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OCT 28 2015

STATE BAR COURT
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LOS ANGELES

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case No.: 12-O-11554-DFM**
	)	
JANE L. SCHOOLER,	)	**DECISION**
	)	
Member No. 131676,	)	
	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent **Jane L. Schooler** (Respondent) is charged here with four counts of misconduct, involving a single matter. The four counts include allegations of willfully violating (1) Business and Professions Code[1] section 6106 (moral turpitude – breach of fiduciary duties as trustee and personal representative); (2) section 6068, subdivision (a) (failure to comply with laws – breach of fiduciary duties); (3) section 6106 (moral turpitude – intentional bad faith violation of court orders and misrepresentations to court and third parties); and (4) section 6068, subdivision (c) (maintaining unjust action). The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

On August 13, 2013, the State Bar filed its original Notice of Disciplinary Charges (NDC) in this matter. This original NDC contained three counts of alleged misconduct, to wit: violations of sections 6106 (moral turpitude - breach of fiduciary duties as trustee and personal

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

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representative); section 6068, subdivision (a) (failure to uphold the law); and section 6106 (bad faith violations of court orders and misrepresentations). The matter was originally assigned to Judge Richard Honn, then a judge of this court's Hearing Department.

On September 5, 2015, Respondent filed her response to the NDC.

On September 17, 2013, the initial status conference was held in the case. At that time the case was scheduled to commence trial on December 7, 2013, with a seven-day trial estimate.

On November 5, 2013, Respondent filed a motion to continue the trial, based on the complexity of the case and the need to secure the voluminous documents which were then in the control of third-parties. On November 8, 2013, the State Bar filed a statement of non-opposition to the request. On November 21, 2013, the motion to continue the trial was granted and a status conference scheduled on December 3, 2013, for the purpose of scheduling the new trial dates. At that status conference, new trial dates of March 24 to 28, 2014, and April 1 and 2, 2014, were scheduled.

At the time that the case called to commence trial, the parties jointly requested a further continuance of the trial date. As a result, an order vacating the existing dates was entered on March 24, 2014, and setting new trial dates of October 6-15, 2014.

On May 9, 2014, this matter was reassigned from Judge Honn to the undersigned. This court then scheduled a pretrial conference on September 29, 2014.

On September 29, 2014, this court abated the matter due to pending appeals in the underlying probate proceedings giving rise to this proceeding, which appeals were represented to this court by Respondent as potentially dispositive of some or all of the allegations in the NDC.

On or about November 17, 2014, this court lifted the abatement order and rescheduled the trial to commence on March 31, 2015.

On December 3, 2014, the State Bar filed a Motion To Amend the existing NDC in this matter. After no opposition to the motion was filed by Respondent, the motion was granted on December 22, 2014.

On December 26, 2014, the State Bar filed its First Amended Notice of Disciplinary Charges. This amended pleading added an additional count, alleging a violation section 6068, subdivision (c) (maintaining unjust action) based on the results and records of the probate appeals that had caused the prior abatement of this proceeding.

On January 13, 2015, Respondent filed her response to the Amended NDC.

On March 23, 2015, the court held a Pretrial Conference and ordered the parties to meet and confer regarding, among other things, a further stipulation to facts and exhibits. The court also ordered Respondent to produce exhibits to the State Bar.

On April 1, 2015, trial began in this matter. In the early stages of the trial, the court again ordered the parties to meet and confer regarding undisputed facts. Although this subsequent order resulted in an extensive stipulation of facts, the trial continued through April 9, 2015. At that time, because the parties had still not yet completed their presentations of evidence and the undersigned was scheduled to go out the country, the court scheduled four additional days to complete the trial commencing July 7 through July 10, 2015.

The case was reconvened on July 7, 2015, and completed on July 10, 2015, followed by a period of post-trial briefing. The State Bar was represented at trial by Senior Trial Counsel Kimberly Anderson and Deputy Trial Counsel Anand Kumar. Respondent acted as counsel for herself.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the Amended NDC, the stipulations of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 14, 1987, and has been a member of the State Bar of California since that time.

Case No. 12-O-11554

Rowena L. Schooler (Rowena) and her husband Eugene Schooler (Eugene) (collectively, Schooler Parents) created the Eugene B. Schooler and Rowena Schooler Trust (Family Trust) on December 6, 1989. This trust was a so-called "AB" trust whereby, on the death of either of the Schooler Parents, the trust corpus would be split into two new trusts: Trust A (referred to as the Survivor's Trust) and Trust B (the so-called Decedent Trust). Of the two trusts, Trust B was irrevocable; in contrast, Trust A could be revoked or modified by the surviving spouse as he or she desired.

The Family Trust included provisions regarding both the short-term and long-term distribution of the assets of the Schooler Parents. Included within the trust were provisions that "Following the death of the surviving Trustor, the Successor Trustee shall divide Trust "B" or the entire trust estate, as the case may be, into five (5) shares of equal market value." The trust went on to state that these shares were to be distributed to the Schooler Parents' five children: Jane Schooler (Respondent); R. Katherine Schooler Kerns (Katherine); Eugene Andrew Schooler (Andrew); John Evan Schooler (John); and Louis V. Schooler (Louis).[2] The trust designated Respondent and Katherine to serve as Successor Co-Trustees on the death of both parents.

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[2] Andrew, John and Louis are collectively referred to herein as the Schooler Brothers.

At the time of the creation of the Family Trust in 1989, one of the major assets owned by the Schooler Parents was their residence near the beach in Del Mar (Beach House). Although the Family Trust contained the above provision regarding the ultimate division of the Trust B corpus into five equal shares at the time of the death of the surviving spouse, the Family Trust also contained the following specific provision regarding the Beach House:

> Notwithstanding anything contained herein to the contrary, it is the Trustors' specific wish and they direct any successor trustee hereof to be mindful that it is their desire that the Trustors' residence located at 1717 Coast Blvd., Del Mar , California, is to be considered a unique and special asset. Therefore, the Trustors direct that this asset shall not be liquidated unless absolutely necessary to meet the needs of the Trustors, but rather that their home should continue to be made available for any of the Trustors three (3) children who wish to reside there, R. Katherine Schooler Kerns, Jane L. Schooler and E. Andrew Schooler, providing that if any such children desire to continue to live in the Trustors' residence, then these children should pay the property taxes on said property and rent to the estate in an amount not to exceed Twenty-five hundred Dollars (2500.00) per month, total."

Eugene died on August 20, 1996, resulting in the original trust being divided into Trusts A and B. On his death, Rowena became the lifetime trustee of both Trust A and Trust B, and her responsibilities included deciding how assets of the Family Trust would then be allocated between the two trusts. One of her decisions was to place the Beach House into the revocable Trust A.

On November 9, 1999, Trust A of the Family Trust was modified, amended and transformed by Rowena into the Rowena L. Schooler Trust of 1999 (the Rowena Trust), and all assets belonging to Trust A of the Family Trust were transferred into it. This new Rowena Trust did not include the language, quoted above, regarding the handling of the Beach House. Instead, on the death of Rowena, the trust generally provided merely for the division of the trust corpus into five equal shares, to be distributed to the five children identified above. (Ex. 10, pp. 37-38.) The trust also designated Respondent to serve as Successor Trustee on the death of Rowena.

At the same time Rowena created the Rowena Trust, she also created the Will of Rowena L. Schooler, dated November 9, 1999 (the Rowena Will). In this will, Rowena indicated that she wished any assets remaining in her estate at the time of her death to be added to the Rowena Trust "as if the property were an of the trust at my death." In her will, she also nominated Respondent to serve as the personal representative of her estate on Rowena's death. (Ex. 10, pp. 125-126.)

