FILED FEBRUARY 2, 2015

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 12-O-14071 (12-O-16633; 12-O-18068)-DFM**
MARILYN SUE SCHEER,	)	
	)	**DECISION**
Member No. 132544,	)	
	)	
A Member of the State Bar.	)	

INTRODUCTION

Respondent **Marilyn S. Scheer** (Respondent) is charged here with a total of six counts of misconduct, involving three different client matters. All of the clients in each of the three matters was a resident of a state where Respondent was not licensed to practice law, who hired Respondent to seek modifications of loans secured by property in those states. The State Bar alleges that Respondent's work for each of those clients constituted the unauthorized practice of law (UPL) in each such state, in willful violation of rule 1-300(B) of the Rules of Professional Conduct,[1] and that, as a result, the fees she charged for that work were illegal fees, in willful violation of rule 4-200(A). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

[1] Except as otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on July 19, 2013. On July 29, 2013, Respondent filed a motion to dismiss the NDC and a motion to disqualify the undersigned judge.

On August 5, 2013, the undersigned filed an answer to the motion to disqualify and referred the matter to the Supervising Judge of the Hearing Department for handling. On August 7, 2013, the motion to disqualify was denied.

An initial status conference was held in this matter on August 26, 2013. At that time, Respondent's motion to dismiss was denied. At the same time, the case was ordered abated by agreement of the parties pending receipt of the final decision in the prior disciplinary action in which the same legal issues raised in this proceeding were being addressed on appeal by Respondent to the Review Department of the State Bar Court (Review Department).

On September 4, 2013, Respondent filed her response to the NDC, although the case was then abated.

On May 5, 2014, after being informed that the Review Department had issued a decision in the prior disciplinary matter, a status conference was held in this case. The proceeding was then given a trial date of September 9, 2013, with a three-day trial estimate.

On August 11, 2014, Respondent filed a new motion to dismiss the NDC based on the fact that the client complaints in the pending three matters had been received prior to the trial of the prior disciplinary action and could have been consolidated and tried in that proceeding. An opposition to the motion was filed by the State Bar on August 18, 2014, and the motion was denied by this court on August 19, 2014.

A pretrial conference was held in this case on September 2, 2014. Because this court was going to still be in trial in another matter at the time of the commencement of the scheduled trial in this proceeding, the trial was continued to December 9, 2014. In addition, due to Respondent's complaint that the State Bar was unreasonably failing to stipulate to facts and was unnecessarily bringing in complaining witnesses to testify from other states, the court ordered the parties to meet and confer regarding undisputed facts and the admissibility of exhibits, and it ordered them to a conference with Judge Pro Tempore Scott of this court for the purpose of working out such a stipulation.

On November 20, 2014, Respondent filed a new motion to dismiss the NDC. The motion requested that this court either dismiss the matter or, in the alternative, exclude any award of costs in the event of a finding of culpability. The basis for the request was Respondent's complaint that counsel for the State Bar was failing and refusing to provide Respondent with an acceptable stipulation of facts in the proceeding, despite orders from Judge Pro Tempore Scott.

On December 1, 2014, the State Bar filed an opposition to the motion. The opposition disputed the accuracy of the statements contained in Respondent's declaration, although it did not attach any statement under oath to dispute or contradict Respondent's complaints.

On December 3, 2014, this court denied the motion, concluding that Respondent had failed to establish any basis for the dismissal of the NDC prior to trial and that her request to exclude costs was premature and should be made after the trial was concluded. (Rules Proc. of State Bar, rules 5.129 and 5.130.)

A continuation of the pretrial hearing was conducted on December 3, 2014. After indicating that the motion to dismiss was denied, the court again ordered the parties to meet and confer prior regarding a stipulation of undisputed facts and the admissibility of documents.

On December 8, 2014, an extensive stipulation as to facts and admission of documents was filed by the parties.

Trial was commenced and completed on December 9, 2014, at which time the evidentiary record was closed and the parties were given dates for the filing of post-trial briefs.

On December 12, 2014, the court, after it had reviewed the exhibits offered by the parties in evidence, issued an order requiring the State Bar to prepare a formal record of Respondent's prior discipline, provide it to Respondent for review and approval, and then file it with this court as part of the evidentiary record in this proceeding.

Respondent then objected to the evidentiary record being re-opened and again sought unsuccessfully to disqualify the undersigned.

