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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 14-O-04539;14-O-05757 YDR
)	
MARY FRANCES PREVOST,)	DECISION
)	
Member No. 157782)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this matter, Mary Frances Prevost (“Respondent”) is charged with the following misconduct: (1) one count of violating rule 1-300(B) (engaging in the unauthorized practice of law in another jurisdiction); (2) one count of violating section 6106 (moral turpitude); (3) one count of violating rule 3-110(A) (failure to perform with competence); (4) one count of violating section 6068, subdivision (i) (failure to cooperate in State Bar investigation); and, (5) one count of violating section 6068, subdivision (m) (failure to inform client of significant developments). The Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) had the burden of proving these charges by clear and convincing evidence. This court finds that the State Bar met its burden of proof and established by clear and convincing evidence that Respondent is culpable on each of the five counts.

Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, the court recommends that Respondent be actually suspended from the

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

practice of law for a minimum period of six months, 2 year suspension, stayed and three years probation.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (“NDC”) in case number 14-O-04539, on February 11, 2015. The State Bar filed a First Amended Notice of Disciplinary Charges in case number 14-O-04539 on May 12, 2015. On June 2, 2015, the State Bar filed a Notice of Disciplinary Charges in case number 14-O-05757 (“Second NDC”). Respondent’s former counsel filed a response to the First Amended NDC on May 19, 2015, and Respondent filed a response to the Second NDC on June 25, 2015.

Trial took place July 27-30, 2015. The State Bar was represented by Senior Trial Counsel Kimberly G. Anderson, Esq. Respondent represented herself. The parties filed a Partial Stipulation as to Facts and Admission of Documents on July 27, 2015 (“Stipulation”). The matter was submitted for decision August 17, 2015, and the parties filed their respective closing argument briefs on or before that date.

On September 29, 2015, the State Bar filed a Notice of Finality of Prior [Discipline] which attached a California Supreme Court Order, filed September 23, 2015, in case number S227482 (State Bar Court case number 12-O-14626).² On its own motion, the court takes judicial notice of this Order.³

² Pursuant to the Supreme Court’s Order, Respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years, subject to conditions, including but not limited to paying restitution to John Hannum, of \$2745 plus 10 percent interest per year from November 16, 2011.

³ At trial, this court took judicial notice of and admitted the underlying Review Department decision associated with Supreme Court Order number S227482. (Exh. 44.)

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on March 23, 1992, and has been a member of the State Bar of California at all times since that date. These findings of fact are based on the record, evidence admitted at trial, and facts set forth by the parties in their factual Stipulation.

Background Facts Regarding Respondent's Prior Discipline

Respondent's first discipline (Supreme Court case no. S227482, filed September 23, 2015), arose in connection with Respondent's failure to communicate with her client, failure to respond to case inquiries in late 2011 through early 2012, and her failure to promptly return unearned fees. In violation of Business and Professions Code section 6068 subdivision (m), Respondent did not respond to her client's numerous emails and phone calls inquiring about the status of the matter Respondent was handling. Respondent did not respond to her client's inquiries until after the client asserted a State Bar complaint.

As to Respondent's violation of rule 3-700 (D)(2), for almost seven months, Respondent failed to return fees requested by her client, notwithstanding Respondent's failure to provide services of value.

Respondent was also found culpable of violating section 6068 subdivision (i), by failing to cooperate in the disciplinary investigation of the underlying matter. Respondent stipulated that the State Bar investigator caused two letters to be sent to her official membership address but she didn't recall seeing either letter.

For this misconduct, Respondent received a one year stayed suspension, a two year probation term subject to conditions including, but not limited to the payment of restitution plus interest to her former client within the first 60 days of her probation.

CASE NO. 14-O-04539 (*Baker vs. Ensign*)

Facts

As a member of State Bar MCLE Compliance Group 3, Respondent was required to certify by January 31, 2014, her completion of 25 minimum continuing legal education (“MCLE”) units for the compliance period of February 1, 2011 through January 31, 2014. Respondent was fully aware of her Group 3 MCLE compliance requirements and had, for at least four or more prior compliance periods, completed the MCLE requirements.⁴ Failing to certify MCLE compliance for the February 1, 2011 through January 31, 2014 compliance period, Respondent’s State Bar status was changed to Not Eligible, effective July 1, 2014.

