell the Del Mar Beach House to Respondent for $2,000,000.00.

33. On or about June 1, 2006, after the Schooler Brothers objected to Respondent's sole occupancy of the Del Mar Beach House rent free, Respondent provided an accounting claiming that as of that date, she began paying rent in the amount of $2,000.00 per month, which was an amount she unilaterally determined and which was below the fair rental value of the Del Mar Beach House including the three living units within the beach house. In June 2006, the combined fair rental value of the Del Mar Beach House was approximately $5,000.00 and the fair market value of the Del Mar Beach House was between approximately $1.9 million and $4 million at that time. To date, Respondent has not provided an adequate accounting or evidence to establish that she did actually make the $2,000.00 monthly rental payments she claimed she began making to live in the Del Mar Beach House on or about June 1, 2006. For example, Respondent has never provided any checks, bank statements or any other records showing the purported rental payments.

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34. Between in or about October 2004 and in or about July 2011, Respondent did not list the Del Mar Beach House for sale and she did not rent the other two living units within the Del Mar Beach House in order to make the property profitable. Between in or about October 2004 and in or about July 2011, Respondent continued to live in the Del Mar Beach House and excluded the Schooler Brothers from the Del Mar Beach House.

35. Between in or about October 2004 and in or about July 2011, Respondent improperly charged the Rowena Estate for personal expenses relating to maintenance, utilities and the purchase of appliances for the Del Mar Beach House for her own personal use in the amount of approximately $110,026.85.

36. On or about July 28, 2006, Respondent, acting as President of TDM, sold Las Vegas Parcel 8 for $775,000.00. TDM netted a profit of approximately $666,657.00 from the sale. Respondent did not advise the beneficiaries of the sale of the property and did not disburse any portion of the funds from the sale of Las Vegas Parcel 8 to the beneficiaries. Respondent did not provide any accountings to the beneficiaries showing the sale of Las Vegas Parcel 8.

37. On or about January 23, 2007, Respondent, Katherine and the Schooler Brothers attended a meeting with Ruyle and Vandeveer to discuss the closing of the Rowena Estate and a plan for distribution of the assets of the Rowena Estate, the Rowena Trust and the Family Trust. During the meeting, Respondent disclosed that TDM had experienced an operating loss of $85,000.00 for the year 2006, but Respondent refused to provide any specific information regarding the loss. During the meeting, Respondent also disclosed that she had in fact sold a Las Vegas lot owned by TDM "to pay expenses," but she did not disclose any other information, such as the date of sale or the net proceeds received from the sale. Instead, Respondent stated she intended to distribute $100,000.00 of the sales proceeds to each of the beneficiaries after determining an "appropriate reserve."

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38. On or about February 18, 2007, Respondent sent an email to the Schooler Brothers offering that they accept Las Vegas Parcels 22, 23 and 24 in exchange for the Del Mar Beach House. At the time Respondent extended this offer, she had not distributed any assets from the Family Trust to the beneficiaries.

39. On or about February 27, 2007, attorney William Brewer ("Brewer") sent a letter to Vandeveer on behalf of the Schooler Brothers rejecting Respondent's February 18, 2007 offer and demanding that the Del Mar Beach House be placed on the market for sale immediately or transferred into the Rowena Trust and placed on the market for sale, that the stock of TDM be distributed to the beneficiaries free of the Family Trust immediately, that the properties held in the Family Trust be deeded to the beneficiaries as tenants in common as to their respective interests immediately, that Respondent provide an accounting of the Family Trust and the Rowena Trust immediately, including an accounting for all activities of TDM, that $500,000.00 of the proceeds from the sale of the Las Vegas lot be distributed immediately, and that a justified budget be provided for any funds not distributed. Vandeveer received the February 27, 2012 letter and Respondent received actual notice of the contents of the letter.