On October 27, 2004, Rowena died. At the time of her death, Rowena left behind Trust B, the Rowena Trust, and the Rowena Will. Pursuant to the provisions discussed above, Respondent became the trustee of both trusts and the designated personal representative of the Rowena Estate.

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

- 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 123-28-601-022, 123-28-601-023, and 123-28-601-024, and 123-28-601-025;
- 40 acres of unimproved real property in Reno, Nevada, APN 16-720-721; and
- 100% interest in Tierra Del Mar Corporation (TDM), which at all relevant times was a real estate holding company. In turn, TDM owned the following real properties at the time of Rowena's death:
    - 25% interest in Las Vegas , Nevada, Assessor's Parcel Numbers 123-28-601-022, 123-28-601-023, and 123-28-601-024, and 123-28-601-025;

- 40 acres of unimproved real property in Reno, Nevada, APN 16-720-20;
- Approximately 9.92 acres of unimproved real property in Riverside, California, APN 360350015-7 (Riverside Parcel);
- Approximately 5 acres of unimproved real property in Primm, Nevada, APN 237-08-501-055 (Primm Parcel); and
- Approximately 2 1/2 acres of unimproved real property in Las Vegas, Nevada, APN 123-28-601-008.

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

- Eve Mezy loan note dated November 9, 1999, in the amount of $10,209.69;
- 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
- New York Life Insurance Policy proceeds valued at $5,529.65.

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

- The Beach House;
- Promissory Note dated May 24, 1968 in the amount of $6,765.94 from payors Lawrence R. King and Jo Ann King;
- 500 shares of Daou Systems stock worth approximately $100.00 total;
- Personal belongings valued at approximately $3,000.00; and
- Washington Mutual checking/savings accounts with balance of approximately $320.00.

Although the Beach House had previously been an asset of the Rowena Trust, it was an asset of the Rowena Estate at the time of Rowena's death because, in or about 2002, while Rowena served as trustee of the Rowena Trust, she had removed the Beach House from the Rowena Trust in order to borrow $170,000 from Washington Mutual Bank, a loan secured by a promissory note and deed of trust against the Beach House.

At the time of Rowena's death in 2004, both Respondent and Andrew were living with Rowena in the Beach House. However, the lower level of the Beach House was leased by third-party tenants, who were paying rent of $2,200.00 per month.

In early 2005, Respondent told Andrew that he needed to move out of the Beach House. In addition, she ordered the tenants to vacate the property, resulting in a cessation of the $2,200 monthly rent payments. Respondent represented to her brothers that these steps were being taken to enable Respondent to paint and make repairs to the house so that it could be placed on the market by December 2005,

On or about June 3, 2005, Respondent petitioned the San Diego County Superior Court for probate of the Rowena Will and was appointed executor of the Rowena Estate.

On or about July 21, 2005, Respondent, acting as President of TDM,[3] sold Las Vegas Parcel 25 for approximately $520,000.00. TDM netted approximately $463,049.67 from the sale. (Ex. 10, p. 291.) Respondent did not disclose this sale to her brothers at the time or for many months thereafter. Then, in August 2006, when she eventually purported to provide an accounting of the same, hert accounting misrepresented that the sales price was "$390,000" - a figure $130,000 less than the actual sales price. Despite numerous requests by the brothers, Respondent has never provided an accurate accounting of what happened to all of the proceeds

[3] Because TDM was a corporation wholly owned by Trust B, Respondent, as trustee of the trust, completely controlled its actions.

of this sale. During the trial of the instant proceeding, Respondent testified that approximately $200,000 of this sale went to pay costs associated with the "administration" of family matters.

Despite her representations to her brothers, Respondent, in fact, had no intention of ever selling or moving out of the Beach House. After becoming the sole occupant of the house, Respondent began to use money that she was holding as a fiduciary to make improvements to the house.[4] At the same time, she changed the locks and installed a security gate at the house so that the other Schooler siblings could no longer have immediate access to the premises.

Toward the end of 2005, the three Schooler brothers (Schooler Brothers) were becoming increasingly unhappy that none of them had received any distribution of funds from either of the two trusts or from their mother's estate. Nor had Respondent put the Beach House up for sale. As a result, a family meeting was then held, during which the brothers requested that Respondent liquidate the assets in the trusts and estate and distribute the proceeds in equal shares to the five beneficiaries. In response, Respondent indicated that she had no intention of selling the Beach House, but instead intended to continue to live in it. She also indicated her intent to pay herself a salary for her efforts in managing the assets of the trusts and estate.

On or about March 3, 2006, attorney Chad Ruyle, representing the Schooler Brothers, sent a letter to Respondent's attorney, Fred Vandeveer (Vandeveer), attempting to obtain information concerning the Family Trust, the Rowena Trust, and the Rowena Estate. (Ex. 10, pp. 236-238.) Vandeveer received the letter and Respondent had actual knowledge of the contents of it.

On or about April 5, 2006, Ruyle sent another letter to Vandeveer, confirming the Schooler Brothers' ongoing requests that the Del Mar Beach House be sold (including possibly to Respondent), demanding that the assets of the two trusts be distributed, and asking that an

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[4] According to an accounting prepared by Respondent for the period October 27, 2005, to April 30, 2007, Respondent spent $106,779 on "repairs and maintenance" on the house.

accounting be provided by Respondent of her actions as trustee and executor. (Ex. 10, pp. 239-240.)

On April 21, 2006, Respondent, through her attorney, replied to Ruyle's April 5, 2006 letter. At the outset, Respondent represented that she and her attorney were hoping to close the probate action "very soon" and anticipated forwarding the final accounting for the estate "in the next several days." In the letter, Respondent disclosed that she 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 letter, Respondent also proposed that she receive an additional monthly salary of $2,000.00 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 TDM or Trust B assets.

Further, in this April 21, 2006 letter, Respondent also offered 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. This proposed purchase was to be "on an installment loan basis," with the payments of principal being "tied" to the future sale of other assets from the trusts. (Ex. 10, p. 243.)

On 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 the April 21, 2006 letter. (Ex. 10, pp. 246-248.). In this letter, the Schooler Brothers rejected Respondent's offer to purchase the Beach House on an installment basis, but offered to allow Respondent and Katherine a right of first refusal when the house was placed on the market. In that regard, the brothers again demanded that the house be placed immediately on the market, complained that Respondent was

living in the house rent-free, and demanded that she move out. In response to this letter, Respondent neither moved out of the house nor placed it on the market.

In the April 26, 2006 letter, Ruyle also complained that, while the brothers understood that one of the Las Vegas parcels had been sold for approximately $500,000, they did not know whether this parcel had been owned by Trust B or TDM and that a list of assets provided by Respondent neither showed the parcel nor the money that had been received from its sale. Ruyle, on behalf of the brothers, asked for information regarding the sale and for an accounting of its proceeds.

On or about May 12, 2006, Vandeveer sent a letter to Ruyle, forwarding the Rowena Estate 706 tax return and a draft first and final account for the Rowena Estate. This accounting was subsequently not filed with the probate court until July 2007, 14 months later, and then only after the court had issued an order to show cause why the estate had not already been closed.

On or about May 30, 2006, Respondent, through her attorney Vandeveer, sent a letter to Ruyle in which she offered, on behalf of herself and her sister, to purchase the Beach House based on an a valuation of $2,000,000. Because the sisters would already own 40% of the property (or $800,000 of the stated value), they proposed to pay each of the three brothers an immediate payment of $200,000, with the balance being in the form of an interest-bearing installment note with a balloon payment in three years. (Ex. 10, pp. 221.) At the time of this offer by Respondent, Respondent had still not distributed any money whatsoever to any of the three brothers from either of the trusts or from the estate. It had now been more than 21 months since their mother had died.

