FILED NOVEMBER 4, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **OLLIE PEARL MANAGO,** **Member No. 140135,** A Member of the State Bar.	**Case No.: 13-N-17445 - DFM** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent Ollie Pearl Manago (Respondent) is charged here with a single count of failing to comply with the Supreme Court order that she file a declaration of compliance with California Rules of Court, rule 9.20 within 40 days of the effective date of the Supreme Court order. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on March 26, 2014.

On April 10, 2014, Respondent filed her response to the NDC.

On May 5, 2014, the initial status conference was held in the case. At that time, the case was scheduled to commence trial on June 27, 2014.

On June 12, 2014, attorney Beatrice Lawson associated into the case as counsel of record for Respondent. At the same time, a motion for a brief continuance was filed on Respondent's behalf so that Respondent's new counsel could prepare for the trial. On June 17, 2014, the State

Bar filed an opposition to the motion. On June 23, 2014, the motion for a continuance was denied.

Trial was commenced on June 27, 2014, as previously scheduled. After it quickly became apparent to the court that there was considerable confusion on the part of counsel regarding the proffered exhibits, the court continued the trial to July 29, 2014, and directed the parties to meet and confer regarding anticipated exhibits.

On July 29, 2014, the matter was again called for trial, but was continued to August 19, 2014, because Respondent was then hospitalized.

Trial was commenced and completed on August 19, 2014, and the matter then submitted for decision. The State Bar was represented at trial by Senior Trial Counsel Murray B. Greenberg and Deputy Trial Counsel Timothy G. Byer. Respondent was represented by Beatrice Lawson and Renee Sanders.

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 previously 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 June 6, 1989, and has been a member of the State Bar at all relevant times.

Case No. 13-N-17445 [Non-compliance with Rule 9.20, subd. (c)]

On August 28, 2013, the Supreme Court issued an order (S211547) in case Nos. 12-O-11428 and 12-O-15708. In conjunction with actually suspending Respondent for six months, the court required Respondent's compliance with California Rule of Court, rule 9.20,

subdivisions (a) and (c). Respondent's rule 9.20 compliance declaration was required to be filed on or before November 6, 2013.

On September 20, 2013, and again on October 29, 2013, the Office of Probation sent a letter to Respondent regarding the obligations created by the Supreme Court order, including her duties under rule 9.20. Included within the letter was the fact that Respondent's rule 9.20 compliance declaration was due on or before November 6, 2013. A blank compliance form was forwarded with the letter, as well as a copy of the text of rule 9.20.

On October 30, 2013, Respondent met with her probation deputy regarding her probation and disciplinary obligations. During this meeting, she was reminded of the November 6, 2013 deadline for the rule 9.20 compliance declaration, and she was encouraged to file the declaration as soon as possible.

Respondent did not attempt to file any sort of rule 9.20 compliance declaration prior to November 6, 2013.

On November 20, 2013, the Office of Probation sent Respondent a letter, advising her that it had not yet received a copy of any rule 9.20 compliance declaration, despite the November 6, 2013 deadline.

Two days after the above letter was sent, on November 22, 2013, Respondent made her first effort to comply with rule 9.20, subdivision (c), when she sent a letter, dated November 22,[1] 2013, to the Office of Probation, stating under penalty of perjury that she had no clients and no client files on September 27, 2013. (Ex. 16.) This attempt at compliance with Respondent's rule 9.20 obligation fell far short of being sufficient. Among other things, Rule 9.20 required Respondent to send certified letters, return files and refund unearned fees to any and all clients

[1] Oddly, the letter is dated November 22, 2013, but Respondent's signature on the second page of the letter is dated November 21, 2013. The letter was mailed to the Office of Probation and received on November 26, 2013.

that she had at the time that the Supreme Court order was filed on August 28, 2013. Respondent's declaration, that she did not have any clients or client files on September 27, 2013, did not address whether she had complied with that obligation. Moreover, Respondent's November 22, 2013, declaration did not address whether she still held clients funds as of either August 28, 2013, or September 27, 2013. In fact, she still held client funds in her client trust account until early October 2013. (See Ex. 1007.)

