

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case No.: 13-C-15519-DFM
)	
GINA MARIE SIMAS,)	
)	DECISION
Member No. 205367,)	
)	
<u>A Member of the State Bar.</u>)	

INTRODUCTION

This contested conviction referral proceeding arises from the misdemeanor conviction on December 18, 2013, of Respondent **Gina Marie Simas** (Respondent) of violating Penal Code section 602, subdivision (m) (trespassing). (Cal. Rules of Court, rule 9.10(a); Bus. & Prof. Code, §§ 6101, 6102;¹ Rules Proc. of State Bar, rules 5.340 et seq.) The issues in this proceeding are whether the facts and circumstances surrounding Respondent's trespassing conviction involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, what the appropriate level of discipline to be imposed should be.

For the reasons stated below, the court finds, by clear and convincing evidence, that the facts and circumstances surrounding Respondent's misdemeanor violation of Penal Code section 602, subdivision (m) (trespassing) involve moral turpitude. After evaluating the gravity of the crime and the circumstances surrounding Respondent's criminal conviction and carefully

¹ Except where otherwise indicated, all further statutory references are to the Business and Professions Code.

evaluating the facts and the law, including the applicable mitigating factors and the absence of any aggravating factors, the court recommends, among other things, that Respondent be suspended from the practice of law for a period of one year, that execution of the suspension be stayed, and that she be placed on probation for one year, with conditions including an actual suspension of 30 days from the practice of law.

PERTINENT PROCEDURAL HISTORY

Respondent pled guilty to and was convicted of misdemeanor criminal trespassing by the Los Angeles County Superior Court on December 18, 2013.

The record of conviction was transmitted by the State Bar of California, Office of the Chief Trial Counsel (State Bar), to the State Bar Court Review Department on May 9, 2014. On May 29, 2014, the review department referred the conviction to the hearing department for further handling. Respondent's Answer was filed on June 10, 2014. On June 12, 2014, a notice of hearing on conviction was issued by this court.

Trial was commenced and completed on October 9, 2014. The State Bar was represented at trial by attorney Jeremy Ibrahim. Respondent was represented by attorney Edward Lear of Century Law Group LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on 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 6, 1999, and has been a member of the State Bar of California in in good standing at all relevant times.

Respondent's Background and Circumstances Leading Up to Her Misconduct

Respondent was 39-years-old at the time of the misconduct at issue in this matter. She is extremely talented, dedicated, hard-working, and accomplished in both her personal and professional endeavors. She is a 1999 graduate of UCLA School of Law. Before graduating from law school, she had been an elite gymnast, a star tennis player, student body treasurer, her high school class valedictorian, and a member of Phi Beta Kappa. After law school, Respondent practiced law for over 10 years at Alschuler Grossman and Bingham McCutchen.

Despite Respondent's professional and personal accomplishments, a series of unfortunate and tragic events and circumstances, over which Respondent had no control and which escalated in their intensity, befell her. First, in 2009, due to the downturn in the economy, Respondent was laid off by her law firm. In addition, her beloved dog, Yoshi, died. Although Yoshi was a pet, Respondent viewed him as much more than that.

Nevertheless, Respondent plowed on "as normal" – until she experienced an even more severe loss. Her best friend, Dave Smith (Dave), informed her in 2012 that he had stage-four colon cancer. She and Dave had been best friends since 2007. As Dave's family could not care for him, Respondent took it upon herself to act as Dave's caregiver. Respondent watched as Dave deteriorated, suffered, and died over a six-month period. Dave's death in November 2012 was beyond comprehension for Respondent.

Respondent, however, did not have time to process or deal with her grief and loss because her father, with whom she was very close, experienced a serious fall while in Mexico in October 2011. Respondent, nevertheless, "forged ahead." She flew to Mexico to be with her father for his hip surgery. She stayed with him for two weeks until he was well enough to return to the United States. In January 2012, Respondent's father developed a serious infection and had to have his prosthetic hip removed. He remained in a rehabilitation facility for 80 days without a hip. At the end of 2012, Respondent's father had yet another surgery. After surviving all of the

serious complications resulting from his fall and subsequent surgeries, Respondent had hopes that her father would be fine. However, in February 2013, he was diagnosed with melanoma. Respondent had always viewed her father as her “rock” and the person who provided her with unconditional love and support. Therefore, becoming his caretaker and reversing roles was difficult and challenging for Respondent.

Although Respondent’s father survived his battle with melanoma, Respondent was not given the opportunity to take stock of, and deal with, the physical, emotional and psychological toll that the events of the past years had inflicted. Unfortunately, the long series of tragic events and circumstances with which Respondent was confronted did not end with her father’s recovery; nor did the responsibilities that she assumed in order to help others.