In the course of the above letter, Respondent disclosed that she had agreed to sell one of the Las Vegas parcels for $775,000; that the transaction was then in escrow; and that the escrow was then scheduled to close in approximately 60 days, which it did (see below). With regard to

the remaining Las Vegas properties, as well as the remaining properties in Nevada and Riverside, Respondent made clear her intent was to retain them "long-term."

On June 1, 2006, after the Schooler Brothers again objected to Respondent's sole occupancy of the Beach House rent-free, Respondent provided an accounting, stating that, as of that date, she had begun paying rent to the Estate in the amount of $2,000 per month. Respondent had previously been advised by her attorney in December 2005 that a rental value for the property of $2,500 was probably too low. Moreover, at the time of the mother's death in 2004, third-party tenants were already paying a monthly rent of $2,200 for their use of just the lower level of the house. When asked during the trial of the instant proceeding how she had determined in 2006 that the rental value of the house was $2,000, Respondent testified that she had relied on the advice of a "litigator" in Los Angeles regarding the fair rental value of the Del Mar property, rather than seek the advice of any real estate or rental authorities in the Del Mar market. There was no evidence that this litigator had any knowledge of the rental value of homes near the beach in Del Mar, other than some rental listings that had been forwarded to this litigator by Respondent. In contrast, in March 2009, the Schooler Brothers obtained a "Small Residential Income Appraisal Report" for the property assessing the fair rental value of the property as of November 1, 2004. This report concluded, "Based on the projected rents and a summer vacation rental income, the property could earn approximately $67,000 in rent per year." (Ex. 10, p. 416.) Similarly, in July 2006, the Schooler Brothers obtained opinions from two real estate agents in the Del Mar region that the anticipated selling price of the Beach House would be a minimum of $3,500,000 and in the range of $3,500,000-$4,000,000. (Ex. 10, pp. 219-220.)

On July 28, 2006, Respondent, acting as President of TDM, completed the sale of Las Vegas Parcel 8 for $775,000.00, netting $666,657 from the sale. Again, she never provided a full and accurate accounting to the Schooler Brothers of the proceeds of the sale.

In January 2007, a family meeting was held, attended by all five of the Schooler beneficiaries. During the meeting, Respondent stated that TDM, who only business was buying and selling undeveloped land, had an operating loss of $85,000 for the year 2006 and that the company had sold one of its Las Vegas lots "to pay expenses." However, she declined to explain how such a loss had occurred, and she failed to provide any details regarding the sales transaction.

On February 14, 2007, the probate court issued an order requiring the estate to be closed and scheduling an order to show cause on July 6, 2007, why the estate had not yet been closed.

On February 18, 2007, Respondent sent an email to the Schooler Brothers, proposing that they accept Las Vegas Parcels 22, 23 and 24 in exchange for the Beach House. This offer was rejected by the brothers through a letter from their attorney, dated February 27, 2007. In this letter the brother continued to demand that the various properties be placed on the market and that the shares in TDM be immediately distributed equally between the five beneficiaries.

On March 1, 2007, Respondent disbursed $100,000.00 to each of the Schooler beneficiaries. The Schooler Brothers were informed that the funds were derived from the sale of an unspecified Las Vegas parcel, but they were not provided with an accounting of the other proceeds of the sale.

On or about April 2, 2007, Wilderness Preservation LLC and John Dolan made a written cash offer to purchase from TDM the two properties located in Reno for $250,000 apiece. (Ex. 10, pp. 224-235.) Rather than accept the offer, Respondent indicated to the Schooler Brothers, who were responsible for securing the offer from the prospective purchasers, that she would purchase the lots for the same price. However, once the Wilderness Preservation/Dolan cash offer had expired, Respondent did nothing to move forward to purchase the properties herself. (Ex. 10, p. 181.)

On April 10, 2007, an entity titled MILCO TRUST 05/05/05 provided to Respondent a written, all cash offer to purchase Las Vegas Parcels 22, 23 and 24 for a total price of $2,250,000. Because this purchase offer was being made in connection with a so-called "1031 exchange," it was time-sensitive. However, rather than promptly accept the offer, Respondent again advised the Schooler Brothers that she wanted to purchase the parcels. Then, when the brothers gave their consent to her purchase of the properties, she failed to do so. As a result of Respondent's actions, the MILCO purchase offer expired without being accepted and the Las Vegas parcels remained unsold and undistributed. In the meantime, in 2007, Respondent stopped paying the property taxes owed on the Nevada parcels. As will be discussed below, this resulted in foreclosure actions being initiated by the Nevada taxing authority on the properties in 2010 and, in turn, a bankruptcy petition being filed by Respondent on behalf of the trust.

On or about June 14, 2007, Respondent transferred a 20% undivided 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. This transfer and the $100,000 distributions discussed above were the only distributions Respondent would make from the trusts or the estate to any of the Schooler Brothers from the time of the mother's death in 2004 until Respondent was removed from her fiduciary positions by the court in June 2011.

At no time between October 2004 and July 2011 did Respondent sell the Riverside Parcel or disburse it to the beneficiaries equally as tenants in common, despite repeated demands by the Schooler Brothers that she do so. Nor did she ever distribute the shares of the TDM corporation to the beneficiaries, despite the fact that an equal distribution of such shares would have been easy to effect.[5]

[5] Respondent's failure to distribute the corporate shares is probably best explained by the probability that the Schooler Brothers, as majority shareholders, would have removed Respondent from her position controlling the assets of the corporation.

On June 15, 2007,[6] Respondent filed a first and final accounting in the probate action, which contained an purported accounting of the estate for the period from October 27, 2004 through April 30, 2007. In this filing, Respondent asked that the accounting be approved; that the probate be closed; and that the residuary properties, including the Beach House, be poured over into the Rowena Trust, as provided in the Rowena Will. In addition, Respondent requested that she receive an award of $30,019.15 in statutory fees as the executor of the Rowena Estate. The accounting listed expenses of $189,608 incurred by Respondent in administering the estate.

The Schooler Brothers then sought to object to Respondent's accounting, to have her removed as executor, and to have her surcharged for improper expenses and waste resulting from her handling of the estate. In their proposed contest, they emphasized that, of the $1,701,920 in total assets on hand in the estate at the time of their mother's death, less than $2,000 were assets other than the Beach House. (Ex. 14, p. 8.) They also complained that Respondent had incurred expenses of nearly $190,000 to administer the estate and had borrowed or received advances of nearly that amount to pay those expenses,[7] rather than merely sell the Beach House. Further, their proposed objections complained that they had not been provided access to the books and records used to prepare the estate's accounting.

Although the brothers wanted to file these objections to the accounting, because the Rowena Will contained a so-called No Contest clause, disinheriting any beneficiary contesting specified actions and issues related to the will, the brothers first sought to obtain a ruling from the court under then applicable section 21340 of the Probate Code that their objections and proposed remedial action would not fall within the No Contest provision. (Ex. 14.) When the

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[6] The parties' stipulation of undisputed facts mistakenly refers to the date of this filing as July 15, 2007. See instead court the "filed" date on Exhibit 13, p. 1.

[7] In a subsequent challenge to Respondent's estate accounting, the brothers charged that Respondent had borrowed $12,200 from TDM corporation and $176,710 from Trust B to fund the expenses associated with the estate. (Ex. 11, p. 212.)

probate court concluded that certain aspects of their proposed challenges to Respondent and her accounting would violate the No Contest provision, the brothers then appealed that adverse decision to the court of appeal, which subsequently reversed on January 6, 2010, the probate court's conclusions regarding the challenges to the accounting. (Ex. 96.) In the interim, the estate remained open, Respondent continued to live in the Beach House, and no effort was being made by her to sell the house.