The evidentiary record was re-opened on Thursday, January 15, 2015, for the limited purpose of receiving in evidence the formal record of Respondent's prior discipline. After that record was received in evidence, the evidentiary record was again closed and the matter submitted for decision on January 27, 2015.

The State Bar was represented at trial by Senior Trial Counsel Ashod Mooradian. Respondent acted as counsel for herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the stipulation 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 California on December 11, 1987, and has been a member of the State Bar at all relevant times.

Case No. 12-O-14071 (Pereira Matter)

On December 5, 2009, Aderito Pereira (Pereira), a resident of New Jersey, entered into a fee agreement with the Marilyn Scheer Law Group PC, a California corporation. Pereira had previously received an advertisement from Respondent, informing Pereira that he might be entitled to a loan modification under new government regulations and offering "to negotiate the current terms of your mortgage." The fee agreement was titled "Residential Loan Modification Retainer Agreement" and prominently displayed the letterhead: "Marilyn Scheer Law Group PC, a California law corporation." The "Attorney" signature block in the fee agreement reads: "Marilyn S. Scheer, President, Marilyn Scheer Law Group PC, a California law corporation."

In the agreement, in exchange for payment of an advance fee of $4,000, Respondent offered to perform "a set (or combination thereof) of legal services described below, to assist Client in obtaining an agreement to modify a loan or loans involving Client's residential real property (collectively, the 'Services')." The subject residential real property was identified in the agreement as being located in New Jersey and the legal services to be provided under the agreement were defined as follows:

> Client retains Attorney for the limited purpose of: (a) confirming Client's eligibility for obtaining a loan modification of the loan secured by the real property described [therein], analyzing and verifying Clients' financial information; and reviewing lender's policies and guidelines governing Client's circumstances; (b) submission of the loan modification package to Client's lender and confirmation of the acceptability thereof; initiating contact with the lender and engaging in negotiations with the lender for purposes of obtaining a loan modification and providing Client with regular status reports thereof; and (c) finalization of the workout/trial plan modification between the lender and Client (subject to Client's performance). Client may select any or all of the services described in the foregoing subparagraphs a, b, or c, with each set of services being billed for separately according to the attached schedules.

The agreement then stated that "*Attorney* will not provide *legal services* in any area other than loan modification without a separate written agreement with the client." (Italics added.)

Respondent is not now, and never has been, admitted to practice law in the State of New Jersey. This fee agreement failed to state that Respondent was not licensed to practice in New Jersey.

Pereira wired the sum of $2,000 to Respondent's professional corporation on December 8, 2009, as a retainer for the services to be provided. Those funds were then deposited into Respondent's trust account. Thereafter, on or about March 20, 2010, Pereira tendered a check in the amount of $2,000, which was deposited into Respondent's trust account on March 29, 2010.

Respondent sought to secure a loan modification on behalf of Pereira, but was unsuccessful. When she declined to return the entire fee that had been advanced, Pereira filed a complaint with the California State Bar on May 21, 2012.

Count 1 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

Rule 1-300(B) states that a member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. To analyze whether Respondent has run afoul of this prohibition, we look to the statutes, rules, and case law of the non-California jurisdiction involved in the case. (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 257 [analyzing nine states' professional regulations to determine whether California attorney's conduct was in violation of rule 1-300(B)].)

New Jersey Disciplinary Rules of Professional Conduct, rule 5.5(b) provides that a lawyer not admitted to the bar of that state may only practice in New Jersey under certain specified conditions ("safe harbor conditions"). None of those conditions is applicable to Respondent's representation of Pereira.

Further, even in those situations where the non-admitted attorney is allowed to practice law in New Jersey in a particular matter, the attorney shall "not hold himself or herself out as being admitted to practice in [New Jersey]." (N.J. Rules Prof. Conduct, rule 5.5(c)(4).) Although Respondent is not admitted to practice law in New Jersey, she held herself out as admitted to practice law in it. Under the auspices of the "Marilyn Scheer Law Group PC, a California law corporation" and in her capacity as an "attorney," she entered into a written fee agreement with a resident of that state to provide "legal services" involving property located in that state. She prominently displayed her law firm's letterhead at the top of the agreement and included it in her signature block. Despite identifying herself as a California attorney, she failed to disclose that she was *not* licensed to practice in New Jersey. And finally, upon execution of the agreement, Respondent collected fees and provided legal services, cementing the impression she had the right to practice in that state.