On July 3, 2014, Respondent filed memoranda of points and authorities in support of two separate motions to strike affirmative defenses raised by various defendants in a case entitled *Baker vs. Ensign*, United States District Court, Southern District of California, Case No. 11-cv-02060. In each memorandum, Respondent indicated she was the attorney for plaintiff Baker and cited her California State Bar Number. Local Civil Rules 83.3.c.1.a and 83.3.c.2 preclude an attorney from practicing law in the district court for the Southern District of California, unless that attorney is an active member in good standing with the California Bar.

State Bar Member Services notified Respondent by letter on July 11, 2014, that her status had been changed to “Not Eligible” effective July 1, 2014. The July 11, 2014 letter was mailed to Respondent at her State Bar membership records address. Subsequently, on or about July 16, 2014, Respondent completed two additional MCLE programs in order to have the requisite number of MCLE credits. Thereafter, Respondent was reinstated to active status on July 17, 2014.

⁴ Although in 2002, Respondent was enrolled inactive due to her MCLE non-compliance, and for at least two other compliance periods, Respondent belatedly certified her compliance, it appears that Respondent did comply with the MCLE requirements for each compliance period until January 31, 2014.

In August 2014, Respondent moved her law office from the State Bar membership address to another location in San Diego. Respondent did not change her State Bar membership records address until December 4, 2014.

At some point, opposing counsel in *Baker v. Ensign*, reported Respondent to the State Bar for the unauthorized practice of law (“UPL”) in the United States District Court, Southern District. The State Bar commenced an investigation of the alleged UPL with the State Bar investigator forwarding a letter to Respondent, on or about November 18, 2014, asking her to respond to the allegations that she engaged in the unauthorized practice of law by filing two pleadings in *Baker v. Ensign*, on July 3, 2014. The investigator’s letter was not returned as undeliverable.

Since Respondent did not respond to the November 18, 2014 letter, the State Bar investigator sent a second letter to Respondent on or about December 9, 2014, again asking her to address the allegations. The investigator also emailed the letter to Respondent at her Membership Records email address. The letter was not returned as undeliverable.

Conclusions of Law

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

Rule 1-300(B) provides that an attorney must not practice law in a jurisdiction where to do so would be in violation of the regulations of the profession in that jurisdiction. In Count One of the First Amended NDC, the State Bar charges that by filing two separate memorandum of points and authorities in support of a motion to strike affirmative defenses and by making a court appearance as an attorney in *Cameron Baker v. Jason Ensign*, United States District Court, Southern District, case number 11-cv-02060, in violation of Local Civil Rules 83.3.c.1.a and 83.3.c.2, Respondent violated rule 1-300(B) by holding herself out as entitled to practice law, on or about July 3, 2014.

Count Two – § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In Count Two, the State Bar charges that by holding herself out as entitled to practice law on or about July 3, 2014, by making an appearance as an attorney and filing the two pleadings in the *Baker* case in support of motions to strike affirmative defenses, when Respondent knew, or was or was grossly negligent in not knowing that she was not an active member of the State Bar, Respondent willfully violated section 6106 by committing an act involving moral turpitude, dishonesty, or corruption.

Counts One and Two – Discussion

It is undisputed that Respondent engaged in the misconduct charged in Count One. Specifically, on behalf of her client, Respondent signed, caused to be filed and served two motions to strike affirmative defenses in *Baker v. Ensign* on July 3, 2014.

Respondent contends that she either doesn't recall receiving or never received the pre-MCLE non-compliance letters, call(s) or email communications sent to her by the State Bar so she had no warning of the prospective July 1, 2014, inactive status for non-compliance. For her purported non-receipt of each of these communications, Respondent places blame on others.

According to Respondent, she had a "long standing negative relationship" with the office receptionist whom she accused of intercepting some of her mail. Respondent had no evidence that her mail had been intercepted by anyone during the relevant time frame that the State Bar was communicating with Respondent.⁵ Although the State Bar failed to prove by clear and

⁵ Respondent did not serve a trial subpoena on the receptionist she accused of intercepting her mail and the receptionist did not testify at trial. However, almost two months after closing briefs were filed and this matter was submitted, Respondent filed a motion to reopen evidence and/or supplement/augment the record with new evidence to be obtained from subpoenaed

convincing evidence that Respondent received the 60 day notice letter mailed April 30, 2014,⁶ it established that Respondent received a number of other communications directed to Respondent relating to her MCLE non-compliance. The State Bar established that the “first notice” mailed December 2, 2013, the “final notice” mailed March 7, 2014, the June 4, 2014 letter sent by certified mail⁷ and, the May 21, 2014 call to Respondent’s office were and should have been received by Respondent.