In October 2007, Respondent, acting through her attorney, provided to counsel for the Schooler Brothers various accountings and expense records Respondent had then prepared for the estate and the two trusts.

On or about March 28, 2008, the attorney for the Schooler Brothers sent a letter to Respondent's attorney, indicating that the accounting and supporting materials had been reviewed by an accountant retained by the brothers and that numerous discrepancies and inadequacies in the reports and supporting documents had been identified. (Ex. 10, pp. 350-354.) It was not until August 6, 2008, that Respondent's attorney purported to provide an admittedly partial response to the March 28, 2008 list of concerns and challenges. (Ex. 10, pp. 355-359.)

As previously noted, Rowena had borrowed money against the Beach House prior to her death, resulting in a monthly mortgage payment of $700 owed to Washington Mutual Bank. because the Beach House was an asset of the estate over which Respondent was the executor, Respondent had the obligation to see that those monthly payments were made. She did not. As a result, on or about November 6, 2009, and again on March 16, 2010, Notices of Default and Election to Sell was recorded against the Del Mar Beach House by Washington Mutual Bank. (Ex. 10, pp. 275-278.) The stated amount of the arrearage in November 2009 was $5,232; the stated arrearage in March 2010 was $3,547.

On August 31, 2009, Respondent initiated two new actions in the San Diego Superior Court, entitled *In the Matter of the Trust Agreement for the Rowena L. Schooler Trust of 1999* and *In the Matter of the Eugene B. Schooler and Rowena Schooler Trust, dated December 6, 1989,* by filing Petitions for Instructions Regarding Distribution of Assets of the Trust. (Ex. 19.) In these petitions, which Respondent sought to consolidate, Respondent asked for authority to consolidate the trusts for purposes of making distributions to the beneficiaries. In addition, she asked that the portions of the trust corpus owed to the Schooler Brothers being taxed to recover the costs incurred by her in defending the brothers' challenges to her in the estate matter.

After the appellate court concluded in January 2010, that the Schooler Brothers could file their contest to Respondent's estate accounting without running the risk of being disinherited, the brothers filed a new contest to Respondent's accounting on May 21, 2010, again seeking to have her removed and surcharged as executor. (Ex. 15.)

On or about October 21, 2010, Respondent filed an amendment to the first and final accounting in the probate action. (Ex. 17.) The filed amendment scheduled a hearing on the accounting on December 2, 2010. In response to the amended accounting, on November 29, 2012, the Schooler Brothers filed an objection to Respondent's first and final accounting in the probate action.

On or about December 27, 2010, three Notices of Intent to Sell Real Property were issued by the Office of the Clark County Treasurer against Las Vegas Parcels 22, 23 and 24, respectively. The notices indicated that the Schooler Trust owed overdue taxes, penalties and interest of $19,993, $20,004, and $19,900 on the respective parcels, and that the county had scheduled the properties to be sold at a public foreclosure auction on April 27 and 28, 2011. (Ex. 10, pp. 292-294.)

On or about January 3, 2011, another Notice of Default and Election to Sell was recorded against the Del Mar Beach House, this time by JP Morgan Bank as corporate successor to Washington Mutual. (Ex. 10, pp. 279-281.) The stated arrearage in this notice was $4,608.

On or about April 25, 2011, Respondent filed a Chapter 11 bankruptcy petition on behalf of an entity entitled the "Schooler Trust." This petition, signed by Respondent as "Trustee of the Schooler Trust," stated that the residence or principal place of business of the trust was Clark County, Nevada; and listed the principal assets of the trust as Las Vegas Parcels 22, 23 and 24; the Primm Parcel in Nevada; and "Tierra Del Mar." The petition identified as the principal creditors of the "Schooler Trust" the Clark County tax collector and the attorneys representing Respondent in the various trust and estate matters. (Ex. 10, pp. 454-458.) The petition, executed by Respondent under penalty of perjury, did not disclose that Tierra Del Mar was a corporation; did not disclose that the Primm Property was owned by TDM, rather than by the trust; did not disclose the true name of the trust whose obligations were subject to the bankruptcy action; and did not disclose the other properties owned by TDM and/or the Trust B, including the two Reno properties. The filing of this bankruptcy had the effect of terminating the scheduled foreclosure sales that had been initiated by Clark County to collect the overdue taxes. Thereafter, on June 23, 2011, the Chapter 11 bankruptcy was dismissed due to the ineligibility of a trust to file for bankruptcy. (Ex. 10, p. 459.)

On June 23, 2011, a hearing was held before the probate court in San Diego. Respondent was present. During that hearing Respondent indicated that she had lived in only one of the two units of the Beach House and, despite the large amount of money that had purportedly been spent to fix up the home, described the other unit as still needing "major repairs." "It has no hot water. It has no heat. I had SDG&E check it, it needs a new heater, flooring, and ceiling. It's just in need of really major repairs to rent." (Ex. 22, p. 12.) She estimated that the property still needed

to spend an additional $50,000 for the Beach House to be sufficiently habitable to be rented. Respondent also acknowledged at this hearing that properties owned by Trust B had been subject to foreclosure sales due to tax delinquencies in Nevada; that she had filed a bankruptcy on behalf of Trust B to forestall those foreclosure sales; that the Beach House had also been the subject of foreclosure notices, even though she assured the court that she had been paying her monthly rent to the Estate; that sales of the family assets in 2007 would likely have generated $6 million in proceeds for the beneficiaries; that the values of those properties had now dropped dramatically, providing estimates of the current values of those same properties totaling less than $1 million dollars; and that she wanted the court to order the brothers to return money that she had previously distributed to them to pay for the attorneys' fees she had incurred in defending against their complaints. At the end of the hearing in the three related actions, the court orally made an order removing Respondent as the trustee of the trusts and as the executor of the Rowena Estate; concluded that none of the Schooler siblings were qualified or suitable to serve in either position; indicated an intent to name an independent fiduciary to fill the positions; and ordered Respondent to produce documents on July 5, 2011, and appear for her deposition on July 7, 2011. (Ex. 22.) Because Respondent was present at the hearing, she was aware of this court order. The court also indicated that it was going to immediately transfer the Beach House from the probate estate to the Rowena Trust, unless anyone could give the court a good reason not to do so. No one objected to the transfer. (Ex. 22, p. 43.) When counsel for the Schooler Brothers suggested that the court issue a restraining order to prevent any transfers by Respondent of any properties, the court stated, "I don't think I need to do that. She has no power to transfer." (*Id.* at p. 45.)

On or about July 12, 2011, the court issued a written order in the three related actions, memorializing the oral order made by the probate court on June 23, 2011. (Ex. 46.) This order

explicitly stated that Respondent was removed as the Personal Representative of the Rowena Estate and as the trustee of the two trusts. With regard to the Schooler Brothers' motion to compel Respondent's deposition, the court order provided:

> 1. The Schooler Brothers' Motion is GRANTED.
> 2. Jane Schooler has not timely submitted her objections to the Motion and the court finds her objections to be without merit.
> 2.[sic] Jane Schooler shall deliver, to the Law Offices of Philip H. Dyson, the documents required to be produced by the Notice of Deposition by 12:00 p.m. on July 5, 2011.
> 3. Jane Schooler shall appear and submit to her deposition at the Law Offices of Philip H. Dyson on July 7, 2011 at 9:00 a.m.
> 4. Jane Schooler shall immediately pay the Schooler Brothers and their prior counsel, William K. Brewer, sanctions of $2,280.00.

(Ex. 46.)

Respondent had actual notice of the July 12, 2011 order within five days of its' issuance.

