PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of CARI DONAHUE, A Member of the State Bar, No. 273436.	)	Case Nos. 14-O-05402 (15-O-11752; 15-O-12438; 15-O-13507; 15-O-14533) DECISION

Introduction[1]

Respondent Cari Donahue (Respondent) is charged with nine counts of misconduct in five matters. The charges include failing to obey a court order, aiding the unauthorized practice of law (UPL), forming a partnership with a non-lawyer, charging an illegal fee, and failing to promptly pay funds to her client. The Office of Chief Trial Counsel of the State Bar of California (OCTC) has the burden of proving these charges by clear and convincing evidence.[2] During the disciplinary hearing, Respondent stipulated that she committed the alleged misconduct in four of the nine counts. Based on the stipulated facts, the record, and the evidence admitted at trial, this court finds clear and convincing evidence that Respondent is culpable of eight counts of misconduct and recommends that Respondent be suspended from the practice of

[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.

[2] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

law for one year and until she pays restitution, monetary sanctions and proves her rehabilitation, fitness to practice and present learning and ability in the general law.

Significant Procedural History

OCTC initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case numbers 14-O-05402, 15-O-11752, 15-O-12438, 15-O-13507 and 15-O-14533 on July 27, 2016. Respondent filed a response to the NDC on August 9, 2016. The parties filed a Stipulation as to Facts and Admission of Documents on November 9, 2016, and filed a First Amended Stipulation as to Undisputed Facts and Admission of Documents (stipulation) on the same date.

A one-day trial was held on November 9, 2016. OCTC was represented by Senior Trial Counsel William Todd. Respondent was represented by Edward O. Lear. The case was submitted for decision on November 9, 2016. OCTC filed its closing brief on November 28, 2016. Respondent filed a closing brief on November 29, 2016.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 6, 2010, and has been a member of the State Bar of California at all times since that date.

These findings of fact and conclusions of law are based on the record, evidence admitted at trial, and facts set forth by the parties in their stipulation.

Background Facts

Lennie Alzate began working with two non-attorneys, Rey Mendez and Robert Edgemonte before she graduated from law school. Alzate worked in a firm that handled loan modifications. In February 2011, Alzate registered the law office of Pacific Coast law Group APC as a corporation and changed the name to Westside Law Group (WLG) in 2011. In January 2012, Alzate stopped taking new clients at WLG and left the office sometime that year.

Respondent began working as an appearance attorney for WLG in 2012. Later that year, she began to manage the Carlsbad office. On January 15, 2013, WLG became Westside Law APC (Westside Law), which Respondent owned, managed and operated. Respondent continued to work with Edgemonte and Mendez. Respondent and Mendez were both on Westside Law's business accounts, but Mendez controlled the office's funds. He paid Respondent based on her invoices. Once Respondent assumed control of Westside Law, Respondent provided Mendez with her signature upon his request, to create a signature stamp. The stamp was only supposed to be used upon Respondent's authorization.

In 2013 and 2014, Respondent was physically in the office once per month. In 2014, Mendez and Edgemonte converted the practice into a virtual office. Respondent did not maintain a case or client list and only knew the names of the clients on whose cases she actually worked. Respondent ceased her work with Westside Law by December 2015.

Case No. 14-O-05402 – The Buechel Matter

Facts

On May 29, 2014, Respondent's firm filed client Robert Buechel's Chapter 13 bankruptcy petition, *In re Robert Buechel*, United States Bankruptcy Court, Southern District of California, case No. 14-04191-LT13. The petition listed Respondent as the attorney of record.[3] On June 5, 2014, the court ordered Respondent to appear on June 13, 2014, to show cause why the bankruptcy case should not be dismissed. Respondent received this order.

On June 12, 2014, Lawrence Haines, appeared on Buechel's behalf at a status conference due to Respondent's unavailability. Haines requested a continuance of the order to show cause (OSC) hearing scheduled for June 13, 2014. The court continued the hearing to July 18, 2014. On July 18, 2014, Respondent did not appear for the scheduled hearing. The court continued the

[3] Although many of the pleadings contained Respondent's signature stamp, Respondent did not authorize the use of the stamp.

hearing until August 27, 2014, and again ordered Respondent to appear. Respondent received this order.