Respondent blamed many others for her failure to comply with her MCLE requirements and her alleged non-receipt of State Bar communications. In addition to the “difficult and acrimonious receptionist”, Respondent blamed two “incompetent” paralegals who she accused of failing to give her the phone message from the State Bar and thwarting the State Bar’s efforts to deliver other communications. Notably, Respondent had no support for any of her accusations against others.

Overall, the court did not find Respondent’s evasive, self-contradictory and at times, sarcastic, testimony credible with regard to this issue.

It is undisputed that Respondent was aware of her obligation to complete 25 MCLE units by the end of the 2011-2014 compliance period. Moreover, Prevost received at least four communications regarding MCLE non-compliance and warnings she would not be eligible to practice law if she failed to provide proof of her compliance by June 30, 2014. Not only did she

testimony from the receptionist who Respondent characterized as “a necessary witness”. The State Bar opposed the motion.

By order filed October 15, 2015, this Court denied Respondent’s motion to reopen evidence for lack of good cause shown.

⁶ The State Bar provided a copy of a 60 day notice addressed to Respondent, dated April 30, 2014. [See Exh. 6-0013] However, the State Bar’s documentation regarding its communications with Respondent does not reflect the April 30, 2014 letter.

⁷ The allegedly difficult receptionist received and signed the certified return receipt forwarded to Respondent with the June 4, 2014 certified letter. However, Respondent submitted no evidence that the receptionist failed or refused to provide the certified or other State Bar letters to Respondent.

fail to provide the State Bar with proof of compliance by the required date, she did not complete all of her MCLE requirements until July 16, 2014. Under these circumstances, Respondent committed UPL with gross negligence, in violation of section 6106, as charged in Count Two.

Count Three – § 6068(i) [Failure to Cooperate in State Bar Investigation]

In Count Three, the State Bar charges that by receiving and failing to respond to the State Bar's letters of November 18, 2014 and December 9, 2014, regarding its disciplinary investigation against Respondent, she willfully violated section 6068 subdivision (i), of the Business and Professions Code. This court agrees and finds Respondent culpable of violating section 6068 subdivision (i) by ignoring the investigation letters. (See *Bach v. State Bar* (1991) 52 Cal.3d 1201 1208) [attorney who ignored two investigation letters without a credible explanation, breached the duty to cooperate.]

Respondent stipulated that the State Bar investigator sent November 18, 2014 and December 9, 2014 letters which asked her to respond to the unauthorized practice of law allegations. [Stipulation, Fact Nos. 6, 7.] She also stipulated that the letters were not returned as undeliverable. [Id.] Respondent contends, however, that she did not receive the November 18, 2014 letter for over three weeks because although she logged onto the State Bar website to change her address on August 6, 2014, she failed to complete the process and it took over three weeks for the November 18 letter to be forwarded to her law office.

As to the December 9, 2014 letter, it was not only mailed to Respondent's new address, it was emailed to her as well. Respondent received the emailed letter on December 9, 2014, and contends she responded to the investigator by letter dated December 18, 2014; a letter the investigator denies receiving before January 2015, at the earliest.

On January 16, 2015, Respondent communicated with the State Bar after her receipt of a Notice of Intent to File Disciplinary Charges. Respondent's January 16, 2015 response attached a copy of the December 18, 2014 letter.

This court doesn't find credible Respondent's explanations regarding her late response. For example, even though in the December 18 letter Respondent asks the State Bar investigator for documents from the State Bar MCLE compliance division, noting that "time is of the essence", it doesn't appear that Respondent followed up with the State Bar until at least a month after she purportedly forwarded the December 18 letter. As a matter of fact, Respondent didn't follow-up with the State Bar until after she received the January 16, 2015, State Bar notice of intent to file disciplinary charges.

Respondent is culpable of violating section 6068 subdivision (i) by ignoring the investigation letters forwarded to her by the State Bar.

CASE NO. 14-O-05757 (THE HARRIS MATTER)

Facts

On October 9, 2009, Respondent and another attorney, Thomas Beck, filed a civil complaint on behalf of May Harris and her family in United States District Court, Southern District of California, Case #09-cv-02239, entitled *Eric Harris, et al vs. City of Chula Vista*. The lawsuit was filed following dismissal of criminal charges against defendant Dr. Eric Harris, a spinal surgeon and military officer in the United States Navy.