Thereafter, on or about July 18, 2011, the court heard an ex parte motion by the Schooler Brothers regarding (1) the failure of Respondent to comply with the court's previously issued orders and (2) the appointment of a Successor Trustee and Personal Representative. Respondent was present at the hearing. On that same day, the court issued a written order in the three related actions, appointing Gloria Trumble (Trumble) as successor trustee of the two trusts and as the personal representative of the Rowena Estate; finding that Respondent had failed to comply with the court's June 23, 2011 order; ordering Respondent to produce all documents responsive to the deposition notice on July 20, 2011, at 10:00 a.m.; ordering Respondent to pay the previously-ordered monetary sanctions of $2,280 by July 25, 2011, at 10:00 a.m.; requiring Respondent to pay additional sanctions of $3,375 for her failure to comply with the June 23, 2011 order; and ordering Respondent to produce the original trust and estate documents to Trumble no later than 3 p.m. on August 2, 2011. (Ex. 26.) . Respondent had actual notice of this July 18, 2011 order but failed to comply with it. According to the credible testimony of Trumble during the trial of the instant matter, Respondent has still not produced all of the original trust and estate documents

to Trumble, despite ongoing requests that she do so. According to Respondent's own testimony during her deposition in 2011, she failed to produce the documents either on July 5, 2011 or at her deposition on July 7, 2011, at ordered by the San Diego Superior Court. (See Ex. 24, pp. 8, 102-116, 142-146; Ex. 25; and 27, p. 20.)

An additional ex parte hearing was held on August 4, 2011, to again address Respondent's continued failure to deliver to Trumble and counsel for the Schooler Brothers the documents previously ordered by the court. At the hearing on August 4, 2011, Respondent asserted that her appeal of the prior orders stayed the proceedings and rendered the court's appointment of Trumble as successor trustee ineffective. The court, concerned that Respondent's argument that the Respondent's appeals required the court to conduct a noticed hearing to appoint Trumble as interim trustee, reserved a hearing date of August 10, 2011, and directed counsel for the brothers to file a motion to be heard that date. (Ex. 27.)

The hearing was conducted in the combined trust and probate proceedings on August 10, 2011. Respondent was present. Prior to the hearing, Respondent attempted unsuccessfully to challenge the assigned judge for cause. During the hearing the court indicated that his research had revealed that there was no automatic stay in force for his order that Respondent pay monetary sanctions; nor did Respondent's appeal stay her obligation to produce records. Finally, with regard to the appointment of Trumble, the court reviewed the law applicable to his power to appoint Trumble; made some additional finding to make clear his justification under the statutes for making the appointment; and amended the terms of his appointment to make clear that Trumble was appointed as an "interim trustee of the two trusts, and that she be appointed temporary executrix of the estate with general powers, but not independent powers under the IAEA; otherwise, all existing orders regarding transfer of records would remain in effect - - all existing orders regarding or affecting Ms. Trumble remain in effect." (Ex. 28, pp. 5-13.) These

orders, including the court's findings regarding the law relative to the stay issues, were committed to a written order on the same day. (Ex. 29.)

As previously noted, Respondent filed a notice of appeal challenging her removal as the trustee of the two trust and as executor of the Rowena Estate and the appointment of Trumble as her interim successor. On October 2012, the court of appeal filed a decision, rejecting Respondent's challenges and affirming both her removal as trustee and executrix and the appointment of Trumble. (Ex. 30.) In this decision, the appellate court specifically rejected Respondent's contentions that her appealing the court's removal of her stayed the proceedings and deprive the court of the ability to appoint Trumble as an interim successor:

> The court's rulings were proper. Section 1300, subdivision (g) provides that a party may appeal from an order removing a fiduciary. Generally, an appeal challenging the removal of a fiduciary under section 1300 stays the operation and effect of the removal order. (§ 1310, subd. (a).) However, section 1310, subdivision (b) provides an exception to the stay rule: "Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or special administrator or temporary trustee, to exercise the powers, from time to time, as if no appeal were pending."
>
> At the August 10 hearing, the probate court specifically discussed this statutory exception, and recognized that during the pendency of the appeal, it had the choice of specifically directing the exercise of Jane's powers or of appointing a temporary administrator to exercise the powers of the personal representative and trustee as if no appeal were pending. After examining these choices, the court found that it was appropriate to appoint an interim trustee/personal representative to preserve and protect the trust/estate assets. The court's ruling was within its discretionary powers.
>
> Jane argues section 1310, subdivision (b) does not apply here because her appeal was directly related to her removal and Trumble's appointment. However, the purpose of the section 1310, subdivision (b) exception is to provide the court with the discretion to lift the automatic stay to ensure that the trust/estate assets are protected while the issues are pending on appeal. Although generally a removal order challenged on appeal is stayed, a trial court has the discretion to remove that stay and appoint a temporary administrator if the appointment is necessary to "prevent[]

> injury or loss to a person or property." (§ 1310, subd. (b).) That is precisely the circumstances occurring in this case.

(Ex. 30, pp. 21-22.)

On or about December 16, 2011, the court in the three related actions issued an order authorizing Trumble to seek to sell the Beach House, the Las Vegas Parcels, the Primm Parcel, the Riverside Parcel, and the Reno Parcels; directing Trumble to commence eviction proceedings against Respondent to remove her from the Beach House; and increasing the rent on the Beach House from $2,000.00 to $5,000.00 per month. (Ex. 5.)

Pursuant to the court's order, Trumble filed an unlawful detainer action in San Diego County Superior Court case (UD action) against Respondent. On or about January 27, 2012, Respondent filed a demurrer in the UD action. In this pleading, Respondent falsely represented to the court that she was still the Personal Representative of the Rowena Estate and the Trustee of Trust B and the Rowena Trust. (Ex. 36, pp. 1, 3.)

As part of Trumble's efforts to manage the assets of the trusts, she was authorized by the probate court to obtain a loan secured by the Beach House. This loan was obtained through Donna Steward. On January 25 and 31, 2012, Respondent sent communications to Ms. Steward, clearly intended to impair Trumble's ability to secure the necessary loan. (Exhibits 38-39.) In both of the communications, Respondent again misrepresented that she continued to be the Personal Representative/Executor of the Rowena Estate.

On or about February 29, 2012, Respondent executed and recorded a grant deed, purporting to convey ownership of the Beach House to Katherine and herself. (Ex. 35.) This deed was executed by Respondent as "Executor of the Estate of Rowena L. Schooler," despite the fact that she had previously been removed as executor and notwithstanding the court's admonition in open court at the time that she had no longer had any power to transfer property. The transaction, had it been valid, would have been a violation by Respondent of her duties owed

to the other beneficiaries, would have required prior court approval, and was attempted and recorded for the obvious purpose of impeding the ability of Trumble to market the Beach House.

On or about March 12, 2012, Respondent filed a motion to strike the UD action. In this pleading, Respondent again falsely represented to the court that she was the Personal Representative of the Rowena Estate and the Trustee of Trust B and the Rowena Trust. (Ex. 37, pp. 1, 3.)

Count 1 – Section 6106 [Moral Turpitude]
Count 2 – Business and Professions Code Section 6068, subd. (a) [Failure to Support Laws

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state."

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. "In broad terms, any act contrary to honesty and good morals involves moral turpitude. [Citations.] Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or at least gross negligence is required. [Citation.]" (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

In these counts, the State Bar alleges that Respondent's conduct while acting as the trustees of the two trusts and as executrix of the Rowena Estate violated many of the Probate Code provisions governing her actions and also the laws defining her duties as a fiduciary. This court agrees.