Further, even under the safe harbor provision, out-of-state attorneys must *first* register with the Clerk of the New Jersey Supreme Court and pay certain assessments before they can practice in that state. (N.J. Rules Prof. Conduct, rule 5.5(c)(3), (6).) Respondent did not prove or argue that she complied with these requirements. (See *In re Opinion No. 49 of the Committee on the Unauthorized Practice of Law*, 210 N.J.L.J. 234 (2012) ["out-of-state lawyers" must meet "all criteria in the pertinent 'safe harbor' subparagraph" of rule 5.5(b)(3)].)

By her actions, Respondent violated the regulations of the profession in Washington in willful violation of rule 1-300(B).

Count 2 – Rule 4-200(A) [Illegal Fee]

Rule 4-200(A) states that a member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. Attorneys are not entitled to charge or collect fees for

services that constitute the unauthorized practice of law. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904.)

Respondent entered into a legal services agreement whereby she contracted for, charged and collected legal fees from her client in New Jersey, a jurisdiction in which she was not admitted to practice law. By that action, she willfully violated the prohibition of rule 4-200(A) against illegal fees.

Case No. 12-O-16633 (Ranabhat Matter)

On January 15, 2010, Bom-Sing and Sushila Ranabhat (collectively "the Ranabhats"), residents of the State of Washington, entered into a fee agreement with the Marilyn Scheer Law Group PC, a California corporation. The Ranabhats had previously received an advertisement from Respondent, informing them that they might be entitled to a loan modification under new government regulations and offering "to negotiate the current terms of your mortgage." The fee agreement was titled "Residential Loan Modification Retainer Agreement" and prominently displayed the letterhead: "Marilyn Scheer Law Group PC, a California law corporation." The "Attorney" signature block in the fee agreement reads: "Marilyn S. Scheer, President, Marilyn Scheer Law Group PC, a California law corporation."

In the agreement, in exchange for payment of an advance fee of $3,500.00, Respondent offered to perform "a set (or combination thereof) of legal services described below, to assist Client in obtaining an agreement to modify a loan or loans involving Client's residential real property (collectively, the 'Services')." The subject residential real property was identified in the agreement as being located in the State of Washington and the legal services to be provided under the agreement were defined as follows:

> Client retains Attorney for the limited purpose of: (a) confirming Client's eligibility for obtaining a loan modification of the loan

> secured by the real property described [therein], analyzing and verifying Clients' financial information; and reviewing lender's policies and guidelines governing Client's circumstances; (b) submission of the loan modification package to Client's lender and confirmation of the acceptability thereof; initiating contact with the lender and engaging in negotiations with the lender for purposes of obtaining a loan modification and providing Client with regular status reports thereof; and (c) finalization of the workout/trial plan modification between the lender and Client (subject to Client's performance). Client may select any or all of the services described in the foregoing subparagraphs a, b, or c, with each set of services being billed for separately according to the attached schedules.

The agreement then stated that "*Attorney* will not provide *legal services* in any area other than loan modification without a separate written agreement with the client." (Italics added.)

Respondent is not now, and never has been, admitted to practice law in the State of Washington. This fee agreement failed to state that Respondent was not licensed to practice in Washington.

The Ranabhats tendered a check dated January 15, 2010, for $3,500.00, which was deposited into Respondent's trust account on January 20, 2010.

Respondent then sought to secure a loan modification on behalf of the Ranabhats, but was unsuccessful. When she declined to return the entire fee that had been advanced, the Ranabhats submitted a written complaint involving Respondent to the California State Bar on June 15, 2012.

Count 3 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

Washington State Court Rules, Rules of Professional Conduct, rule 5.5(b)(2) states, in relevant part, that "a lawyer who is not admitted to practice in this jurisdiction shall not . . . hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."

Respondent is not now, and never has been, admitted to practice law in the State of Washington. Nonetheless, she held herself out as being admitted to practice law in that state. Under the auspices of the "Marilyn Scheer Law Group PC, a California law corporation" and in her capacity as an "attorney," she entered into a written fee agreement with the Ranabhats, residents of the State of Washington, to provide "legal services" involving property located in that state. She prominently displayed her law firm's letterhead at the top of the agreement and included it in her signature block. Despite identifying herself as a California attorney, she failed to disclose that she was *not* licensed to practice in Washington. And finally, upon execution of the agreement, Respondent collected fees and provided legal services, cementing the impression she was admitted to practice law in that state.