On March 21, 2012, summary adjudication was granted as to certain counts involving May Harris and the Harris children, but the case proceeded on Dr. Harris' claims. In connection with Dr. Harris' claims, the Court issued a pretrial order scheduling motions in limine to be heard on January 14, 2013. Respondent had notice of the order.

Defendants filed the following five motions in limine on January 7, 2013:

- A motion to exclude evidence relating to a 1993 physical altercation involving Defendant Chula Vista Police Officer Kraft;
- A motion to exclude loss of income evidence by Dr. Harris due to an alleged delayed promotion as a result of his arrest;
- A motion to exclude evidence of a prior civil lawsuit against Officer Kraft;
- A motion to exclude evidence of past and future claimed medical expenses by Dr. Harris; and
- A motion to preclude evidence of Dr. Harris' treatment by a Navy psychiatrist. (Collectively, "MILs" or "motions in limine").

A day later, the court on its own motion, issued an order rescheduling the hearing on the motions in limine and ordering a briefing schedule. Pursuant to the court's order, the Plaintiffs were given until January 14, 2013, to file oppositions to the motions in limine. Several times and for various reasons between February 12, 2013 and February 19, 2013, the court extended the time for Plaintiffs to file oppositions to the MILs to February 25, 2013. Respondent had notice of each order extending the opposition filing deadlines.

On February 26, 2013, the court issued an order rescheduling the hearing on the MILs to June 17, 2013. All motions in limine, including any supplemental briefs, were to be filed by May 31, 2013, and responses to those motions in limine were due to be filed no later than June 7, 2013. Respondent received notice of the February 26, 2013 order but did not file any oppositions to the MILs.

After not having received opposition to any of the MILs by June 10, 2013, the court issued an order deeming the motions suitable for disposition without a hearing, taking the MILs under submission and vacating the June 17 MIL hearing date.

Four days later, on June 14, 2013, Respondent filed an *ex parte* application and declaration seeking an order enlarging time to file responses to Defendants' motions in limine. Respondent argued that a further extension of time should be allowed due to "ongoing settlement

talks, the press of proceedings in other matters, and certain unnamed medical issues.”

Respondent also argued she was “rooked” by Defendants’ feigned interest in participating in further settlement negotiations. Defendants opposed the *ex parte* contending that Respondent’s request for a further extension of time to oppose the MILs lacked good cause.

Respondent’s *ex parte* was denied by order dated June 25, 2013, on the grounds that Plaintiffs had already had many months to oppose the motions in limine. Specifically, the June 25th order stated:

“Plaintiffs have had over five months to file oppositions to defendants’ motions and to file their own motions and have failed to do so. This Court finds plaintiffs’ assertions concerning the press of other matters and medical issues are inadequate to justify a finding of good cause to extend time, considering that there are two counsel and two law firms representing plaintiffs. This Court further finds plaintiffs’ assertions concerning settlement talks are inappropriate⁸ and fail to justify the requested extension since, as defendants point out, attorneys are often required to manage their case filings even while settlement negotiations are pending.” [Order Denying Plaintiffs’ *Ex Parte* Request, Exh. 37-0002]

On July 25, 2013, the *Harris* court issued an order granting the Defendants’ unopposed motions in limine. [Order Granting Defendants’ Unopposed Motions In Limine, Exh. 38].

Neither Respondent nor Thomas Beck notified May Harris or Eric Harris that they had failed to file oppositions to the MILs. Nor did either lawyer notify the Harrises that the court had issued an order granting Defendants’ unopposed motions in limine.

Conclusions of Law

Count One- Rule 3-110 (A) [Failure To Perform With Competence]

⁸ The *Harris* court noted that communications between counsel regarding settlement are privileged and ordered settlement communications contained in Respondent’s declaration in support of the *ex parte* be stricken from the record. [Exh. 37-0002, fn. 1]

In Count One of case number 14-O-05757, the State Bar charges that between January 14, 2013 and June 7, 2013, Respondent had the opportunity, but failed to file oppositions to five motions in limine, filed by defendants against her clients in a matter entitled *Harris, et al. v. City of Chula Vista*, United States District Court, Southern District, case number 09-cv-02239 (“the *Harris Matter*”). The State Bar charges that Respondent willfully violated rule 3-110(A) by intentionally or recklessly, failing to perform with competence by failing to file oppositions to the MILs.