40. On or about March 1, 2007, Respondent disbursed $100,000.00 to each of the Schooler Brothers from the sales proceeds of Las Vegas Parcel 8 and/or Las Vegas Parcel 25, but Respondent has never specifically accounted for the basis for the $100,000.00 disbursement to each of the Schooler Brothers. To date, and despite many requests from the Schooler Brothers, including but not limited to requests made by letters to Vandeveer for which Respondent had actual notice of the contents dated on or about March 2, 2007, March 13, 2007, April 2, 2007, April 13, 2007, April 27, 2007, May 11, 2007, May 21, 2007 and June 13, 2007, Respondent has failed to account for the $1,295,000.00 sales proceeds from Las Vegas Parcels 8 and 25, Respondent has failed to account for the $85,000.00 operating loss she reported for TDM in 2006, Respondent has failed to account for any "appropriate reserves" withheld from the disbursement from the sales proceeds of Las Vegas Parcel 8 and/or Las Vegas Parcel 25, and

Respondent has failed to show proof that she paid rent for the Del Mar Beach House from June 2006 to at least July 2011.

41. On or about April 10, 2007, Louis received and transmitted to Respondent three cash offers from MILCO TRUST in the amount of $750,000.00 each (a total of $2,250,000.00) for Las Vegas Parcels 22, 23 and 24. Respondent responded to the offers by telling the Schooler Brothers that she wanted to purchase Las Vegas Parcels 22, 23 and 24. The Schooler Brothers advised Respondent they did not object to her purchase of the Las Vegas parcels at fair market value. But Respondent did not take any steps to purchase Las Vegas Parcels 22, 23 and 24, and she did not accept the three cash offers or make any counteroffers to the MILCO TRUST.

42. On or about April 20, 2007, Wilderness Preservation, LLC presented written and signed all-cash offers to purchase Reno Parcels 1 and 2 for $250,000.00 each, $500,000.00 in total. Respondent had requested that Andrew search for a buyer for both parcels and negotiate the sale. However, as soon as Andrew obtained the all-cash offers, Respondent stated to Andrew that she and Katherine wanted to buy the parcels at the offered price. The Schooler Brothers told Respondent they had no objection to Respondent purchasing the property at fair market value, but then Respondent failed to tender the money to purchase their interests in Reno Parcels 1 and Parcel 2. Respondent also refused to accept or negotiate the all-cash purchase offers that had been presented by Wilderness Preservation, LLC.

43. On or about June 14, 2007 (nearly two and a half years after Rowena's death), Respondent caused a trustee's deed to be prepared, transferring a 20% interest to each of the five beneficiaries of the Rowena Trust as tenants in common of the Rowena Trust's 5% interest in the Escondido Parcel (so that each of the beneficiaries now owns a 1% interest in the Escondido Parcel). Between in or about October 2004 and in or about July 2011, when she was removed as trustee, Respondent did not make any disbursements to the Schooler Brothers from the Rowena Trust or the Family Trust other than the 20% interests in the Escondido Parcel (which effectively amounts to only a 1% interest for each of the beneficiaries in the Escondido Parcel) and the $100,000.00 distribution in or about February 2007. At no time between in or about October

2004 and in or about July 2011 did Respondent sell the Riverside Parcel or disburse it to the beneficiaries equally as tenants in common.

44. On or about July 15, 2007 (more than two and a half years after Rowena's death), Respondent filed a first and final accounting in the probate action, which ostensibly contained an accounting from October 27, 2004 through April 30, 2007. In the accounting, Respondent requested $30,019.15 in statutory fees as the executor of the Rowena Estate. The accounting was deficient and incomplete because Schedule D of the accounting listed approximately $59,299.64 in administrative expenditures, which were not supported by evidence and approximately $10,070.95 in expenditures that were questionable and not supported by evidence.

45. The Schooler Brothers also sought to reconcile the accounting against the source documents, but Respondent did not provide the following source documents:

- the bank documents for Washington Mutual checking account #3461[1], which were listed in Schedule A,
- the bank documents for Washington Mutual checking account #9333[2], which were listed in Schedule A,
- the documents to support the deposit of $250.00 of retirement funds listed in Schedule B,
- the documents to support the $2,200.00 in monthly rental payments received from Patrick Mason listed in Schedule B,
- the documents to show $22,000.00 in rental income Respondent claims to have paid for living in the Del Mar Beach House, the documents to support advances made from TDM in the amount of $12,220.00 listed in Schedule A,
- the documents to support advances from Respondent listed in Schedule A in the amount of $100.00,
- the documents to support Respondent's claimed administrative expenditures of the Rowena Estate in the amount of $59,299.64 listed in Schedule D,

[1] Only the last four digits of the account are included to protect the account.
[2] Only the last four digits of the account are included to protect the account.