After losing her dog, her best friend, and nearly losing her father, another friend, Zofia, reached out to Respondent for help. One day, Zofia telephoned Respondent and asked Respondent to take her to the emergency room. It was then that Respondent learned for the first time that her friend had cirrhosis of the liver and was an alcoholic. In January 2013, and for the next four months while Zofia remained in the hospital, Respondent again took on the role of primary caretaker to an extremely ill person. Respondent dealt with the doctors and visited Zofia daily. The only days she missed were when she flew home to be with, and provide care for, her father. Zofia passed away in April 2013.²

Thus, from 2009 through 2013, in addition to the demands placed on her as a lawyer, Respondent took on the heavy burden of caring for extremely ill individuals, without recognizing the emotional strain that she was under. She was so overwhelmed by “grief, responsibility, pain

² Zofia’s two sisters wrote letters to the State Bar, which are included as Respondent’s exhibits 1001 and 1003. In their letters, Zofia’s sisters described Respondent’s constant presence and advocacy with medical staff on behalf of Zofia. They described the emotional support that Respondent provided to Zofia and to Zofia’s family when they were unable to be with Zofia. They described Respondent as a person of extraordinary character, who treated their sister with devotion, compassion, and loyalty.

and sadness” that “[she] had gone numb.” (Exh. 6-0002.) By the end of her ordeal, it is apparent that Respondent was simply running on empty.

Facts and Circumstances Surrounding Respondent’s Criminal Conviction

On September 7, 2013, at approximately 5:25 p.m., Respondent entered Sephora, a retail cosmetic store, approached one of the store displays, picked up a tester item, and placed it into her shopping basket. Respondent continued to walk around the store placing tester items into her shopping basket and taking items from her shopping basket and putting them in her duffle bag. Respondent proceeded to the register where she purchased one item and walked approximately ten feet out of the store, whereupon she was contacted by Sephora loss prevention personnel who escorted her back to the management office.

The loss prevention personnel recovered seven Sephora testers from Respondent’s duffle bag, as well as two items from Old Navy that Respondent admitted that she took without paying for them. The total amount of the recovered Sephora property was \$175.

Police responded to Sephora, took custody of Respondent, and questioned her about the incident. Respondent admitted her misconduct, stated that she was sorry, and indicated that this was the first time she had stolen. She also admitted to taking items from Old Navy prior to taking the items from Sephora. Notably, at the time of the shoplifting incident, Respondent had \$112.11 and multiple credit cards belonging to her in her possession. Respondent spent the night in jail.

On November 13, 2013, Respondent was arraigned for violating Penal Code § 484 (Petty Theft), a misdemeanor. On December 18, 2013, Respondent entered a no contest plea to an added second count, a violation of Penal Code § 602(m) (Trespassing), a misdemeanor, which is not a crime of moral turpitude per se. The Penal Code § 484 charge was dismissed pursuant to

the plea. Respondent was placed on summary probation for six months, ordered to pay a fine, and given credit for the one day she spent in custody.

Respondent's criminal probation has ended and the misdemeanor trespass is now expunged from her record.

Respondent's State of Mind on September 7, 2013, and Her Subsequent Understanding of the Misconduct In Which She Engaged on that Date

In a letter to the State Bar (Exh. 6), Respondent wrote the following regarding the events of September 7, 2013, the steps she has taken to understand her criminal conviction and the facts and circumstances surrounding that conviction, as well as why and how she wound up committing those acts. She also described the steps that she has taken to ensure that she will never again hit "rock bottom" or repeat that behavior, which she found to be so out-of-character as to be incomprehensible, even to herself. Respondent wrote as follows:

To this day, I cannot comprehend that it was ME who shoplifted. Honestly, it was as if I were in a fog, and I cannot explain what happened. It is so outside my character, prior experience (or post experience), and personality, that I can only say that it was some sort of subconscious cry for help.³ I was so overwhelmed with grief, responsibility, pain and sadness, that I had gone numb.

... [¶] ...

To this day, I struggle with why I did what I did. . . . I attended Catholic schools my entire life and remain a strong practicing Catholic. Stealing never has been, nor is it now, in my nature. This incident served as a wake-up call that something was wrong with me. I immediately sought to figure out what and to get myself back on track. The week after I was arrested, I started seeing a therapist. . . . We worked through a lot of issues, and I now have a better understanding of myself. I have come to forgive myself for what I did, and understand that the consequences for my shoplifting are now outside of my control. I can only ensure that I do not repeat the behavior and that I make the best out of a very bad situation.