Respondent stipulated that she received notice of each of the four orders granting an extension of time for the *Harris* plaintiffs to file oppositions to the five MILs. She also stipulated that although she received the four court orders extending the deadlines to do so, Respondent did not file any oppositions to the MILs. Respondent argued that for various reasons, none of the MILs “required” an opposition because they were not well drafted and lacked merit.

While this court declines to address the merits of each MIL, it notes that Respondent sought several of the four opposition filing extensions and even more importantly, that it was Respondent who filed the *ex parte* seeking yet a further extension of time to oppose the MILs after the *Harris* court vacated the hearing date and took the unopposed MILs under submission. Respondent’s vigorous and repeated efforts to get more time to oppose the MILs over the five month period that the MILs were pending, indicates that Respondent believed oppositions were warranted.⁹ Moreover, Respondent’s co-counsel in the *Harris* matter acknowledged that certain of the MILs should have been opposed, *e.g.* the motion in limine to exclude evidence of past and future claimed medical expenses involving a dispute regarding \$80,000 in medical expenses and,

⁹ Based on these facts, Respondent’s failure to file oppositions to the MILs is attributable to more than negligent legal representation or legal malpractice, which would not establish a rule 3-110(A) violation. (See *In the Matter of Riley* (Review Dept. 1994) 3 Cal.State Bar Rptr. 91, 113)

the motion in limine to exclude evidence of Dr. Harris' treatment or diagnosis by Dr. Harris' physician.

Respondent's failure to oppose the MILs in the *Harris* Matter on what appeared to her at the time, to be significant issues, constitutes a failure to perform competently and a willful violation of rule 3-110(A).

Count Two – § 6068, Subd. (m) [Failure To Inform Client of Significant Development]

In Count Two, the State Bar charges that in willful violation of section 6068 subdivision (m), Respondent failed to keep her clients, Dr. Eric Harris and May Harris, reasonably informed of significant developments in the *Harris* Matter. Specifically, the State Bar charges Respondent failed to inform her clients that she did not oppose the five MILs and, subsequently, that the court granted the five MILs in favor of the defendants.

It is undisputed that Respondent did not advise the Harrises that she did not oppose the five MILs. In addition, it is undisputed that Respondent did not advise the clients that the *Harris* court issued an order granting the unopposed motions in limine which resulted in the preclusion and/or exclusion of substantial evidence.

Due to her failure to inform the Harrises that she had not opposed the five MILs and that the MILS had been granted by the court, Respondent violated section 6068 subdivision (m) by failing to inform her clients of significant developments in the *Harris* Matter.¹⁰

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Standards for Atty. Sanctions for Prof. Misconduct, Std. 1.5) The court finds the following with regard to aggravating factors.

¹⁰ It is not clear from the evidence whether Respondent at any time consulted with the Harrises regarding the nature and/or substance of the MILS or the possible impact that each may have had on the outcome of the case.

Prior Record of Discipline (Std. 1.5(a).)¹¹

In aggravation, Respondent has a record of prior discipline, discussed above.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent has been found culpable on five counts of misconduct in the instant proceeding. The existence of multiple acts of misconduct is another aggravating circumstance.

Significant Harm To Clients (Std. 1.5 (j).)

Respondent's misconduct significantly harmed her clients. As a result of her failure to oppose the five MILs, the settlement value of Dr. Harris' case was greatly reduced and he was financially harmed by a 50% reduction in the pending settlement offer after the unopposed MILs were granted.

Indifference (Std. 1.5(k).)

It is disturbing that within a relatively short period of time after the first discipline recommended by the Hearing Department, Respondent repeated at least two of her first discipline offenses: the failure to cooperate with the State Bar in its investigation and the failure to communicate with clients. In addition, Respondent once again blamed others for her misconduct.

Mitigation

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6). The court finds the following with regard to mitigating factors.¹²

¹¹ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

¹² During trial, Respondent intermittently inferred that her misconduct was attributable to health problems. However, the court affords Respondent no mitigation credit for physical disability under standard 1.6(d) as Respondent offered no expert testimony regarding any physical condition responsible for her charged misconduct and her random statements fall short of being clear and convincing evidence.

Cooperation (Std. 1.6(e).)