Respondent contends that her conduct fell within the temporary practice and federal practice exceptions of Washington's rule 5.5(c) and (d)(2), modeled after the ABA Model rules.[2] This court disagrees.

With regard to the temporary practice exception, none of the legal services Respondent provided to her Washington clients was reasonably related to her practice in California or involved the application of California law. Instead, the legal services she provided related to her clients' residential properties, which were not located in California. Further, Respondent had not previously represented these clients, and they had no prior contact with California. (*In the Matter of Lenard, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 258-259.)

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[2] Washington State Court Rules, Rules of Professional Conduct, rule 5.5(c)(4) provides that a "lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction . . .[¶] aris[ing] out of or . . . reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice." Rule 5.5(d)(2) provides that "a lawyer, admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction," may provide legal services that "are services that the lawyer is authorized to provide by federal law or other law in this jurisdiction."

Likewise, this court rejects Respondent's claim regarding the federal practice exception. She asserts that she is not culpable of engaging in UPL because she provided legal advice exclusively involving federal law and because she is allowed to provide loan modification services under federal programs like the Home Affordable Modification Program (HAMP). However, even if her practice was limited to federal law, the federal practice exception only reaches services non-admitted lawyers are "authorized by federal or other law or rule to provide in [the] jurisdiction." Respondent was not so authorized. She was not admitted to practice before the federal courts of that state or before any federal agency or federal administrative tribunal. And nothing in HAMP preempts a state's UPL rules or licensing regulations. It governs the relationship between mortgage servicers/lenders on the one hand and borrowers on the other. (See, e.g., 12 U.S.C. § 5219a.) Respondent is neither a lender nor a borrower. And although HAMP may *allow* non-attorneys to provide loan modification services under certain circumstances, it does not *authorize* out-of-state attorneys to provide legal services in states where they are not admitted. Absent federal laws, rules, or regulations authorizing Respondent to practice law in the area of loan modifications, her out-of-state legal practice were not an authorized federal practice under the model rule, the Washington rule, or as contemplated in the cases she cites.

Finally, this court would emphasize that the fact that Respondent held herself out as admitted to practice in Washington is dispositive. Regardless of whether her practice fell within one of the exceptions to the Washington rule, she was not permitted to hold herself out as admitted to practice in that jurisdiction.

By her actions, Respondent violated the UPL regulations of the profession in Washington in willful violation of rule 1-300(B). (Wash. Revised Code, § 2.48.180(2)(a); Wash. Practice of

Law Board (Dec. 30, 2009, No. 09-35) [unauthorized practice of law when California lawyer agreed to renegotiate residential mortgage loan for client residing in Washington].)

Count 4 – Rule 4-200(A) [Illegal Fee]

Respondent entered into a legal services agreement whereby she contracted for, charged, and collected legal fees from her clients in Washington, a jurisdiction in which she was not admitted to practice law. By that action, she willfully violated the prohibition of rule 4-200(A) against illegal fees.

Case No. 12-O-18068 (Osborne Matter)

On or April 7, 2010, Maynard and Karen Osborne (collectively "the Osbornes"), residents of the State of Maryland, entered into a fee agreement with the Marilyn Scheer Law Group PC, a California corporation. The Osbornes had previously received an advertisement from Respondent, informing them that they might be entitled to a loan modification under new government regulations and offering "to negotiate the current terms of your mortgage." The fee agreement was titled "Residential Loan Modification Retainer Agreement" and prominently displayed the letterhead: "Marilyn Scheer Law Group PC, a California law corporation." The "Attorney" signature block in the fee agreement reads: "Marilyn S. Scheer, President, Marilyn Scheer Law Group PC, a California law corporation."