Respondent did not appear the August 27, 2014, OSC hearing.

Conclusions

Count One - (§ 6103 [Failure to Obey a Court Order])

Respondent is charged with willfully failing to obey the bankruptcy court's June 12, 2014 order by failing to attend the July 18, 2014 OSC hearing. Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. To establish a willful violation of section 6103, an attorney must know that a final, binding court order exists. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney's knowledge of a final, binding order is essential element of § 6103 violation].)

The record indicates that notice of the June 12, 2014 order continuing the OSC hearing to June 18, 2014, was "to come from [the] Court." Under Evidence Code section 664[4] there is a presumption that the bankruptcy court properly performed its official duty in serving the OSC continuance order on Respondent as the bankruptcy court directed. The effect of a rebuttable presumption affecting the burden of proof, including the presumption that an official duty has been performed (Evid.Code, § 664), is to "impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718.) No evidence has been introduced to rebut the presumption that the bankruptcy court's order was served on Respondent. Thus, this court finds Respondent had notice that the June 12, 2014 OSC hearing was continued to July 18, 2014, which she failed

[4] Evidence Code section 664 provides, in relevant part: "It is presumed that official duty has been regularly performed."

to attend. Respondent is culpable of failing to comply with the bankruptcy court's June 12, 2014 order, in willful violation of section 6103.

Count Two - (§ 6103 [Failure to Obey a Court Order])

OCTC charged Respondent with willfully violating section 6103 by failing to appear at the August 27, 2014 OSC hearing as ordered by the bankruptcy court on July 18, 2014. Since Respondent failed to appear at the July 18, 2014, OSC hearing, the bankruptcy judge ordered the hearing continued to August 27, 2014. Respondent received the court's continuance order, but she failed to appear at the August 27, 2014 hearing. As such, Respondent is culpable of willfully violating section 6103.

Case No. 15-O-11752 – The Alpizar Matter

Facts

On September 14, 2011, Victoria and Abel Alpizar filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court, Southern District of California, case No. 11-15354-PB13 (the bankruptcy).

On December 17, 2013, Jose de Jesus Alpizar and Antonia Lopez, through Respondent's firm, filed a lawsuit in San Diego County Superior Court against Victoria and Abel Alpizar, titled *Jose De Jesus Alpizar and Antonia Lopez v. Victoria G. Alpizar and Abel Alpizar,* case No. 37-2013-00080158-CU-BC-NC (the civil matter). However, the automatic stay pursuant to 11 U.S.C. § 362 triggered by Victoria and Abel Alpizar's 2011 bankruptcy petition barred plaintiffs from filing the complaint. On May 23, 2014, David L. Speckman, counsel for Victoria and Abel Alpizar, informed Respondent about the automatic stay by letter. Speckman warned Respondent that he would file a motion for contempt if Respondent did not dismiss the civil matter within five business days.

On May 27, 2014, Speckman filed a notice of stay of proceedings in the civil matter, which Speckman also served on Respondent. Respondent's firm responded by fax on May 29, 2014, and refused to recognize the applicability of the stay. Respondent's firm also refused to dismiss the civil matter.

On June 10, 2014, Speckman filed a motion in the bankruptcy court for an order to show cause as to why the court should not hold Jose, Antonia and Respondent in contempt for violating the automatic stay. The court set a hearing on the OSC for July 9, 2014. On June 27, 2014, Respondent filed an opposition to the motion. Respondent did not appear at the July 9, 2014 hearing. The court set the matter for evidentiary hearing on August 1, 2014, but later rescheduled the hearing for August 27, 2014. The court served Respondent with electronic notice and served Jose Alpizar via first class mail.

On August 27, 2014, neither Respondent nor her clients personally appeared at the evidentiary hearing. Rather, an appearance attorney, Lawrence Haines, appeared on their behalf and on behalf of Westside Law. Haines stated on the record that Respondent was appearing in a Los Angeles criminal court, an appearance which she could not get anyone else to cover.