To that end, I have done a lot. In addition to therapy, in October 2013, I enrolled at the University of Santa Monica ("USM") and am pursuing a Master's in

³ Respondent's therapist corroborates Respondent's belief that her behavior was a cry for help. (Exh. 1003.)

Spiritual Psychology. To say that this has been life transformational would be an understatement. It . . . is the best thing I have ever done for myself. . . .

In addition to therapy and school, I am also back to work. . . . With a changed perspective on life, I have found that I am a better lawyer.

Upon reflection, I understand that getting arrested was in some ways a blessing. . . . I am truly sorry for what I did. However, I was in such a dark place-truly lost and letting life pass me by. Sometimes major traumas and events are necessary to inspire change. I experienced a lot of heartache and sadness. Rather than processing it, I simply forged ahead in my usual resilient Type A manner.

(Exh. 6, pp.002-004.)

The court finds credible Respondent's statements that she is truly sorry for what she did. And, the court also finds commendable the fact that Respondent immediately took responsibility for her wrongdoing and showed the strength of character to take the immediate and positive step of getting herself into therapy. Within one week of her arrest, Respondent recognized that she needed to seek help and needed to "get [herself] back on track" and deal with the fact that she had strayed from her core values. Nonetheless this court cannot ignore the fact that the circumstances surrounding Respondent's criminal conviction involved dishonesty.

Aggravating Circumstances⁴

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, std. 1.5.) The State Bar offered no evidence of any aggravating circumstances and acknowledged at trial that there are no aggravating circumstances in this matter.

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 Record (Std. 1. 6(a).)

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent had practiced law in California for nearly 14 years prior to the instant misconduct. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.6(a)); *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88; *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93,106; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591 [mitigation acknowledged for absence of prior record of discipline in 12 years of practice, despite willful misappropriation of over \$29,000].)

Moreover, as the Supreme Court stated in *Cooper v. State Bar* (1987) 43 Cal.3d 1016,1029, a prior record of discipline-free practice and a distinguished career are most relevant for a finding of mitigation if the misconduct occurred during a "single period of aberrant behavior" and is unlikely to recur. Here, Respondent is truly remorseful, has accepted responsibility for her misconduct, and is determined that she will never again engage in any act of misconduct. She took steps to address the cause of the misconduct by entering therapy shortly after the misconduct occurred. Moreover, the evidence reveals that Respondent's misconduct was out-of character and aberrational. Thus, Respondent is entitled to significant weight in mitigation for her years of discipline-free practice. (*In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320, 325.)

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Respondent experienced extreme emotional stress over a period of years while she was the primary caregiver to two of her closest friends who had been diagnosed with terminal illnesses. During that time period, Respondent also provided care to her father who suffered a serious injury, followed by a diagnosis of melanoma. The source of Respondent's emotional distress was not one for which criticism can be leveled at her. As such she is entitled to substantial mitigation for these difficulties.

Candor/Cooperation to Victims/State Bar (Std. 1. 6(e).)

Respondent displayed candor and cooperation when she was approached by the loss prevention personnel outside Sephora and in her subsequent dealings with the police. That candor and cooperation has continued throughout the pendency of the State Bar proceeding.

Respondent also stipulated to the facts and to the admission of documents in this proceeding. As a result, State Bar did not need to call law enforcement officers to testify about the circumstances and facts surrounding Respondent's conviction. Respondent's cooperation saved the State Bar and this court both time and resources for which significant mitigating credit should be afforded. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [significant mitigating credit afforded for entering into a stipulation as to the facts and culpability in order to simplify the disciplinary proceedings].)

Good Character (Std. 1.6(f).)

Respondent submitted evidence of good character through the oral testimony of two California attorneys and three letters from family members of those she took care of when they were ill.

One of the attorneys, Bruce Friedman was a partner at Bingham McCutchen (formerly, Alschuler Grossman et al.) with whom Respondent worked for over 10 years. The other attorney, Henry David, was also an attorney at Alschuler Grossman while Respondent was employed there. Both have high praise for Respondent's legal skills. It is clear from the testimony of the attorneys, as well as that of Respondent, that she has maintained contact with them over the years. Favorable character testimony from employers and attorneys are entitled to considerable weight. (*Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.) Because judges and

attorneys have a “strong interest in maintaining the honest administration of justice” (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319), “[t]estimony of members of the bar . . . is entitled to great consideration.” (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