Respondent's handling of the estate and trusts was governed by two desires inconsistent with the language of the controlling documents. She wanted to continue to live in the beach house and she wanted to consolidate the assets of the trusts and then manage those assets over time as if the trust documents had created a family business, over which she would exercise

control. This latter desire was made explicitly clear by Respondent to the court during the hearing on June 23, 2011:

> I mean what my Dad really envisioned me doing is running the business and basically sending the rest of the kids checks as property sold and the businesses made money. [¶] My initial plan with the business and the properties was really the good one to do and it fit in with the economy. I was going to sell the lots in Las Vegas, we would have had money to run through the recession, we would have had to run conservatively, but at the end of the ten years I had switched the tax status of the corporation, so that takes ten years actually of time. We would have been out of the recession, and all of the properties would have been substantially more valuable at that time, some probably would go to end-users at that point, but that was a time to distribute and sell properties. That's what made business sense. That's what my Dad expected me to do.

(Ex. 22, pp. 39-40.)

In her efforts to effectuate that outcome, Respondent ignored the beneficiaries' demands that she immediately and unconditionally transfer to them their pro rate share of the shares of the TDM corporation. While Respondent offered to transfer the TDM shares to her siblings, she qualified that offer with requirements that the shares be restricted and that she be made the CEO of TDM. So long as she, as trustee, controlled all of the shares of the corporation, she was able to retain the position of president of the corporation, unilaterally decide when and whether to sell the assets of the corporation, control the use of the proceeds of those sales that were transacted, and pay herself a salary as CEO which she alone decided. At the same time, she ignored numerous demands that she provide information to the beneficiaries regarding the financial operations of the corporation, including any explanation for what had happened to the proceeds of the sale of two of the corporations (Las Vegas parcels 8 and 25) and any accounting for her statement to the beneficiaries in January 2007 that the corporation had a $85,000 operating loss for the prior year, 2006. Had she transferred the shares of the corporation to her siblings, with each having a one-fifth ownership of the corporation, the three brothers would have been able to control the corporation and select someone else to be its executive officer. This was a result that

was unacceptable and she resolved the conflict of interest by subordinating the interests of the trust beneficiaries.

Respondent's reliance on the language in the original Family Trust, indicating a desire of the Trustors to maintain the Beach House for the benefit of three of their children, does not justify Respondent's ongoing refusal to sell the house while she continued to live in it. When Rowena acted to remove the property from Trust B and eventually place it in the Rowena Trust, which included no such limitation, the provision was no longer in force. That fact was made expressly clear to Respondent by her attorney in the letter of December 27, 2005, quoted above.

On December 6, 2011, the San Diego County Superior Court probate court conducted a hearing on the Schooler Brothers petition that Respondent be surcharged for her actions as the trustee of the two trusts and as executrix of the Rowena Estate. Respondent was aware of the scheduled trial but consciously decided not to participate in it.

At the conclusion of the trial, the court made the following findings and conclusions regarding Respondent's violations of her obligations as a fiduciary, set forth in a written decision filed on December 16, 2011:

> As an introduction, the Court finds that Jane has engaged in a course of conduct, the purpose of which was to obtain the sole and exclusive use and ownership of the Del Mar property, to receive as much income from the assets of the two trusts and the estate as possible, to receive maximum distribution of the assets as possible, to coerce her siblings into acceding to her demands and decisions. She misused the discretion and authority given to her by her parents in the trust and the will.
>
> Her conduct has resulted in the loss of substantial value in the various assets. The extent of that loss is yet to be determined. Had she acted timely, she would have avoided the loss of value that occurred later from market conditions.
>
> Her intent was to personally enrich herself to the detriment of her siblings, and her conduct has caused harm to her siblings and a loss to the three estates.

The following findings are not the extent of Jane's breaches and are not limiting:

1. Jane Schooler violated her duty to carry out the terms of the trust as found in *Probate Code Sec. 16000*. She has failed to make timely distribution to those entitled, and in fact, after five years has made only one partial distribution. Under the terms of the operative documents she had a duty to distribute within a reasonable time after the death of the last of the two trustors.

2. Jane Schooler violated the duty to avoid a conflict of interest as found in *Probate Code Sec. 16004*. She has taken a position regarding assets that is contrary to the expressed desires of the other beneficiaries and the interests of the beneficiaries including beneficiary Katherine Schooler.

3. Jane Schooler violated the duty of loyalty found in *Probate Code Sec. 16002*. She has taken numerous steps that have the purpose of personally benefitting herself to the detriment of the other beneficiaries.

4. Jane Schooler has violated the duty of impartiality found in *Probate Code Sec. 16003*, in that, among other things, she has placed her interests particularly her interest in receiving income from the trust and estate assets and to reside in and own the Del Mar property, ahead of the interests of all of the other beneficiaries and their expressed desires.

5. Jane Schooler has violated her duty to keep the beneficiaries reasonably informed of the affairs of the trust pursuant to *Probate Code Sec.16060*. She has also violated the related *Section 16061*. She has refused to provide information on request and has concealed other material evidence.

6. Jane Schooler has actually misrepresented material facts to her siblings. She's violated the duty of care under *Probate Code Sec. 16040*. It's noted that at least one of the trusts expanded the standard of care, however, the Respondent has acted in bad faith in the performance of her duties and has exercised discretionary power unreasonably, in violation of *Probate Code Sec. 16080*.

7. Jane Schooler has failed to exercise due care in the management of the assets of the trust and estate. She's failed to list and sell property, without reasonable justification. She has refused to accept or consider cash offers for sale of assets.

8. Jane Schooler has withheld distribution and information as part of a plan to gain an advantage over her brothers so that ultimately, she would receive the Del Mar property. Next, she has failed to perform her

duty to preserve the trust property, as found in *Probate Code Sec. 16006, Sec. 16007 and Sec. 16009.*

9. Jane Schooler failed to list and sell assets in a timely fashion. As a result of her unreasonable delay, valuable assets have decreased in value. Tax liens have been recorded against the Las Vegas lots with the assessor's parcel numbers ending in 22, 23 and 24. A bankruptcy in the Schooler trust was filed in Nevada as a result of Jane's failure to preserve and protect the assets. This was done as protective measure by her, and would not have been necessary if she had otherwise performed her duties.

10. Jane Schooler failed to pay the mortgage on the Del Mar property, with the result that notices of default were recorded against that property. She has violated her duty to account under *Probate Code Sec. 16062 and 16063*. An accounting involves an accurate and complete accounting. Under recent cases, the duty to account extends to actual distribution of property the accounting shows should be distributed. She has failed to account for relevant time periods when she was acting as a fiduciary. She has failed to account for significant transactions, including the sale of one of the Las Vegas lots. She has failed to account for other assets, including cash.

11. Jane Schooler has acted in disregard of the terms of the trust, and in bad faith pursuant to *Probate Code Sec. 16081.*

12. Jane Schooler has unlawfully misappropriated trust and estate assets for her own use and purposes. In particular, and without limitation, she has charged personal expenses such as utilities, appliance repairs, upkeep and the like with respect to the Del Mar property to the trust and/or the estate. Many of these expenses should have been personally paid by her.

(Ex. 6.)

This court joins in the above findings and conclusions. Not only are those findings and conclusions entitled to great weight in this proceeding, they are supported by overwhelming, clear, and convincing evidence. In sum, Respondent's conduct, as set forth at length hereinabove, represented multiple willful violations by her of her obligations under the Probate

Code and as a fiduciary. Such patent disregard by Respondent for her duties under the law represented multiple violations by her of section 6068, subdivision (a).[8]

Moreover, because Respondent's misconduct was intentional, motivated by improper purposes, and frequently infused with dishonesty and/or concealment, the misconduct also represented multiple acts of moral turpitude, in willful violation of the prohibition of section 6106.