The bankruptcy judge issued an order after the August 27, 2014 hearing. On September 2, 2014, the court filed and entered an order finding Respondent willfully violated the automatic stay by filing and maintaining the civil matter despite Speckman citing the automatic stay; she presented no evidence explaining why the stay was inapplicable and she failed to dismiss the complaint. The court determined that Respondent made no request for any continuance to accommodate Respondent's purported scheduling conflict, and her refusal to stop the proceedings in the civil matter "was based on her failure to understand some of the most fundamental tenets to bankruptcy and chapter 13 law." The court ordered Victoria Alpizar $1,820 as compensation for the mental stress caused by the pending civil matter. In addition,

Respondent was ordered to pay $9,600 in attorney's fees, and $3,000 in exemplary damages. All ordered payments were due within 30 days of the entry of the order. Respondent's office received the bankruptcy judge's order.

On November 10, 2014, the court entered judgment against Respondent, but Respondent still did not pay the sanctions. On or about February 13, 2015, Respondent's office and Speckman (and their respective clients) entered into a Compromise, Mutual Release and Settlement Agreement which included payment of the $14,420 judgment. On February 23, 2015, Respondent's office sent Speckman a fully executed copy of the settlement, and paid $2,500 on the same day.

Conclusions

Count Three - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

Respondent is charged with willfully violating section 6068, subdivision (a) by failing to comply with the automatic stay imposed pursuant to 11 U.S.C. § 362. Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6068, subdivision (a), proscribes "attorney conduct which violates any federal or California statute. [Citation.]" (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 110, fn. 20.) Respondent filed and maintained a civil action that violated the automatic stay imposed by 11 U.S.C. § 362. Respondent received notice about the automatic stay and was advised to dismiss the action, but Respondent did not withdraw the complaint. Thus, Respondent is culpable of failing to support the laws of the United States, in willful violation of section 6068, subdivision (a).

Count Four - (§ 6103 [Failure to Obey a Court Order])

Respondent is charged with failing to obey a court order because she only paid $2,500 of the $14,420 in sanctions. The bankruptcy court's September 2, 2014 order directed Respondent

to pay a total of $14,420 for violating the automatic stay in the bankruptcy matter. Respondent was required to make all payments within 30 days of the entry of the order. Respondent's office paid $2,500 on February 23, 2015, but the payment was untimely and was $11,920 less than the full amount owed. The evidence clearly and convincingly demonstrates that Respondent is culpable of willfully violating section 6103.

Case No. 15-O-12438 – The Ludyjan-Woods Matter

Facts

Sophia Ludyjan-Woods needed assistance with obtaining a loan modification for her residence that was in foreclosure. In 2012 she met with two people at WLGs's offices. Ludyjan-Woods spoke with Ray Mendez and another woman who was not Respondent. Ludyjan-Woods hired WLG to assist her with her mortgage loan and foreclosure that commenced on March 25, 2010. She was told that WLG would halt the foreclosure and negotiate a loan modification with her lender. She signed a fee agreement for the law office's representation on August 27, 2012, but no attorney from WLG signed the agreement.

Ludyjan-Woods never met with Respondent. In late 2012, Respondent made court appearances on Ludyjan-Woods's behalf in an unlawful detainer matter, but she did not communicate with Ludyjan-Woods at the time.

On November 1, 2012, WLG filed a chapter 13 bankruptcy petition on Ludyjan-Woods's behalf. Lennie Ann Alzate was listed as the attorney of record. Alzate represented Ludyjan-Woods until the chapter 13 trustee was discharged and the estate was closed on December 3, 2012.