- the documents to support Respondent's claimed administrative expenditures of the Rowena Estate in the amount of $10,070.95 listed in Schedule D,
- the documentation to support the activity and the balance in Wells Fargo checking account #2650[3] listed in Schedule G, and the documentation to support the activity and the balance in Wells Fargo checking account #2676[4] listed in Schedule G.

46. The first and final accounting filed on or about July 15, 2007 by Respondent as the executor in the probate action also contained discrepancies, when compared with the accountings provided by Respondent as the trustee of the Family Trust and the Rowena Trust.

47. On or about September 7, 2007, the Schooler Brothers filed a petition questioning Respondent's actions as trustee of the Rowena Trust and personal representative of the Rowena Estate in San Diego County Superior Court case number 37-2007-00101775-PR-TR-CTL ("2007 petition action").

48. On or about January 15, 2008, the Schooler Brothers filed a petition questioning Respondent's actions as trustee of the Family Trust and personal representative of the Rowena Estate in San Diego County Superior Court case number 37-2008-00150817-PR-TR-NC ("2008 petition action"). The 2007 and 2008 petition actions were subsequently related and coordinated (but not consolidated) by the court to the probate action. (The three related actions are collectively referred to herein as "the three related actions," except where it is necessary to reference a specific action.)

49. On or about March 28, 2008, Brewer sent a letter to Vandeveer raising concerns about the inadequacy of the July 15, 2007 first and final accounting in the probate action. Vandeever received the letter and Respondent received actual notice of the contents of the letter.

50. On or about November 6, 2009, a Notice of Default and Election to Sell was recorded against the Del Mar Beach House by Washington Mutual Bank, because Respondent failed to

[3] Only the last four digits of the account are included to protect the account.
[4] Only the last four digits of the account are included to protect the account.

pay the $700.00 monthly payments on the promissory note, and the payments were in default in the amount of $5,232.04.

51. On or about March 16, 2010, a Notice of Default and Election to Sell was recorded against the Del Mar Beach House by Washington Mutual Bank, because Respondent failed to pay the $700.00 monthly payments on the promissory note, and the payments were in default in the amount of $3,547.54.

52. On or about October 21, 2010, Respondent filed an amendment to the first and final accounting in the probate action, which was deficient and incomplete because it did not address the concerns raised by the Schooler Brothers in the March 28, 2008 letter Brewer sent to Vandeever. Respondent had continued to fail to verify that she had paid for the rent on the Del Mar Beach House.

53. On or about November 29, 2012, the Schooler Brothers filed an objection to Respondent's first and final accounting in the probate action based upon the deficiencies and incomplete information.

54. On or about December 27, 2010, a Notice of Intent to Sell Real Property was recorded by the Office of the Clark County Treasurer against Las Vegas Parcels 22, 23 and 24 due to Respondent's failure to pay property taxes and applicable penalties, interest, fees and costs.

55. On or about January 3, 2011, a Notice of Default and Election to Sell was recorded against the Del Mar Beach House by Washington Mutual Bank, because Respondent failed to pay the $700.00 monthly payments on the promissory note, and the payments were in default in the amount of $4,608.34.

56. On or about April 25, 2011, Respondent filed a Chapter 11 bankruptcy petition on behalf of the Family Trust ("Chapter 11 Bankruptcy"), listing principal assets of the Family Trust as Las Vegas Parcels 22, 23 and 24 and the Primm Parcel. Respondent did not advise any of the other beneficiaries that she had filed for bankruptcy on behalf of the Family Trust.

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57. On or about June 23, 2011, the Chapter 11 Bankruptcy was dismissed due to the Family Trust's ineligibility for bankruptcy. Respondent did not advise any of the other beneficiaries that the bankruptcy had been filed or dismissed.

58. On or about June 23, 2011, the court in the three related actions orally made an order removing Respondent as the trustee of the Family Trust and the Rowena Trust and as the personal administrator of the Rowena Estate. The court found that Respondent and the Schooler Brothers had been unable to agree on the disbursement of assets between 2004 and 2011 and that Katherine's interests were not represented. The court found that Respondent's continued service as a fiduciary was detrimental to the trusts and the Rowena Estate, and the court refused to appoint any of the other beneficiaries as trustee and personal representative. Instead, the court ordered that it would appoint a neutral independent trustee and personal representative. Respondent had actual notice of the court's June 23, 2011 orders.