Respondent is entitled to some mitigation for cooperating with the State Bar by entering into a partial stipulation of facts which assisted the State Bar in prosecution of this case. (Std. 1.6(e)). Since most, if not all of the stipulated facts were easily provable, the Court affords Respondent only limited mitigation cooperation credit for the Stipulation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

However, the limited mitigation credit afforded to Respondent for entering into the Stipulation is extinguished due to Respondent's failure to timely file a response to the Notice of Disciplinary Charges, as required by rule 5.43(A).¹³ As a result, the State Bar had to expend resources in filing a motion for entry of default in case number 14-O-04539. So, Respondent is afforded no mitigation credit for cooperation.

Character Evidence

During the disciplinary proceeding, Respondent presented good character testimony from eight witnesses, including four attorneys and a judge.¹⁴ In addition, she submitted thirteen declarations, at least ten of which were attested to by attorneys. Each declarant indicated she or he has known Respondent for many years.

Respondent is entitled to some mitigation credit for the character witness evidence from attorneys and former clients who all basically stated Respondent appears to be an honest, zealous

¹³ As of February 11, 2015, Respondent was aware that the State Bar was attempting to serve her with a certified copy of the NDC however, Respondent stated in email communications with the senior deputy trial counsel ("DTC") that Respondent had provided the wrong suite number to the State Bar. The senior deputy trial counsel emailed a copy of the NDC to Respondent on February 12, 2015. Respondent claimed her office was moving on that date. When Respondent still had not filed a response by March 9, 2015, the DTC emailed Respondent and gave Respondent an additional week to file her response. Respondent filed her response March 19, 2015.

¹⁴ Respondent subpoenaed Judge Ervin to testify on her behalf.

and tenacious litigator who doggedly represents her clients' interests and who readily takes on pro bono projects.

However, Respondent is entitled to only limited mitigation credit for this good character evidence, the weight of which is reduced by the fact that very few of her character witnesses seemed to be aware of the full extent of the misconduct charged against Respondent. (Std. 1.6(f); *In Re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct]). (See also *In the Matter of Myrdall*, 3 Cal. State Bar Ct. Rptr. 363, 387 [testimony of three clients and three attorneys familiar with charges against attorney was entitled only to limited mitigation because they did not constitute a broad range of references].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the 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). Second, the court looks to 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.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of sanctions ranging from reproof to actual suspension or disbarment. (Stds. 2.10(b), 2.11, 2.12(b).) The most severe sanction is found at standard 2.11 which recommends actual suspension or disbarment for an act of moral turpitude, fraud or dishonesty, intentional or grossly negligent misrepresentation(s). The degree of sanction is dependent upon the magnitude of the misconduct.

Due to Respondent's prior record of discipline, the court also looks to standard 1.8 for guidance. Standard 1.8(a) states that when an attorney has a prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Here, the misconduct that constituted Respondent's first discipline was not remote in time as it occurred roughly within two years of the present misconduct. Accordingly, Respondent's present discipline must be greater than the prior discipline of one year stayed suspension, two year probation term, subject to conditions.

However, the standards "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In connection with the present misconduct, the State Bar has requested that Respondent be actually suspended from the practice of law for six months with a one year stayed suspension and probation for three years. Respondent, on the other hand, argued that an agreement in lieu of discipline was appropriate.

In determining the appropriate level of discipline, this court is guided by *Farnham v. State Bar* (1976) 17 Cal. 3d 605, *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639.

In *Wells*, the attorney was suspended for six months for engaging in UPL in another jurisdiction in two client matters. She was also culpable of collecting an unconscionable fee, failing to refund unearned fees, a trust account violation, and moral turpitude involving dishonesty with the South Carolina authorities investigating her UPL. The attorney had a prior discipline involving trust account violations and other aggravating factors including multiple acts of wrongdoing, significant harm, and indifference. The mitigating factors included extreme emotional distress, good character, and cooperation with the State Bar.

The *Farnham v. State Bar* (1976) 17 Cal.3d 605, attorney engaged in the unauthorized practice of law by giving legal advice and preparing legal papers for a client during the period of time he was suspended for nonpayment of membership fees. In addition, he wilfully deceived that client and another, avoided their efforts to communicate with him and eventually abandoned their cases. Farnham had been previously disciplined for the abandonment of his client interests in four matters. In light of Farnham's prior record of discipline and his lack of insight into the impropriety of his actions, the Supreme Court determined that a six-month actual suspension was appropriate.