After Respondent began operating Westside Law, Ludyjan-Woods paid the office $9,695 from January 16, 2013, through May 14, 2014. She made the payments in cash to Mendez who provided her with a receipt. Respondent received $600 for her work on the Ludyjan-Woods

matter, but is unaware of what happened to the remaining $9,095. Once Ludyjan-Woods hired WLG to represent her, Mendez and "Robert" oversaw her matter.[5] Mendez collected her paperwork and payments, and provided her with receipts. Robert indicated that he was an attorney and portrayed himself as one. It was Robert who made all of the decisions. Westside Law did not stop the foreclosure of Ludyjan-Woods's home and failed to renegotiate her loan. She lost her family home of 18 years.

Conclusions

Count Five - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])

OCTC charged Respondent with violating rule 1-300(A) by aiding Mendez, who is not licensed to practice law in California, in the unauthorized practice of law. Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law. "Courts have generally defined the term [practice of law] as follows: '[t]he practice of law is the doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure. But in a larger sense it includes legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matters may or may not be [pending] in a court.' [Citations.]" (*In re Utz* (1989) 48 Cal.3d 468, 483, fn.11.) Respondent is not culpable of willfully violating rule 1-300(A) because there is a lack of clear and convincing evidence that she aided Mendez in engaging in UPL.

The evidence establishes that Mendez, a non-lawyer exerted control over Westside Law's office. In 2013 and 2014, Respondent only went into the office once a month, and sometime in 2014, the office became a virtual office. Respondent allowed Mendez to create two to three signature stamps bearing her name. She authorized Mendez to use the stamp with her

[5] The court finds that "Robert" is Robert Edgemonte.

authorization. The stamps were used repeatedly to file pleadings without Respondent's knowledge. But, there is no evidence that Mendez drafted any pleadings and or used the signature stamps to file those pleadings. There is no evidence that Mendez "dispensed legal advice," as alleged in the NDC. It was Edgemonte who told Ludyjan-Woods that he was an attorney and presented himself as one. Additionally, Edgemonte managed Ludyjan-Woods's matter; he made all of the decisions, not Mendez. Mendez's role was to collect documents and payments from Ludyjan-Woods and provide her with receipts. Handling client funds does not establish UPL. Although there is evidence that Respondent abdicated her ethical responsibilities and allowed non-lawyers to practice law, there is a lack of clear and convincing evidence that she aided Mendez in practicing law as charged in the NDC. Thus, Count Five is dismissed with prejudice.

Count Six - (Rule 1-310 [Forming a Partnership with a Non-Lawyer])

Respondent is charged with willfully violating rule 1-310 by forming a partnership with Mendez, a non-lawyer. Rule 1-310 provides that an attorney must not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law. Respondent is culpable of willfully violating rule 1-310.

Although there is no evidence that Respondent and Mendez entered into an agreement to establish a partnership, Mendez was signatory to Westside Law's business accounts and controlled Westside Law's funds. Mendez was a non-lawyer who exerted control over Westside Law. It was Mendez who paid Respondent after she provided an invoice. Respondent went into the office once per month until Mendez and Edgemonte converted it into a virtual office. Respondent referred to Mendez and Edgemonte as "the law firm." The court finds clear and convincing evidence that Respondent and Mendez formed a partnership, in willful violation of rule 1-310.

Count Seven - (Rule 4-200(A) [Illegal Fee])

Respondent is charged with willfully violating rule 4-200(A) by collecting an illegal fee of $3,000 from Ludyjan-Woods. It is alleged that the fee was illegal because it was the product of Respondent's aiding and abetting the unauthorized practice of law and her partnership with a non-lawyer. Rule 4-200(A) provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee.

As stated above, in 2013 and 2014, Respondent only went into the Westside Law once a month, and sometime in 2014, Mendez and Edgemonte changed Westside Law into a virtual office.[6] Mendez and Edgemonte, two non-attorneys, managed and controlled the law office. Pleadings were drafted, signed with Respondent's stamp and filed without Respondent's knowledge. Edgemonte managed and made decisions about client cases, and held himself out as an attorney. Respondent did not maintain records of all clients and their cases, which allowed non-attorneys to handle cases without her knowledge. Respondent was not culpable of aiding Mendez in engaging in UPL as charged in Count Five, but it is clear that Respondent aided Edgemonte in engaging in UPL. In addition, Respondent formed a partnership with a non-lawyer. Thus, Respondent is culpable of willfully violating rule 4-200(A) by collecting a fee which was the product of aiding UPL. (See *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904 [attorney violated rule 4-200(A) for charging or collecting fees for services that constituted UPL].)