59. To date, Respondent has failed to provide full and complete accountings to the beneficiaries and to the court regarding all assets and expenditures relating to the trusts and the Rowena Estate.

60. At all relevant times, Respondent as the trustee of the trusts and as the personal representative of the Rowena Estate owed the beneficiaries the following fiduciary duties: the duty to administer the trusts according to the trust instruments, the duty to act in the best interests of the beneficiaries, the duty to deal impartially with all of the beneficiaries in investing and managing the trust property taking into account any differing interests of the beneficiaries, the duty to not use the trusts' property for her own benefit and adversely to the other beneficiaries, the duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trusts' property, the duty to make the trusts' property productive under the circumstances and in furtherance of the purposes of the trusts, the duty to keep the trusts' property separate from other property not subject to the trusts, the duty to see that the trusts' property was properly designated as trust property, the duty to administer the trusts with reasonable care, skill and caution, the duty to keep the beneficiaries of the trusts reasonably

informed of the trusts and their administration, on reasonable request of a beneficiary the duty to report relating to the administration of the trusts relevant to the beneficiary's interest, the duty to account to the beneficiaries.

61. Respondent intentionally or with gross negligence violated each of the following fiduciary duties to the Schooler Brothers and to Katherine in order to further her intention of obtaining sole and exclusive ownership of the Del Mar Beach House, to receive as much income from the assets of the two trusts and the Rowena Estate as possible, to personally enrich herself to the detriment of her siblings (the other beneficiaries), and to coerce her siblings into acceding to her demands and decisions regarding the property of the trusts and the Rowena Estate:

A. Respondent breached her duty to carry out the terms of the trusts as required by Probate Code section 16000. She failed to make timely distributions to the entitled beneficiaries, and in fact, after five years, had only made one partial distribution to the beneficiaries of $100,000 each from the sale of either Las Vegas Parcel 25 or 8, which she collectively sold for approximately $1,295,000, and a portion of a tenancy in common interest in the Escondido Parcel. Under the terms of the Family Trust, the Rowena Trust and the Rowena Will, Respondent had a duty to distribute all assets within a reasonable time of Rowena's death.

B. Respondent violated the duty to avoid a conflict of interest as required by Probate Code section 16004 by taking positions regarding the assets of the trust and the Rowena Will that were contrary to the expressed desires and interests of the other beneficiaries.

C. Respondent violated the duty of loyalty set forth in Probate Code section 16002 by taking numerous steps with the purpose of personally benefitting herself to the detriment of other beneficiaries.

D. Respondent violated the duty of impartiality set forth in Probate Code section 16003 by placing her interests in receiving income from the assets of the Rowena Trust, the Family Trust and the Rowena Estate, and in particular, her interest in residing in the

Del Mar Beach House, ahead of the interests of the other beneficiaries and their expressed desires.

E. Respondent violated her duty to keep the beneficiaries reasonably informed of the affairs of the Rowena Trust and the Family Trust as required by Probate Code section 16060.

F. Respondent violated her duty to provide the beneficiaries, upon reasonable request, with requested information relevant to the administering of the Rowena Trust and the Family Trust as required by Probate Code section 16061. Respondent also concealed relevant information and made misrepresentations to the beneficiaries about the status of assets of the Rowena Trust and the Family Trust.

G. Respondent violated her duty pursuant to Probate Code sections 9600 and 16040 to administer the Rowena Trust, the Family Trust and the Rowena Estate with reasonable care, skill and caution. Specifically, Respondent failed to exercise due care in the management of the assets of the Rowena Trust, the Family Trust and the Rowena Estate, failed to list and sell property without reasonable justification, and refused to accept cash offers for sale of assets.

H. Respondent violated her duty to preserve the property of the Rowena Trust, the Family Trust and the Rowena Estate as required by Probate Code sections 9650 and 16006.

I. Respondent violated her duty to make the property of the Rowena Trust, the Family Trust and the Rowena Estate productive as required by Probate Code section 16007.

J. Respondent violated her fiduciary duties pursuant to Probate Code sections 16062 and 16063 to provide complete and accurate accountings to the beneficiaries of all assets and distributions of the Rowena Trust, the Family Trust and the Rowena Estate.