Several days later, Respondent partially filled out and executed the Rule 9.20 Compliance Declaration that had been provided to her by the Office of Probation. While she dated the form as having been executed on November 25, 2013, there is no evidence that it was ever received by the Office of Probation or the State Bar Court.[2] That may result from the fact that Respondent failed to fill out the top portion of the declaration, which had blanks calling for the disclosure of her name, her State Bar number, the case number in which the declaration was being filed, and the name of her attorney. In this declaration, she inaccurately checked the box stating that she had no client property in her possession at the time the Supreme Court order was filed.

Respondent did not file a fully executed Rule 9.20 Compliance Declaration until May 5, 2014. In doing so, she filled out the balance of the form she had signed on November 25, 2013, and provided it to the State Bar Court. That completed declaration continued to include the inaccurate statement that Respondent did not have client property in her possession at the time the Supreme Court order was filed.

Count 1 - Rule 9.20(c) [Failure to File Timely Compliance Affidavit]

A member, ordered by the Supreme Court to comply with rule 9.20, subdivision (c), must file with the Clerk of the State Bar Court, within 40 days after the effective date of the Supreme Court's order, an affidavit showing that he or she has fully complied with the provisions of the

[2] Respondent testified that she told her secretary to mail the form. There is no direct evidence that it was actually sent.

rule. Respondent was required to have filed her rule 9.20(c) affidavit no later than November 6, 2013. She did not file any affidavit of compliance within the time that she was required to do so. Worse, while Respondent purported to provide compliance information to the State Bar in November 2013, and again in May 2014, the information she provided was, at times, incomplete and consistently inaccurate. This conduct by Respondent constitutes a willful violation by her of rule 9.20 and the Supreme Court Order.

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.)[4] The court finds the following with respect to aggravating circumstances.

Prior Discipline

Respondent has been disciplined on three prior occasions.

Effective March 13, 1997, in State Bar case Nos. 94-0-14516, et al., Respondent was suspended for one year, stayed, and placed on probation for two years for four client matters including violations of Rules of Professional Conduct rule 3-700(A)(2) [improper withdrawal], rule 3-700(D)(2) [failure to promptly return unearned advanced fees], rule 4-100(A)(2) [failure to maintain client funds in trust account], and two violations of rule 3-110(A) [failure to perform with competence].

Effective December 24, 1998, in State Bar case No. 98-O-01251, Respondent was suspended for one year, stayed, and placed on probation for one year for five violations of Business and Professions Code section 6068, subdivision (k) [probation violations].

Effective September 27, 2013, in State Bar case Nos. 12-O-11428 and 12-O-15708, Respondent was suspended for one year, stayed, and placed on probation for two years with

[3] All further references to standard(s) or std. are to this source.
[4] Previously standard 1.2(b).

conditions including that she be actually suspended for six months. Respondent's misconduct involved two client matters and included violations of Rules of Professional Conduct, rule 3-110(A) [failure to perform with competence] and rule 4-100(A) [failure to maintain client funds in trust], and Business and Professions Code section 6068, subdivision (i) [failure to cooperate in State Bar investigation].

Uncharged Violation

As discussed above, Respondent submitted a rule 9.20 Compliance Declaration that included an untrue statement under penalty of perjury. In addition, being placed on probation by the Supreme Court in 2013 she has submitted two quarterly reports containing inaccurate certifications by her that she has complied with the conditions of her probation. These misrepresentations constitute acts of moral turpitude in violation of Business and Professions Code section 6106. Such acts of misconduct are a significant aggravating factor.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[5] The court finds the following with regard to mitigating factors.

No Harm

Respondent is entitled to some mitigation credit because her misconduct caused no actual harm to the client or person who is the object of the misconduct. (Std. 1.6(c).)

Cooperation

Respondent entered into a brief stipulation of facts, but did not admit culpability for failing to comply with her Rule 9.20 obligation. For this cooperation, she is entitled to mitigation credit, albeit limited. (Std. 1.6(e); *In the Matter of Gadda* (Review Dept. 2002) 4 Cal.

[5] Previously standard 1.2(e).