In the agreement, in exchange for payment of an advance fee of $4,500.00, Respondent offered to perform "a set (or combination thereof) of legal services described below, to assist Client in obtaining an agreement to modify a loan or loans involving Client's residential real property (collectively, the 'Services')." The subject residential real property was identified in the agreement as being located in the State of Maryland and the legal services to be provided under the agreement were defined as follows:

> Client retains Attorney for the limited purpose of: (a) confirming Client's eligibility for obtaining a loan modification of the loan secured by the real property described [therein], analyzing and verifying Clients' financial information; and reviewing lender's policies and guidelines governing Client's circumstances; (b) submission of the loan modification package to Client's lender and confirmation of the acceptability thereof; initiating contact with the lender and engaging in negotiations with the lender for purposes of obtaining a loan modification and providing Client with regular status reports thereof; and (c) finalization of the workout/trial plan modification between the lender and Client (subject to Client's performance). Client may select any or all of the services described in the foregoing subparagraphs a, b, or c, with each set of services being billed for separately according to the attached schedules.

The agreement then stated that "*Attorney* will not provide *legal services* in any area other than loan modification without a separate written agreement with the client." (Italics added.)

Respondent is not now, and never has been, admitted to practice law in the State of Maryland. This fee agreement failed to state that Respondent was not licensed to practice in Maryland.

The Osbornes tendered a check dated April 7, 2010, for $2,500.00, as partial payment of the retainer, which was deposited into Respondent's trust account on April 12, 2010.

The Osbornes tendered a second check, dated May 7, 2010, which was deposited into Respondent's trust account on May 12, 2010, as the balance owing on their retainer of $4,500.00.

Respondent sought to secure a loan modification on behalf of the Osbornes, but was unsuccessful. When she then declined to return the entire fee that had been advanced, the Osbornes submitted a written complaint involving Respondent to the California State Bar on December 3, 2012.

Count 5 – Rule 1-300(B) [Unauthorized Practice of Law in Another Jurisdiction]

Maryland Lawyer Rules of Professional Conduct, rule 5.5(b)(2) states, in relevant part, that "a lawyer who is not admitted to practice in this jurisdiction shall not . . . hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." Respondent is not now, and never has been, admitted to practice law in the State of Maryland.

Although Respondent is not admitted to practice law in Maryland, she held herself out as admitted to practice law in it. Under the auspices of the "Marilyn Scheer Law Group PC, a California law corporation" and in her capacity as an "attorney," she entered into a written fee agreement with residents of that state to provide "legal services" involving property located in that state. She prominently displayed her law firm's letterhead at the top of the agreement and included it in her signature block. Despite identifying herself as a California attorney, she failed to disclose that she was *not* licensed to practice in Maryland. And finally, upon execution of the agreement, Respondent collected fees and provided legal services, cementing the impression she was admitted to practice law in that state.

As she did in the *Ranabhat* matter, above, Respondent contends that her conduct fell within the temporary practice and federal practice exceptions of Maryland's rule 5.5, also modeled after the ABA Model rules and substantively identical to the Washington provisions quoted above. For the reasons set forth above, this court disagrees.

Finally, this court would once again emphasize that the fact that Respondent held herself out as admitted to practice in Maryland is dispositive. Regardless of whether her practice fell within one of the exceptions to the Maryland rule, she was not permitted to hold herself out as admitted to practice in that jurisdiction.

By her actions, Respondent violated the regulations of the profession in Maryland in willful violation of rule 1-300(B).

Count 6 – Rule 4-200(A) [Illegal Fee]

Respondent entered into a legal services agreement whereby she contracted for, charged, and collected legal fees from her clients in Maryland, a jurisdiction in which she was not admitted to practice law. By that action, she willfully violated the prohibition of rule 4-200(A) against illegal fees.

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

Prior Discipline

On July 16, 2014, the California Supreme Court issued an order (S218357), suspending Respondent for three years, stayed, and placing her on probation for three years with conditions of probation that included actual suspension for a minimum of two years and until she makes restitution to 30 former clients and provides proof to this court of her rehabilitation, fitness to practice and learning and ability in the general law. The initiating NDC in that matter (case No. 11-O-10888, et al) was filed on May 25, 2012, and involved loan modification clients represented by Respondent in various states, including New Jersey, Maryland, and Washington, during the same time period as those involved in this proceeding. The matter was tried on November 6, 2012, in the Hearing Department and then appealed by Respondent to the Review Department. In its *de novo* decision, the Review Department found Respondent culpable of

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

committing 26 acts of UPL in willful violation of rule 1-300(B); found that she charged and collected illegal in those 26 matters; and committed four violations of Civil Code section 2944.7 with regard to four California clients, for which she was subject to discipline under Business and Professions Code section 6106.3.

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.5(a).)