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K. Respondent violated her fiduciary duties as required by Probate Code sections 16080 and 16081 by disregarding terms of the Rowena Trust, the Family Trust and the Rowena Estate and by exercising her discretionary care unreasonably in bad faith.

62. By repeatedly breaching her fiduciary duties as personal representative of the Rowena Estate and as trustee of the Rowena Trust and the Family Trust, by failing to disburse all assets of the trusts and the Rowena Estate between in or about October 2004 and in or about July 2011 with the exception of $100,000.00 to each of the Schooler Brothers in February 2007 and the transfer of their tenants in common interests in the Escondido Parcel amounting to only 1% ownership interest for each beneficiary in the Escondido Parcel, by failing to file a *Heggstad* motion to have the Del Mar Beach House transferred from the Rowena Estate into the Rowena Trust between October 2004 and July 2011, by exclusively occupying the Del Mar Beach House rent free from October 2004 through at least June 2006, by removing third party tenants who were paying $2,200.00 per month for rent of a portion of the Del Mar Beach House, by failing to renovate the Del Mar Beach House so that rents could be collected, by failing to rent out the two additional living units of the Del Mar Beach House, by failing to move out of the Del Mar Beach House and sell it at any time between January 2005 and July 2011 despite repeated requests from the Schooler Brothers that she do so, by continuing to occupy the entire Del Mar Beach House to the exclusion of the other beneficiaries at all times between January 2005 and July 2011, by unilaterally determining that she would pay only $2,000.00 per month rent for the occupancy of the entire Del Mar Beach House between June 2006 and July 2011, by failing to provide accountings proving that she actually paid $2,000.00 per month in rent to occupy the Del Mar Beach House between June 2006 and July 2011, by unilaterally paying herself $25,000.00 in trustee's fees on or about April 21, 2006 for the management of the Family Trust, by unilaterally paying herself $20,000.00 on or about April 21, 2006 for management of the Rowena Trust, by unilaterally paying herself a $15,000.00 per-year salary to operate TDM, by failing to accept all cash offers for Las Vegas Parcels 22, 23, 24 and Reno Parcels 1 and 2, by failing to sell Las Vegas Parcels 22, 23, 24 and Reno Parcels 1 and 2, by failing to pay monthly mortgage

payments on the Del Mar Beach House resulting in the November 6, 2009, March 16, 2010 and January 3, 2011 Notices of Default being recorded against the Del Mar Beach House, by failing to pay property taxes on Las Vegas Parcels 22, 23 and 24 resulting in the issuance of a Notice of Intent to Sell Real Property on December 27, 2010, by filing a Chapter 11 bankruptcy on behalf of the Family Trust without telling the other beneficiaries, by improperly charging the Rowena Estate $110,026.85 for personal expenses relating to the maintenance, utilities and the purchase of appliances for the Del Mar Beach House for her own personal use between October 2004 and April 2007, by repeatedly failing to provide complete and accurate accountings for the Rowena Trust, the Rowena Estate and the Family Trust, and by failing to account for in excess of $1,000,000.00 from the $1,295,000.00 in sales proceeds from Las Vegas Parcels 8 and 25, Respondent intentionally or with gross negligence committed acts involving moral turpitude, dishonesty or corruption.

COUNT TWO

Case No. 12-O-11554
Business and Professions Code, section 6068(a)
[Failure to Comply With Laws]

63. Respondent willfully violated Business and Professions Code, section 6068(a), by failing to support the Constitution and laws of the United States and of this state, as follows:

64. The General Background Allegation and the allegations of Count One are incorporated by reference.

65. By failing to comply with and violating the duties contained in Probate Code sections 9600, 9650, 16000, 16002, 16003, 16004, 16006, 16007, 16040, 16060, 16061, 16062,16063, 16080, and 16081, Respondent failed to support the Constitution and laws of the United States and of this state.