State Bar Ct. Rptr. 416, 443; 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/Community Service

Respondent presented declarations from five individuals regarding Respondent's long-standing and extensive commitment to providing assistance and pro bono legal services to disadvantaged individuals. Organizations attesting to her good work and good character included the Neighborhood Youth Achievers, the Frederick Douglass Child Development Center, HERD CDC ("The Senior Connection"), the Youth Intervention Program, and the Mesereau Free Legal Clinic. Each of the organizations commented on the positive and significant impact of Respondent's efforts in their communities. This is "a mitigating factor that is entitled to 'considerable weight.' [Citation.]." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305 [10-15 hours per month of volunteer community and church work counseling people in crisis.]; *In the Matter of Crane and DePew* (Review Dept 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

Emotional Difficulties/Family Medical Issues

Standard 1.6(d) provides that extreme emotional difficulties or physical or mental disabilities suffered by the member at the time of the misconduct may be a mitigating circumstance. However, this standard requires that the circumstance must be established by expert testimony as directly responsible for the misconduct, provided that such difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse. The standard also requires that the member establish by clear and convincing evidence that the difficulties or disabilities "no longer pose a risk that the member will commit

misconduct." (Std. 1.6(d); see also *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

During the time that Respondent was required to comply with rule 9.20, her husband, who had previously acted as her office manager, was physically impaired and in the midst of undergoing what proved to be five separate surgeries (including repeated amputations of portions of his leg) because of significant complications of diabetes. Although Respondent presented no expert evidence regarding the nexus between her husband's life-threatening problems and her failure to file a timely 9.20 compliance declaration, that nexus was made clear by other clear and convincing evidence.

The evidence, however, fails to show that Respondent's distracted mental state no longer poses a risk that she will commit misconduct. While Respondent's husband's condition is significantly better than it was in late 2013 and early 2014, by his own self-description at trial he is still significantly impaired. Of even greater concern to this court, the evidence is clear that Respondent is still distracted. As described by her husband at trial, when Respondent now goes into the office, she still has difficulty focusing and is not "really in tune with what she's doing." That continuing lack of focus may well account for Respondent's ongoing delay in seeking to comply with her rule 9.20 obligation, even after the instant disciplinary action was filed against her.

Accordingly, the court declines to treat as a significant mitigating circumstance the emotional problems suffered by Respondent as a result of her husband's medical problems.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d

103, 111.) In determining the appropriate level of discipline, the 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) 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 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.

The standard for assessing discipline for a violation of rule 9.20 is set out, in the first instance, in the rule itself. Rule 9.20(d) states, in pertinent part: "A suspended member's willful failure to comply with the provisions of this rule is a cause for disbarment or suspension and for revocation of any pending probation." Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) That said, both this court and the

Supreme Court have, on occasion, imposed lesser discipline in situations where there has been timely compliance with subdivision (a) and the violation merely arises from a late submission of the compliance affidavit mandated by subdivision (c). (See, e.g. *Shapiro v. State Bar* (1990) 51 Cal.3d 251; *Durbin v. State Bar* (1979) 23 Cal.3d 461; *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.) In those cases, however, the courts emphasized the respondent's good faith, the presence of significant mitigating circumstances, and the absence of substantial aggravating circumstances. Respondent does not fall within the aegis of the above cases.

In addition, Standard 1.8(a) provides that disbarment is appropriate in instances where the respondent has had two or more prior records of discipline, including a period of actual suspension, unless the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. This will be Respondent's fourth discipline. Neither of the above two exceptions applies to Respondent.

As discussed above, Respondent's failure to comply with rule 9.20 is only one of the many instances during the last year where she has failed during the disciplinary process to conform her conduct to that required of a member of the bar. Under such circumstances, a recommendation of disbarment is both necessary and appropriate to protect the public, the profession, and the courts. (*In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599-601.)

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RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Ollie Pearl Manago,** Member No. 140135, be disbarred from the practice of law in the State of California and that her name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Rule 9.20

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

Costs

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

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Ollie Pearl Manago,** Member No. 140135, be involuntarily enrolled as an inactive

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member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[6]

Dated: November _____, 2014.

DONALD F. MILES
Judge of the State Bar Court

[6] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid*.) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)