Multiple Acts of Misconduct

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

Significant Harm

Respondent acquired illegal attorney's fees from members of the public by improperly holding herself out to be an attorney in jurisdictions where she was not authorized to practice, and she has failed to return those fees to her clients, despite their complaints to her and to the California State Bar. The resulting harm is significant and is an aggravating factor. (Std. 1.5(f).)

Lack of Insight and Remorse

Respondent fails to demonstrate any realistic recognition of or remorse for her wrongdoings and, instead, continues to assert that her conduct in each of the states was proper. This is an 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 weight of this aggravating factor is significantly lessened, however, by Respondent's convincing assurances that she would not repeat such misconduct in the future.

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.

Cooperation

Respondent did not admit any culpability in this matter but entered into an extensive stipulation of facts, thereby assisting the State Bar in the prosecution of the case. For such conduct, Respondent is entitled to some mitigation. (Std. 1.6(e); see also *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but "very limited" where culpability is denied].)

Character Evidence

Respondent presented good character testimony from eight witnesses, including three attorneys and four former clients, regarding Respondent's integrity, her fine qualities as an attorney, her good character, her sincere (and frequently successful) efforts on behalf of her loan modification clients, and her work in community and charitable activities. Respondent is entitled to substantial mitigation for this character evidence. (Std. 1.6(f).)

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.)

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.8(a), which provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

Application of this standard, however, must be made by this court in conjunction with an analysis pursuant to *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602. The misconduct here occurred during the same period of time as that which formed the basis for Respondent's first discipline. Indeed, two of the three complainants in this proceeding had filed their complaints with the State Bar in time for those complaints to have been joined with the prior NDC. No explanation has been offered as to why that was not done.

Respondent has been previously disciplined for her loan modification efforts in New Jersey, Washington, and Maryland. Although this court views as an aggravating factor her continued unwillingness in this forum to accept the fact that her conduct in those states was inappropriate, this court is nonetheless convinced that she honestly believed in 2010 that her efforts to provide legitimate and aggressive loan modification services for residents of those states was not unauthorized. It is also convinced that, if and when Respondent becomes eligible to practice in the future, her misconduct will not be repeated.

Had the three matters giving rise to this proceeding been tried in conjunction with the prior proceeding, the discipline recommended by this court at that time would not have been significantly greater, if at all, other than increasing the number of payees to whom restitution must be made.

In its post-trial brief, the State Bar indicated that it agrees with this assessment. It suggests that no additional period of actual suspension be required, but that a period of stayed suspension, with restitution to the three formers clients as a condition of probation, be recommended.

This court agrees that no additional minimum period of actual suspension should be required, but concludes that Respondent must remain actually suspended until she makes restitution to her former clients. Accordingly, this court recommends discipline as set forth below.

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RECOMMENDED DISCIPLINE

Actual Suspension/Probation

It is recommended that **Marilyn Sue Scheer** be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law until the following conditions are satisfied:

   (a) She makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payee, in accordance with Business and Professions Code section 6140.5) and furnishes proof of such restitution to the State Bar's Office of Probation in Los Angeles:

      (i) Aderito Pereira in the amount of $4,000 plus 10 percent interest per year from March 29, 2010;

      (ii) Bom-Sing and Sushila Ranabhat in the amount of $3,500 plus 10 percent interest per year from January 20, 2010;

      (iii) Maynard and Karen Osborne in the amount of $4,500 plus 10 percent interest per year from May 12, 2010; and

   (b) In the event that the period of Respondent's resulting actual suspension lasts for two years or longer, Respondent must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (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 30 days after the effective date of the Supreme Court order in this proceeding, Respondent must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with the assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. Thereafter, Respondent must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

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).[4] 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.

[4] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

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

8. At the termination of the probation period, if Respondent has complied with all of the terms of her probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.[5]

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.[6] 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: February _____, 2015

DONALD F. MILES
Judge of the State Bar Court

[5] It is not recommended that Respondent be required to comply with California Rules of Court, rule 9.20, or take and pass either the Multistate Professional Responsibility Examination or the State Bar Ethics School because she was already required to do all of those acts as a result of the Supreme Court's order issued in July 2014, and she has been actually suspended at all times since that order became effective.

[6] This recommended order regarding costs is without prejudice to Respondent's ability to file a motion to tax costs pursuant to rules 5.129 and 5.130 of the Rules of Procedure of the California State Bar.