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COUNT THREE

Case No. 12-O-11554
Business and Professions Code, section 6106
[Moral Turpitude – Intentional Bad Faith Violation of Court Orders and Misrepresentations to Court and Third Parties]

66. Respondent willfully violated Business and Professions Code, section 6106, by committing acts involving moral turpitude, dishonesty or corruption, as follows:

67. The General Background Allegations and the allegations of Count One are incorporated by reference.

68. During the June 23, 2011 hearing when the court in the three related actions orally made an order removing Respondent as the trustee of the Family Trust, the trustee of the Rowena Trust and the personal representative of the Rowena Estate, the court also granted the Schooler Brothers' motion to compel Respondent to appear for deposition. The court orally ordered Respondent to produce all documents responsive to a notice of taking deposition to attorney Phillip Dyson ("Dyson"), and to pay $2,280.00 in monetary sanctions to Dyson, the attorney for the Schooler Brothers, by no later than July 5, 2011. The court also ordered Respondent to appear for her deposition at Dyson's office on July 7, 2011. Respondent had actual notice of the court's June 23, 2011 orders.

69. Respondent did not comply with the court's June 23, 2011 order to produce all documents to Dyson by July 5, 2011 and to pay the $2,280.00 in monetary sanctions by July 5, 2011. Respondent's failure to comply with the court's order was intentional and in bad faith.

70. On or about July 12, 2011, the court issued a written order in the three related actions memorializing the oral order made in court on June 23, 2011 removing Respondent as the trustee of the Family Trust and the Rowena Trust and as the personal administrator of the Rowena Estate. Respondent had actual notice of the July 12, 2011 order.

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71. On or about July 18, 2011, the court issued an order in the three related actions appointing Gloria Trumble ("Trumble") as successor trustee of the Family Trust and the Rowena Trust and as the personal representative of the Rowena Estate, The court ordered Respondent to produce original trust and estate documents to Trumble by August 2, 2011, ordered Respondent to produce documents responsive to the deposition notice to Dyson by July 20, 2011, ordered Respondent to pay by July 25, 2011 to Dyson, the $2,280.00 in sanctions which the court had previously ordered Respondent to pay by July 5, 2011, and ordered Respondent to pay an additional $3,375.00 in sanctions to Dyson by July 25, 2011 for failing to comply with the court's order that she produce documents responsive to the notice of taking deposition to Dyson by July 5, 2011. Respondent had actual notice of the July 18, 2011 orders.

72. Respondent failed to comply with the court's July 18, 2011 orders. Respondent intentionally and in bad faith failed to produce the original trust and estate documents to Trumble by August 2, 2011 or at any other time. Respondent intentionally and in bad faith failed to produce all documents responsive to the deposition notice to Dyson by July 20, 2011 or at any other time. Respondent intentionally and in bad faith failed to pay the $2,280.00 in sanctions to Dyson by July 25, 2011 or at any other time. Respondent intentionally and in bad faith failed to pay the $3,375.00 in sanctions to Dyson by July 25, 2011 or at any other time.

73. On or about November 28, 2011, Respondent filed a Notice of Pendency of Action ("Lis Pendens") relating to the Del Mar Beach House with the court in the probate action and the 2007 petition action and caused the Lis Pendens to be recorded with the San Diego County Recorder's Office. In the Lis Pendens, Respondent intentionally and falsely represented herself as the personal representative of the Rowena Estate, and as the trustee of the Rowena Trust and the Family Trust. At the time she caused the Lis Pendens to be filed and recorded, Respondent knew that she had been removed as the personal representative of the Rowena Estate and as the trustee of the trusts. Respondent intentionally and in bad faith violated the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders when she filed and recorded the Lis Pendens falsely

representing herself as the personal representative of the Rowena Estate, and as the trustee of the Rowena and Family Trusts.

74. On or about December 6, 2011, the court in the three related actions issued an order directing Trumble to commence eviction proceedings against Respondent to remove her from the Del Mar Beach House and to increase the rent on the property from $2,000.00 per month to $5,000.00 per month.

75. On or about January 20, 2012, and pursuant to the court's December 6, 2011 order in the three related actions, Trumble filed an unlawful detainer action in San Diego County Superior Court case number 37-2012-00042276-CL-UD-CTL ("UD action") against Respondent seeking to evict Respondent from the Del Mar Beach House, in which Respondent had resided throughout the pending probate proceedings.

76. On or about January 27, 2012, Respondent filed a demurrer in the UD action, in which she intentionally and falsely represented herself to the court to be the personal representative of the Rowena Estate, the trustee of the Rowena Trust and the trustee/successor co-trustee of the Family Trust. Respondent intentionally and in bad faith violated the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders when she filed the demurrer representing that she was the personal representative of the Rowena Estate, and the trustee of the Rowena Trust and the trustee/successor co-trustee of the Family Trust.