Case No. 15-O-13507 – The Van Uffelen Matter

On November 7, 2014, Respondent's office filed a complaint on behalf of her clients, Lance Van Uffelen and Susan Van Uffelen, in Los Angeles County Superior Court, entitled

[6] Throughout her testimony, Respondent referred to Mendez and Edgemonte as the "law firm."

Lance Van Uffelen, et al. v. Bank of America, N.A., et al., case No. VC064407 (the wrongful foreclosure action). The action alleged wrongful foreclosure with violations of Civil Code § 2934a and § 2923.55, and requested injunctive relief related to their residence located in Lakewood, CA.

On November 17, 2014, Respondent's office signed and filed a notice of pendency of action ("*lis pendens*") with the court, recorded the notice with the Los Angeles County Recorder, and filed an ex parte application for a temporary restraining order pending preliminary injunction, which defendants' counsel opposed.

On March 24, 2015, Respondent's office filed a motion to consolidate the wrongful foreclosure action with an unlawful detainer matter between plaintiffs and defendant Pacifica L 52, LLC dba Pacifica Reat 2031-1, who purchased the mortgage from Bank of America (B of A).

On April 2, 2015, Pacifica filed a motion to expunge the *lis pendens* on the ground that the wrongful foreclosure action was meritless and requested statutory attorney fees under Code of Civil Procedure § 405.38.[7] On April 3, 2015, the court dismissed defendants B of A and Recontrust Company, N.A. from the action.

On May 7, 2015, the court held a hearing regarding Pacifica's motion to expunge the *lis pendens*. An attorney specially appeared on Respondent's behalf. The court granted Pacifica's motion to expunge the *lis pendens*, rejecting Respondent's argument that plaintiffs acted with substantial justification. The court noted that the subsequent procedural history in the action proved the complaint was unsupported by evidence and the motion to expunge the *lis pendens* was necessary because plaintiff declined to withdraw it. Accordingly, the court determined that Pacifica was entitled to attorney's fees of $2,486 pursuant to Code of Civil Procedure § 405.38.

[7] Code of Civil Procedure § 405.38 mandates an award of reasonable attorney fees to the prevailing party who opposes a motion filed without substantial justification.

On May 29, 2015, the court filed an order expunging the *lis pendens* and directing Respondent and plaintiffs to pay Pacifica's attorney's fees within 30 days of service of the notice of entry of the order. On the same date, Pacifica's attorneys filed notice of the order summarizing the court's ruling. Respondent received a copy of the notice of ruling. The attorney's fees have not been paid.

Count Eight - (§ 6103 [Failure to Obey a Court Order])

Respondent is charged with violating a court order by failing to pay $2,486 in attorney's fees to Pacifica. Respondent is culpable of willfully violating section 6103 because she failed to pay Pacifica $2,486 in attorney's fees as ordered by the superior court on May 29, 2015.[8]

Case No. 15-O-14533 – The Alto Matter

Facts

On February 1, 2014, Respondent's office received on behalf of Respondent's client, Bruce Alto, a $1,500 rental payment for a property owned by Alto. Of this sum, the client was entitled to $500, with the remaining $1,000 applied to legal fees that Alto incurred. To date, Respondent's office has failed to promptly pay, as requested by Respondent's client, any portion of the February 2014, $500 payment.