Count 3 – Section 6106 [Intentional Bad Faith Violations of Court Orders and Misrepresentations to Court and Third Parties]

Respondent was ordered by the San Diego County Superior Court to provide documents to counsel for the Schooler Brothers by a specified deadline; to turn over original estate and trust documents to Trumble by a specified deadline; and to pay sanctions by specified deadlines. She failed to comply with any of these orders. These failures by her were intentional and intended to impede the ability of the court, Trumble, and the opposing parties to move forward in resolving the issues in the pending lawsuit and distributing the assets of the estate and trust in a manner inconsistent with Respondent's personal desires. The justifications offered by Respondent for her failures to comply with the court's orders were specious and knowingly unreasonable.

Further, as set forth in greater detail above, Respondent repeatedly made misrepresentations to the court and various parties that she continued to be the trustee of the two trusts and the executor of the Rowena Estate even after she had been removed from those fiduciary positions.

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[8] However, because the conduct underlying this violation is essentially the same as that underlying the finding that Respondent is culpable of the more serious misconduct of committing acts of moral turpitude in wilful violation of section 6106, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

Respondent's disobedience to the court's orders and all of her misrepresentations were knowingly improper, were motivated by improper purposes, and constituted acts of moral turpitude, in willful violation of the prohibition of section 6106.

Count 4 - Section 6068, subd. (c) [Maintaining an Unjust Action]

Section 6068, subdivision (c), states that it is the duty of an attorney "to counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just . . . ."

As the probate court continued to press forward with the estate and trust matters after Respondent had been removed, Respondent filed appeals to virtually every action taken by the court. All of those appeals were unsuccessful.

On November 15, 2013, the court of appeal filed a decision in case No. D062217, concluding that all of Respondent's[9] contentions lacked merit and that the appeal had been taken for improper purposes: "Here, in making arguments that are not supported by the record and that our prior orders preclude appellants from making, appellants and their counsel have made an unmistakable and bad faith effort to avoid the impact of out prior orders." (Ex. 92, p. 2.) As a result, and in an attempt to prevent the repetition of the misconduct in the future, the appellate court ordered Respondent, Katherine, and their attorney to pay sanctions to the Schooler Brothers, Trumble, and the court, totaling nearly $28,000.

Despite the fact that the appellate court had previously affirmed the correctness of both the probate court's removal of Respondent as the fiduciary for the trusts and the estate and the appointment of Trumble as the successor fiduciary, Respondent, joined by Katherine, filed and continued to pursue two appeals, eventually consolidated, of the actions being taken by the court and Trumble to dispose of the Beach House.

[9] Respondent was joined in that appeal by her sister Katherine.

On October 17, 2014, the court of appeal, after giving notice to the parties that it was considering dismissing Respondent's appeals and awarding sanctions, dismissed the appeals, concluding that they were frivolous and filed in bad faith, and awarded sanctions. In reaching these conclusions, the appellate court first provided a history of the prior unsuccessful appeals taken by Respondent, including that which had resulted in sanctions in 2013 (referred to in the appellate court's decision as *Schooler III*). It then set forth the following analysis of the merits of Respondent's latest appeals:

> While our opinion in *Schooler III* grew out of the Brothers' breach of fiduciary duty claims against Jane and Katherine, these consolidated appeals grow out of Jane and Katherine's separate disputes with Trumble, the personal representative of the estate and replacement trustee of the trust. The appeals concern Trumble's efforts to carry out the probate court's instructions to sell the Del Mar beach house and preserve the assets of the trust.
>
> Following entry of the probate's court's order directing that Trumble sell the beach house, on April 25, 2012, Trumble obtained an order under *Estate of Heggstad (*1993) 16 Cal.App.4th 943, 950, determining the beach house was trust property. On July 17, 2012, Trumble obtained an ex parte order permitting her, as trustee, to borrow funds using the beach house as security, which order was later superseded by a separate August 21, 2012 order confirming Trumble's power to borrow funds.
>
> Thereafter, Trumble filed a petition to terminate the estate proceedings. Jane and Katherine opposed the motion to terminate the estate on a number of grounds, including their contentions that the Brothers had been disinherited and that Trumble should be removed as trustee and personal representative because she had supported efforts by the Brothers to make Jane responsible for attorneys fees incurred while she was executor of the estate and trustee. The sisters also demanded an accounting of the funds Trumble had borrowed as trustee. The probate court found that in light of its earlier order determining that the beach was trust property, the estate had no assets, and terminated the estate.
>
> Although in July 2012, the appraised value of the beach house was $1,750,000, Trumble was able to obtain an all cash offer of $1,855,000 for

the house, which she accepted on September 7, 2012. The probate court confirmed that sale on October 25, 2012.

Issues Briefed

Our docket in appeal No. D062877 discloses a notice of appeal and three amended notices of appeal, which together seek review of no less than 18 orders entered by the probate court between July 17, 2012, and February 21, 2013. As Trumble points out in her respondent's brief in D062877, Jane and Katherine's opening brief in D062877 only addresses two of the 18 orders: the July 17,2012 order confirming Trumble's power, as trustee, to borrow money and the October 19, 2012 order terminating probate proceedings in Mother's estate.

Our docket in appeal No. D062878 discloses a notice of appeal and an amended notice of appeal that seek review of eight of the same orders subject to appeal in appeal 0062877 and an April 19, 2013 judgment establishing the trust's ownership of property. Jane and Katherine's opening brief in D062878 only addresses four orders either set forth m their notices of appeal or arguably reviewable on appeal from orders set forth m the notices of appeal: once again Jane and Katherine's brief challenges the probate court's July 17, 2012 order confirming Trumble's power, as trustee, to borrow money; Jane and Katherine also challenge an August 21, 2012 ex parte order expunging a notice of action, an October 15, 2012 order establishing Trumble's ownership of the Del Mar beach house, and the October 25, 2012 order confirming sale of the Del Mar beach house.

DISCUSSION I

Appeal No, D062877

Jane and Katherine contest the probate court's July 17, 2012 order permitting Trumble, acting as trustee, to borrow funds secured by the beach house on the grounds that the order was granted ex parte. This issue is moot for two reasons: (1) the order permitting the secured loan was superseded by a later August 21,2012 order permitting the loan and from which no notice of appeal was filed; and, more importantly, (2) because the home, and the security it represented, was sold by the probate court on October 25, 2012. Because the sisters did not obtain a stay of the sale and the house was in fact sold, there is no practical or meaningful relief available to Jane and Katherine with respect to the order permitting Trumble to borrow funds secured by the house. (See *City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682-683 [failure to obtain stay of receiver's sale renders moot any post sale challenge to proceedings appointing receiver authorizing sale].) "A case is moot when the decision of the reviewing court can live no practical impact or provide the parties effectual relief." *(Id.* at p. 782.)

Jane and Katherine also challenge the order terminating the estate. They argue the probate court failed to require that Trumble report on disposition of the estate's assets. The probate court found that, in light of its order determining that the beach house was trust property, the estate in fact had no assets. There is nothing in the record that shows the probate court erred in making this finding and Jane and Katherine, although they filed a lengthy opposition to Trumble's petition, did not request an accounting of any assets other than the $560,000 loan Trumble, as *trustee*, obtained. Because the loan proceeds were trust assets, and will be accounted for in the trust proceeding, Trumble was not required to provide an accounting of the loan proceeds before obtaining an order terminating the estate.
Appeal No. D062878

Once again Jane and Katherine challenge the validity of the probate court's earlier determinations that Jane should be removed as personal representative of Mother's estate and trustee of Mother's trust, as well as the probate court's direction that the beach house be sold. Those issues were settled in *Schooler II* and *Schooler III.*

They also misconstrue our holding in *Schooler I* and erroneously rely upon it to assert that the Brothers have been disinherited. The Brothers have not been disinherited. In *Schooler I,* we agreed with the Brothers that their challenge to Jane's final accounting did not disinherit them and that their attempt to surcharge Jane was not a will contest. *(Schooler I, supra,* D053924.) We did agree with Jane and Katherine that the Brothers could not attempt to recover *their own* attorney fees from Jane without violating the no contest clause. *(Ibid.)* There is nothing in the record that shows that the Brothers thereafter sought to recover their attorney fees from Jane. Rather, they did oppose the motion *of Jane s* prior attorneys to recover attorney fees the estate had incurred while she was executor. That opposition did not violate the no contest clause.