Those who wrote and testified on Respondent’s behalf collectively described Respondent as honest, dedicated, and a person of integrity. Several also noted that the conduct leading to Respondent’s conviction was entirely out-of-character for her. Particularly noteworthy is the letter from Rona Smith, the mother of Respondent’s deceased friend Dave Smith, attesting to Respondent’s good character. Ms. Smith is an accomplished professional and currently is a writer and researcher for Columbia Business School. With respect to Respondent’s misconduct, Ms. Smith notes that “[s]uch an action is completely atypical of [Respondent’s] values, behavior, and actions.” But, Ms. Smith knows that Respondent is “a person of solid, good character.” Ms. Smith stated that “[o]nly extreme emotional suffering can explain [Respondent’s] atypical behavior.” Ultimately, Ms. Smith still holds Respondent in “high regard” and supports her “unequivocally.” (Exh. 1002.)

The court notes that the State Bar contends that there are not enough declarants to warrant crediting Respondent with mitigation for her good character. This court does not agree. As found by the Review Department of the State Bar Court in *In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320, 325-326), even four witnesses and/or declarants can meet the requirements of Standard 1.6. The review department found that Smithwick’s four witnesses were entitled to mitigation credit for two reasons. First, the witnesses had varied backgrounds, which constituted a sufficient cross-section of witnesses to

provide a picture of present character.⁵ And, second, the review department noted that it gave serious consideration to the testimony of the attorney witness, who corroborated Smithwick's character for honesty and dedication to his clients, since attorney testimony is entitled to serious consideration due to the strong interest of attorneys in maintaining the honest administration of justice. (*Id.* at pp. 325-326.)

In the instant matter, five witnesses were called upon to provide a picture of Respondent. Like the witnesses and declarants in *Smithwick*, they appear to represent a sufficient cross-section to provide a picture of Respondent's character.⁶ And, like the review department in *Smithwick*, this court has given very serious consideration to the testimony of the two attorney witnesses, both of whom corroborated Respondent's character for honesty and trustworthiness and her excellence as a lawyer. The court also has taken note that all of the witnesses and declarants find the misconduct surrounding Respondent's conviction to be out-of-character and aberrational.

Finally, Respondent's dedication, compassion, caring, and selfless actions serve as a testimonial to her good character. The court finds wisdom in Ms. Smith's conclusion that only Respondent's extreme emotional suffering can explain her atypical and aberrational behavior.

Remorse/Recognition of Wrongdoing (Std. 1.6(g).)

Respondent sincerely regrets her conduct. As Respondent's therapist wrote shortly after the shoplifting event occurred, "[t]he reason for [Respondent's] visit [to the therapist] was that Respondent felt ashamed, distressed, and remorseful." (Exh. 1003.) Respondent described herself as being in a fog when she shoplifted. Respondent did not understand what happened or

⁵ The attorney in *Smithwick* presented testimony from a former client, a friend who was a teacher, a paralegal who was a former employee, and an attorney.

⁶ In the instant case, two witnesses are attorneys. Two declarants were sisters of Respondent's late-friend Zofia. And the final declarant was the mother of Respondent's deceased friend, Dave Smith.

why she had shoplifted. However, she viewed her wrongdoing as a “wake-up call that “something was wrong with [her].” Without making excuses, Respondent took objective steps to understand what caused her to stray so far from her true self and her values. First, she engaged in therapy as a means of addressing her problem. After completing therapy, Respondent enrolled in a Master’s program to study psychology. Respondent was determined to learn how to ensure that she will never again engage in acts that are contrary and foreign to her nature and her values. Since the shoplifting incident, Respondent has been in a rehabilitative mode. Respondent’s remorse and recognition of wrongdoing merit mitigating credit.

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 20 years 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; (*In the Matter of Smithwick* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 320, 326.)

Standard 1.7(c) provides that if mitigating circumstances are found, they should be considered alone and in balance with any aggravating circumstances, and if the net effect demonstrates that a lesser sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a lesser sanction than what is otherwise specified in a given standard. On balance, a lesser sanction is appropriate in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession and where the record demonstrates that the member is willing and has the ability to conform to ethical responsibilities in the future.

Standard 2.11 applies in this matter. Specifically, Standard 2.11(c) provides that disbarment or actual suspension is appropriate for a final conviction of a misdemeanor involving moral turpitude.

In a conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) An attorney’s commission of a crime involving moral turpitude is always a matter of serious consequence. The sanction imposed, however, is determined in each case depending on the nature of the crime and the circumstances presented by the record. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 103.)