Count Nine - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

Respondent is charged with violating rule 4-100(B)(4) by failing to promptly pay Alto $500 as he requested. Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession

[8] OCTC charged Respondent with violating the court's May 7, 2015, order. But, the court actually ordered Respondent and plaintiffs to pay $2,486 in attorney's fees to Pacifica on May 29, 2015, following the May 7, 2015 hearing. No due process violation resulted from this slight variation in the evidence from the NDC that was never amended. Respondent had reasonable notice of the charges against her; the NDC identified section 6103 as the code section Respondent violated, identified the lawsuit at issue, the amount of the attorney's fees owed; and there is no evidence that Respondent's defense was compromised. (See *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517, 522-523.)

which the client is entitled to receive. Respondent maintains that she was not aware that her office made arrangements with Alto to collect rental payments on his behalf. Respondent's lack of knowledge due to her failure to supervise her office does not excuse her failure to fulfill her ethical obligations. She stipulated that her office received a rental payment on behalf of Alto, Alto was owed $500, Alto requested payment, and her office failed to promptly pay the client. Thus, Respondent is culpable of willfully violating rule 4-100(B)(4).

Aggravation[9]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with regard to aggravating circumstances.

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

Respondent has one prior discipline record. On July 29, 2016, the Supreme Court ordered Respondent suspended for three years, stayed, with three years of probation subject to a two-year actual suspension and until she makes $13,500 in restitution and provides proof of her rehabilitation and fitness to practice.

Respondent's misconduct arose from her failure to supervise the employees at WLG and or Westside Law. Respondent's client Tony Karam paid advanced fees for loan modification services from June 2012 through December 2012. In addition, in July 2012, Karam paid $8,500 to WLG to pay Karam's lender to finalize the loan modification. In December 2012, Respondent advised Karam that she was starting Westside Law, effective January 15, 2013, and that her solo practice would "resume" his pre-litigation efforts with his mortgage servicers. On April 15, 2013, Karam requested a refund of the $8,500 payment, but it was not returned. In August 2013, he also asked for an accounting of his advance fees and return of the payment to finalize the loan

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

modification, but Respondent never provided either. Respondent acknowledged that beginning in June 2012, she did not properly manage or supervise the non-attorneys at WLG or Westside Law. She was found culpable of accepting an illegal fee, failing to maintain client funds in trust, failing to promptly pay client funds, misappropriation, and failing to render an accounting.

Respondent's misconduct was aggravated by multiple acts of misconduct, significant client harm, failure to make restitution, and uncharged misconduct of moral turpitude and failing to perform based on her lack of supervision of her employees. Respondent's cooperation and good character were mitigating circumstances.

The misconduct in the first prior occurred from 2012 through 2013. The current misconduct took place from January 2013 through December 2015. Respondent's misconduct in the present matter occurred subsequent to and during the same time period as the misconduct underlying her prior disciplinary proceeding. Thus, the aggravating weight of the prior is somewhat diminished. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.)

The date the NDC was filed in the prior discipline is most relevant to an analysis of an attorney's prior record as aggravation because it puts the attorney on notice that the charged misconduct is ethically questionable. (E.g. *In the Matter of Burke* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 448, 461 [filed NDC put attorney on notice misconduct was disciplinable]; *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 564 [filed notice to show cause alerted attorney to ethically questionable nature of misconduct].) The NDC in the first prior was filed on February 11, 2015, which was after Respondent failed to obey three court orders, failed to support the laws of the United States, failed to promptly pay client funds, and began charging an illegal fee. She committed all but one ethical violation before she received the NDC in the first prior. The court also notes that none of the misconduct in the first prior was

similar to the misconduct in the current proceeding. Thus, the aggravating weight of the first prior is minimal because Respondent did not have the opportunity to "heed the import of that discipline" prior to the misconduct committed in the present disciplinary proceeding. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

Multiple Acts (Std. 1.5(b).)

Respondent is culpable of eight ethical violations in five client matters. Her multiple acts of misconduct are a significant aggravating factor.

Failure to Make Restitution (Std. 1.5(m).)

Respondent has not made $500 in restitution to Alto for the rental funds she collected on his behalf, but never paid.

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 circumstances.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent entered into a stipulation as to facts and admission of documents which saved OCTC time and resources. The court assigns moderate mitigation credit for Respondent's cooperation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 ["more extensive weight in mitigation is accorded those who . . . willingly admit their culpability as well as the facts"].)