77. Trumble had to secure a loan from Donna M. Steward ("Steward") to pay the unpaid property taxes and other expenses which Respondent had not paid in order to sell the Del Mar Beach House and preserve other trust properties. On or about January 31, 2012, Respondent sent a letter to Steward containing Respondent's opposition papers objecting to the placing of a loan on the Del Mar Beach House and notices of appeal regarding the court's orders in the three related actions, in which Respondent intentionally and falsely represented herself to be the personal representative of the Rowena Estate. At the time she sent the letter, opposition papers and notices of appeal to Steward, Respondent knew that she had been removed as the personal representative of the Rowena Estate and as the trustee of the trusts. Respondent also knew that

the filing of the notices of appeals did not stay the order of the court removing her as the personal representative of the Rowena Estate and as the trustee of the Rowena and Family Trusts. But Respondent intended to mislead Steward by giving Steward the false impression that the court's orders removing her as trustee and personal representative had been stayed pending appeal. Respondent intentionally and in bad faith violated the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders when she sent the letter, the opposition papers and the notices of appeal to Steward falsely representing herself as personal representative of the Rowena Estate, and the trustee of the Rowena and Family Trusts.

78. On or about February 29, 2012, Respondent executed a grant deed as the purported executor of the Rowena Estate transferring the Del Mar Beach House to herself and Katherine as joint tenants. Respondent caused the grant deed to be recorded with the San Diego County Recorder's Office on or about March 1, 2012. Respondent intentionally and in bad faith violated the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders when she executed the grant deed as the executor of the Rowena Estate even though she knew she had been removed as the personal representative of the Rowena Estate pursuant to the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders.

79. On or about March 12, 2012, Respondent filed a motion to strike the UD action, in which she falsely represented herself to the court to be the personal representative of the Rowena Estate and the trustee of the Rowena and Family Trusts. Respondent intentionally and in bad faith violated the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders when she filed the motion to strike indicating that she was the personal representative of the Rowena Estate and the trustee of the Rowena and Family Trusts even though she knew she had been removed as the personal representative of the Rowena Estate and the trustee of the Rowena Trust and the Family Trust pursuant to the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders.

80. By violating the court's June 23, 2011, July 12, 2011 and July 18, 2011 orders intentionally and in bad faith, by intentionally and in bad faith failing to produce the trust and estate documents to Dyson by July 20, 2011 or at any other time, by intentionally and in bad

faith failing to produce the documents to Trumble by August 2, 2011 or at any time thereafter, by intentionally and in bad faith failing to pay the $2,280.00 in sanctions to Dyson by July 25, 2011 or at any other time, by intentionally and in bad faith failing to pay the $3,375.00 in sanctions to Dyson by July 25, 2011 or at any other time, by intentionally and in bad faith repeatedly representing herself to the court and to third parties as the personal representative of the Rowena Estate and trustee of the Rowena and Family Trusts and by executing and recording a grant deed transferring the Del Mar Beach House to herself and Katherine after the court removed her as personal representative in its June 23, 2011, July 11, 2011 and July 18, 2011 orders, Respondent committed acts involving moral turpitude, dishonesty or corruption.

NOTICE - INACTIVE ENROLLMENT!

YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE RECOMMENDED BY THE COURT.

NOTICE - COST ASSESSMENT!

IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6086.10.

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF THE CHIEF TRIAL COUNSEL

DATED: August 13, 2013

By: _____
Kimberly G. Anderson
Senior Trial Counsel

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **12-0-11554**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES

☐ **By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**

☒ **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County
- of Los Angeles.

☐ **By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').

☐ **By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.

☐ **By Electronic Service: (CCP § 1010.6)**

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ *(for U.S. First-Class Mail)* in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*

☒ *(for Certified Mail)* in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,
Article No.: 7196 9008 9111 6410 0898 at Los Angeles, addressed to: *(see below)*

☐ *(for Overnight Delivery)* together with a copy of this declaration, in an envelope, or package designated by UPS,
Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number / Electronic Address	Via Courtesy Copy to:
Jane L. Schooler	PO Box 969 Del Mar, CA 92014		

☐ **via inter-office mail regularly processed and maintained by the State Bar of California addressed to:**

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: August 13, 2013

SIGNED: Kim Wimbish
KIM WIMBISH
Declarant