In *Wyrick*, the attorney, who was suspended, held himself out as entitled to practice law on multiple occasions in order to procure employment. The attorney's omissions and misrepresentations were found to constitute moral turpitude. In aggravation, the attorney had a prior record of discipline that was found to be remote in time and of minimal severity for the purposes of standard 1.7(a). Additionally, the attorney harmed the administration of justice,

undermined the public's confidence in the court system, and committed multiple breaches of his ethical duties. Little, if any, evidence was presented in mitigation. The Review Department recommended that the attorney be suspended from the practice of law for two years, stayed, with a two-year period of probation, including a six-month actual suspension.

In *Mason*, the attorney made a court appearance and signed and served a trial brief while suspended by the Supreme Court for misconduct in a prior discipline. He did not inform either the court or opposing counsel that he was suspended from the practice of law. He was found culpable of moral turpitude in practicing law while suspended. In aggravation, the attorney had one prior record of discipline for an unrelated offense. The attorney's volunteer and pro bono work was considered in mitigation. The Review Department recommended that the attorney be suspended for three years, stayed, with a three-year period of probation, including a 90-day actual suspension.

Respondent's misconduct warrants greater discipline than the 90-day suspension imposed in *Mason* because Respondent's misconduct was more serious. In *Mason*, the attorney's two ethical violations involved UPL. Here, in addition to the two counts involving UPL, Respondent is culpable of failing to cooperate, failing to perform with competence and failing to inform her client of significant developments. Unlike *Mason*, Respondent's wrongdoing significantly harmed her client. Respondent's misconduct may not involve dishonesty as in *Wyrick*, *Wells*, and *Farnham*, but her minimal mitigation along with her inability to accept responsibility for her wrongdoing and her blame of others for her ethical violations warrant a similar sanction as the six-month actual suspension imposed in those cases. Also, Respondent's indifference and the similarities between her present and prior wrongdoing are particularly disturbing because they suggest not only an unwillingness or inability to comply with her obligations but, the possibility that her misconduct may recur.

Therefore, in view of Respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, the court finds that six (6) months actual suspension, a two year period of suspension, stayed, and three years probation provides adequate protection for the courts, the public, and the legal profession.

Recommendations

It is recommended that respondent **Mary Frances Prevost**, State Bar Number 157782, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, that Respondent be actually suspended from the practice of law for six months and, that Respondent Prevost be placed on probation¹⁵ for a period of three years, subject to the following conditions:

1. 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.
2. 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.
3. 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 purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. 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

¹⁵ 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.)

than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. 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.
6. 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 Prevost will not receive MCLE credit for attending Ethics School. (Rules Proc. Of State Bar, rule 3201)
7. At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

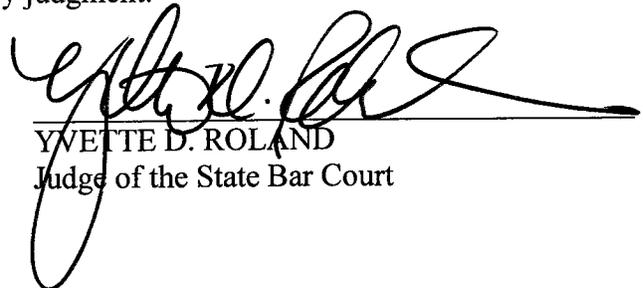
California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

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: November 10, 2015


YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 10, 2015, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

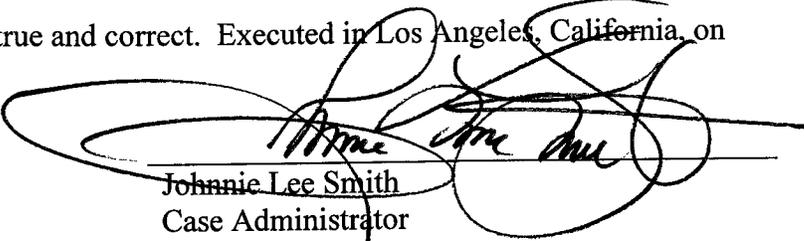
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MARY F. PREVOST
LAW OFC MARY FRANCES PREVOST
550 W "C" ST STE 1830
SAN DIEGO, CA 92101**

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

KIM ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 10, 2015.


Johnnie Lee Smith
Case Administrator
State Bar Court