Good Character (Std. 1.6(f).)

Respondent presented seven declarations from individuals who attested to her good character. The declarants included a real estate broker, sales and marketing manager, former law school classmate, Mt. Sinai Health System employee, an attorney, stay-at-home mom, and medical student. All but one of the declarants had read the complaint against Respondent.

Respondent was described as honest, trustworthy, compassionate and truthful. The court affords Respondent moderate mitigating credit for good character because a single attorney does not satisfy the criteria outlined in the standard. (See std. 1.6(f) [good character must be attested to by a "wide range of references in the legal and general communities"].)

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (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). While they are guidelines for discipline and are not mandatory, they are given great weight to promote consistency. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Moreover, the Supreme Court has instructed that the standards should be followed "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.)

In cases where an attorney commits two or more acts of misconduct and different sanctions apply, "the most severe sanction must be imposed." Standards 1.8(a) and 2.12(a) are the most applicable here. Standard 1.8(a) provides that if an attorney has a prior record of discipline, "the sanction must be greater than the previously imposed sanction" unless the prior discipline was remote in time and "the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." Standard 2.12(a) provides that "[d]isbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the . . . practice of law . . . or the duties required of an attorney under . . . section 6068(a)" (duty to support Constitution and Laws of United States and California).

Since the current misconduct occurred during the same time period as the misconduct in Respondent's prior, standard 1.8(a) does not apply. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [if misconduct underlying prior discipline occurred during same time period as misconduct in present proceeding, the State Bar Court "consider[s] the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct . . . been brought as one case"].) Thus, in addition to considering standard 2.12(a), the court determines the appropriate discipline as if all matters in Respondent's prior and this matter were consolidated in one proceeding. (*In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619.)

The misconduct in both cases occurred from 2012 through 2015. Respondent's misconduct began less than two years after she began practicing law, and it involved six clients and 13 ethical violations. Respondent has repeatedly failed to comply with court orders, twice charged an illegal fee, committed trust account violations, and misappropriated client funds. Moreover, she has disregarded her ethical responsibilities and allowed non-lawyers to run her law practice. Multiple acts of wrongdoing, significant client harm, failure to make restitution, and uncharged misconduct of failing to perform and moral turpitude comprise the aggravating circumstances. Respondent's good character and cooperation are mitigating factors, but are far outweighed by the aggravating factors.

OCTC argues that disbarment is the appropriate level of discipline. Respondent contends that taking into account Respondent's two-year suspension for her prior, an additional one-year suspension is warranted. A review of the case law indicates that those attorneys who ignored their professional duties and failed to control their law practices were disbarred when their misconduct involved dishonesty or they lacked insight into their wrongdoing. (See *In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308 [disbarment for 24 counts of

misconduct including the failure to monitor office staff who had CTA access, which resulted in $8,646.34 misappropriation; aggravated by multiple acts, significant client harm, lack of recognition and remorse, and mitigated by eight years of discipline-free practice and cooperation]; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315 [disbarment for entering into a fee-splitting agreement with a non-lawyer, forming a partnership with a non-lawyer, and failing to supervise non-attorney employees, which resulted in the repeated failure to perform with competence, among other ethical violations; dishonesty, concealment, and a "willingness to disregard the truth whenever the need" arose surrounded the misconduct]; (*In the Matter of Steele* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708 [attorney disbarred in first discipline where he committed several acts of dishonesty; reckless law office management and lack of CTA oversight for more than two years resulted in misappropriation of over $25,000 and demonstrated attorney's favoring of his "own financial interest over the interests of his clients and the requirements of the law"].)