This case involves a misdemeanor violation of Penal Code section 602, subdivision (m) (trespassing), which may or may not involve moral turpitude. In this matter, as set forth *ante*, the facts and circumstances surrounding Respondent’s conviction for trespassing have been found to

involve moral turpitude. Respondent admitted to engaging in petty theft by shoplifting/stealing property from a retail store.⁷

The State Bar does not contend that Respondent should be disbarred for her single act of petty theft. It does, however, argue that Respondent should be suspended from the practice of law for 90 days. Respondent, on the other hand, has requested that she receive a reproof for her misconduct.

The circumstances of Respondent's act, the aberrational nature of it, the lack of any aggravating circumstances and the compelling and extensive mitigating circumstances surrounding it, convince this court that discipline requiring an actual suspension of 90 days is not necessary to protect the public or the profession from repetition by Respondent of further acts of misconduct. The misconduct did not occur in the context of Respondent's activities as an attorney; it was not directed at a client; and it took place during a very brief period of time when Respondent was emotionally off-balance for reasons not of her own making. There has been no indication of any subsequent misbehavior. Moreover, Respondent has dedicated herself to taking steps to ensure that she will not commit any further misconduct.

It does not follow, however, that a period of actual suspension is not warranted. The courts have repeatedly emphasized that honesty is one of the most fundamental rules of ethics for attorneys. (See, e.g., *Borre v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 596.) Attorney discipline serves to maintain the highest possible professional standards for

⁷ Theft is defined by Penal Code 484 to include stealing personal property of another. Section 486 of the Penal Code divides theft into two categories: grand theft and petty theft. With numerous exceptions not applicable here, the theft of personal property having a value of less than \$400 is generally classified as petty theft, rather than grand theft. (Pen. Code, § 488.) It is well-settled that petty theft is a criminal offense involving moral turpitude. (See *In re Rothrock* (1944) 25 Cal.2d 588.)

all attorneys and to preserve public confidence in the legal profession. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 752.)

In *DeMassa*, the review department recommended one year of stayed suspension, one year of probation, and a 60-day actual suspension, for an attorney convicted of harboring a fugitive-client. The charge of harboring a fugitive was found to involve moral turpitude per se. The mitigating evidence showed that the attorney's acts were aberrational, and that he did not currently pose a threat to the public, the legal profession or the courts. The review department concluded that discipline consisting of a one-year stayed suspension and an actual suspension of 60 days was necessary to preserve the integrity and maintain the high standards of the legal profession. (*In the Matter of DeMassa, supra*, 1 Cal. State Bar Ct. Rptr. at p. 752.)

In determining the appropriate discipline to be imposed on the attorney in *DeMassa*, the court focused on the fact that the illegal act that DeMassa had committed constituted a felony. The court emphasized that “[c]onviction of a felony is a serious matter.” (*In the Matter of DeMassa, supra*, 1 Cal. State Bar Ct. Rptr. at p. 752.) In his guilty plea in the criminal matter, DeMassa affirmed that he harbored his client with the intent of preventing the client's discovery and arrest by federal authorities. (*Id.* at p. 751.) The review department noted that even when a well-motivated attorney harbors a fugitive and commits a felony, he “necessarily acts with conscious disregard of his obligations to uphold the law.” [citation]” (*Id.* at pp. 752-753.)

In the instant matter, it cannot be found that Respondent acted with conscious disregard of her obligation to uphold the law. All of the evidence indicates that she was in an emotional “fog” at the time she shoplifted. Prior to engaging in therapy, she had no understanding of why she had taken the cosmetic testers. It cannot be concluded by clear and convincing evidence that at the time Respondent committed the act of shoplifting that she was acting with a “conscious” disregard of her obligation to uphold the law or even that she knew right from wrong at that

particular moment. Given Respondent's mental and emotional state when she shoplifted, and given that the petty theft surrounding her trespassing conviction did not involve felonious conduct, this court finds the circumstances surrounding Respondent's conviction to be somewhat less serious than that of the *DeMassa* attorney.

Thus, in light of the standards and case law, and after balancing all relevant factors, including the underlying misconduct, the lack of any aggravating circumstances and the compelling mitigating circumstances, the court has determined that a 30-day actual suspension would be commensurate with the gravity of Respondent's misconduct and would be adequate for the protection of the public, the courts and the legal profession.

RECOMMENDATIONS

It is recommended that respondent **Gina Marie Simas**, State Bar Number 205367, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that Respondent be placed on probation⁸ for a period of one year subject to the following conditions:

1. Respondent Gina Marie Simas is suspended from the practice of law for the first 30 days of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 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. Upon the direction of the Office of Probation, Respondent 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.
4. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar

⁸ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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

Multistate Professional Responsibility Examination

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

Costs

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

Dated: January _____, 2015

DONALD F. MILES
Judge of the State Bar Court