Contrary to Jane and Katharine's contention, the probate court had the power to ex parte expunge notice of lis pendens they had recorded in an effort to prevent Trumble from selling trust assets, which sales the probate court had ordered. (See Super. Ct San Diego County, Local Rules, rule 4,7.6(L) [court has discretion to hear matters ex parte].)

In short, none of the issues Jane and Katherine raise in either D062877 or D062878 have merit.

After dismissing the appeals, the court then on to consider whether sanctions should be ordered against Respondent and her sister for their actions in pursuing the appeals. It reached the following conclusion:

Although we recognize our power to dismiss frivolous appeals and impose

> sanctions should be used sparingly to deter only the most egregious conduct (see *Flaherty, supra*, 31 Cal.3d at pp. 649-650), both dismissal and sanctions are fully warranted here. From an objective perspective, the arguments asserted have no merit whatsoever. As we have discussed, the arguments Jane and Katherine raise are either moot, are entirely unsupported by the record, have already been finally resolved against them, or are based on a completely erroneous view of the powers of the probate court to act ex parte.
>
> Moreover, the record in these proceedings shows without any serious contradiction, that by way of continuous meritless objections in the probate court and an unbroken train of frivolous appeals in this court, Jane and Katherine have engaged in an unceasing campaign designed to frustrate the probate court's orders in both the trust and estate cases. That record more than amply supports a finding of subjective bad faith.
>
> Because Jane and Katherine's appeals are both objectively and subjectively frivolous, we dismiss their appeals. *(Brar, supra*, 115 Cal.App.4th at pp. 1319-1320.) Once again, the attorney fees incurred by respondents, the impact of the unnecessary delay of these trust and estate proceedings on the parties, and the need to deter future misconduct all support imposition of substantial sanctions. Accordingly, we impose on Jane and Katherine jointly and severally as sanctions $10,260 of the attorney fees incurred by Trumble; we also impose on Jane and Katherine as further sanctions payable to the clerk of the court the estimated $8,500 cost of processing this appeal. (See *In re Marriage of Gong & Kwong* (2008) 163 Cal.App.4th 510, 520.)

Having reviewed the record of these appeals, this court finds that the conclusions of the appellate court are supported by ample, clear and convincing evidence. This court therefore joins in those conclusions and finds that Respondent's actions constituted willful violations by her of section 6068, subdivision (c).

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,[10] std. 1.5.[11]) The court finds the following with respect to aggravating circumstances.

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[10] All further references to standard(s) or std. are to this source.

[11] The standards now in effect were amended and became effective only on July 1, 2015. Because the trial of this matter began before the effective date of those amendments, the

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.5(b).)

Significant Harm

Respondent's misconduct significantly harmed the trusts over which she was trustee, the estate over which she was executor, and the beneficiaries of each. Significant sums of money have been spent as legal fees as a direct result of Respondent's malfeasance in her fiduciary positions, including fees incurred by the beneficiaries. The corpus of the trusts have been significantly reduced as a result of Respondent's misconduct. This is a significant aggravating factor. (Std. 1.5(f).)

Lack of Insight and Remorse

Respondent has demonstrated a lack of insight, little or no remorse, and general indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.5(g).) She fails to demonstrate any realistic recognition of or remorse for her wrongdoings and instead continues to assert that others, including the courts, her brothers, other attorneys, and the court-appointed independent trustee/executor are responsible for the problems resulting from her malfeasance. This is a significant aggravating factor. (Std. 1.5(g); *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

"The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent's continued insistence that her conduct was justified is "particularly troubling" because it suggests

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standards effective at the time the trial of this proceeding commenced will be cited in this decision.

that her prior disregard for her legal and professional obligations may recur. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.)

Mitigating Circumstances

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

No Prior Discipline

Respondent had practiced law in California for 17 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is normally entitled to significant weight in mitigation. (Std. 1.6(a); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49[17 years]; see also *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 520; *In the Matter of Brazil* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 679, 688; *In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594.) Here, however, the weight of this mitigating factor is reduced somewhat by the fact that Respondent only practiced law for a short portion of this 17 years.

Cooperation

Respondent eventually entered into an extensive stipulation of facts. While such a stipulation would normally entitle a respondent to some mitigation, here the Respondent's significant cooperation began only after she was ordered at the time the trial commenced to meet and confer with the State Bar regarding undisputed facts. Moreover, while she has admitted to many of the facts evidencing her culpability in the matter, she has continued to deny any such culpability in the case. As a result, this court declines to give Respondent mitigation credit for her belated cooperation. (Std. 1.6(e) [referring to "spontaneous candor and cooperation"]; see also *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where

appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *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 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) 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.) 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standards 2.7 and 2.8. Standard 2.7 provides: "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

The State Bar argues that Respondent should be disbarred as a result of her misconduct in this matter. When ordered by the court to provide for this court any precedent for such a result, the principal authority advanced by it in it post-trial brief was the case of *Maltaman v. State Bar* (1987) 43 Cal.3d 924. In that case, the Supreme Court did not disbar the respondent for violating probate orders, failing to comply with a sanction order, and various acts of moral turpitude, including preparing a false order misstating a judge's findings. Instead, it rejected the disbarment recommendation of the Review Department and instead ordered discipline including one year of actual suspension. While this court agrees with the State Bar that the actions and attitude of Respondent here warrant greater discipline than that imposed in the *Maltaman* matter, it does not conclude that disbarment is either necessary or appropriate.

Instead, this court recommends that Respondent be suspended for three years, that execution of that suspension be stayed, and that she be placed on probation for four years, with conditions of probation including an actual suspension for a minimum of two years and until she presents proof of her rehabilitation, fitness to practice and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).) This period of suspension and probation should be sufficient to protect the public and the courts during the time that the San Diego probate proceedings are ongoing;[12] are appropriate given the nature and number of Respondent's many transgressions addressed in this

[12] This discipline is not intended to prohibit or dissuade Respondent from participating in those proceedings but are intended to motivate Respondent to do so only appropriately.

proceeding; and will give Respondent ample opportunity and motivation to recognize and correct the error of her ways.

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that be suspended from For all of the above reasons, it is recommended that **Jane L. Schooler**, State Bar number 131676, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for four years, with the following conditions:

1. Respondent must be suspended from the practice of law for the first twelve months of the period of her probation and remain suspended until she provides proof to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.
3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office is maintained,* an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records

Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

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

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates). However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of her probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

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

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

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to

the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

7. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

At the termination of the probation period, if Respondent has complied with all of the terms of her probation, the three-year period of stayed suspension will be satisfied and the suspension will be terminated.

Multistate Professional Responsibility Examination

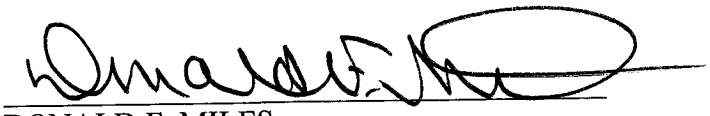
It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination during the period of her actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within that same period. (See *Segretti v. State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

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[13]

Costs

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



Dated: October 28, 2015

DONALD F. MILES
Judge of the State Bar Court

[13] Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

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 28, 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:

JANE L. SCHOOLER
PO BOX 969
DEL MAR, CA 92014

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 28, 2015.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court