Based on the entire record, the court does not find Respondent to be venal, but rather "totally oblivious to [her] obligations as a lawyer." (*In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 881.) There is no evidence in the record that Respondent tried to take advantage of vulnerable clients or was seeking financial gain at the expense of her clients. Respondent acknowledged her wrongdoing and understands how her lack of office supervision and control violated her ethical responsibilities. Her misconduct was more in line with those attorneys who received a substantial period of actual suspension for abdicating their duties as an attorney. (See *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468 [two-year suspension for failing to competently perform, communicate, account, maintain client funds in trust and moral turpitude for permitting nonlawyers to conduct initial client interviews, prepare retainers and negotiate settlements; aggravated by prior private reproval, multiple acts,

client harm, uncharged misconduct involving fee splitting, no rehabilitation or effort to atone for wrongdoing and mitigated by cooperation]; *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 [two-year suspension for failing to competently perform, forming a partnership with a non-lawyer, fee-splitting with a non-lawyer, and aiding and abetting UPL in more than 350 personal injury cases over two years; aggravated by multiple acts and significant harm to medical lienholders, and mitigated by good character, community activities, objective steps taken to make lienholders whole, and full cooperation with the State Bar and other authorities]; *In re Arnoff* (1978) 22 Cal.3d 740 [two-year suspension for the knowing use of cappers, splitting fees with a non-lawyer, and abdication of control of law practice to a non-lawyer for a two-year period; mitigated by 20 years of discipline-free practice, heavy emotional pressures, and evidence of rehabilitative treatment].)

Based on the standards, case law, and totality of Respondent's misconduct in this case and her prior, the appropriate level of discipline is a three-year period of suspension and until she complies with standard 1.2(c)(1). Respondent's misconduct was less serious than in *Jones* and *Arnoff*, but much more mitigation was present in those cases. Additionally, the court is concerned that Respondent is relying on Mendez and Edgemonte to pay her sanctions and restitution in her prior. Respondent has the obligation to take affirmative steps to make the required payments and cannot ignore her responsibilities by trusting that others will fulfill her obligations. A lengthy suspension coupled with the requirement that Respondent prove her rehabilitation, fitness, and present learning and ability before she resumes the practice of law is appropriate to protect the public, the courts and the legal profession. Respondent has already been actually suspended for two years in her prior disciplinary proceeding; thus, the court recommends that Respondent be actually suspended for an additional year for the misconduct in this case.

Recommendations

It is recommended that Respondent Cari Donahue, State Bar Number 273436, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that Respondent be placed on probation[10] for a period of three years subject to the following conditions:

1. She is suspended from the practice of law for a minimum of the first year of probation, and Respondent will remain suspended until the following requirements are satisfied:

   a. She must make restitution to Bruce Alto in the amount of $500 plus 10 percent interest per year from February 1, 2014 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Bruce Alto, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

   b. She must make restitution to Sophia Ludyjan-Woods in the amount of $3,000 plus 10 percent interest per year from May 14, 2014 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Sophia Ludyjan-Woods, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

   c. She must pay $11,920 in sanctions to Victoria Gaspar De Alpizar as ordered on November 10, 2014, by the United States Bankruptcy Court, Southern District of California in case No. 11-15354-PB13 and furnish proof to the State Bar's Office of Probation in Los Angeles; and

   d. She must pay $2,486 in sanctions to Pacifica L 52, LLC dba Pacifica Reat 2031-1 as ordered on May 29, 2015, by the Los Angeles County Superior Court in case No. VC064407 and furnish proof of payment to the State Bar's Office of Probation in Los Angeles.

   e. She must provide satisfactory proof to the State Bar Court of her rehabilitation, fitness to practice and present learning and ability in the general law before her actual suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

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[10] 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.)

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. 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.

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 Client Trust Accounting School and passage of the test given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)

It is not recommended that Respondent be ordered to attend the State Bar's Ethics School, as she has recently been ordered to do so on July 29, 2016, by the Supreme Court in case No. S234645.[11]

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

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[11] The Supreme Court filed an amended order on August 26, 2016, which was entered nunc pro tunc.

Multistate Professional Responsibility Examination

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as she was recently ordered to do so on July 29, 2016, by the Supreme Court in case No. S234645.

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: February 7, 2017

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 February 7, 2017, 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:

EDWARD O. LEAR
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD #345
LOS ANGELES, CA 90045

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

William S. Todd, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 7, 2017.

Angela Carpenter
Case Administrator
State Bar Court