PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **SOUSAN ALEMANSOUR,** **Member No. 180216,** A Member of the State Bar.	**Case Nos.: 15-O-10928, 15-C-15241-DFM** **DECISION**

INTRODUCTION

This proceeding is a consolidation of two disciplinary matters pending against respondent **Sousan Alemansour** (Respondent). In the first-filed matter, case No. 15-O-10928, she is charged with three counts of misconduct in a single client matter. The three counts include allegations of willfully violating (1) rule 4-100(B)(3) of the Rules of Professional Conduct[1] (failure to render account of client funds); (2) rule 3-700(D)(1) (failure to release client file); and (3) rule 3-700(D)(2) (failure to refund unearned fees). The second matter, case No. 15-C-15241, arises out of Respondent's criminal conviction in 2015 of violating Penal Code sections 278.5(a) (child abduction), 240 (assault), 242 (battery), and 166(c)(1) (violation of protective order).

The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in case No 15-O-10928 was filed by the State Bar of California on October 29, 2015.

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

On November 19, 2015, Respondent filed a verified response to the NDC. In this response, Respondent simultaneously (1) generally denied all of the allegations of the NDC; (2) admitted, inter alia, that she had received $5,000 from her client and had previously acknowledged that an unearned refund of $178.34 was due and owing to him; and (3) specifically denied, inter alia, that she received the $5,000 as "advance fees;" that she performed some services for the client; that her employment by Momeni was terminated on or about December 8, 2014; that a fee dispute had arisen between the parties; and that she had failed to refund the $178.34 to her client.

On December 7, 2015, the initial status conference was held in the case. At that time the case was given a trial date of February 16, 2016, with a one-day trial estimate.

On January 19, 2016, a further status conference was held at the request of the parties. At that conference, the parties informed the court that the second disciplinary matter was in the process of being finalized as a result of Respondent's recent criminal conviction. As a result, by agreement of the parties, the existing pretrial and trial dates of case No. 15-O-10928 were vacated and that case was abated until the new matter was filed, so that the two cases could be consolidated and tried at the same time.

On January 29, 2016, an order was issued in case No. 15-C-15241 by the Review Department of this court, referring the second matter to this court. On February 4, 2016, a Notice of Hearing on Conviction was filed and served by this court. At the same time, an initial status conference in the matter was noticed for February 29, 2016.

On February 29, 2016, Respondent filed her Answer to the Notice of Hearing in case No. 15-C-15241. Also on February 29, 2016, the status conference was held in the two cases. At that time the two matters were consolidated and given a trial date of June 1, 2016, with a two-day trial estimate.

Trial was commenced and completed as scheduled. The State Bar was represented at trial by Deputy Trial Counsel Hugh Radigan. Respondent acted as counsel for herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the NDC and the Notice of Hearing and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 10, 1995, and has been a member of the State Bar at all relevant times.

Case No. 15-0-10928 (Momeni)

On or about September 26, 2014, Respondent was retained by Arash Momeni (Momeni) to represent Momeni in an ongoing dissolution action. A written fee agreement was prepared by Respondent and signed by Momeni, requiring Momeni to deposit with Respondent $5,000 of advance legal fees, with Respondent's work then being charged against that deposit at $200 per hour. This fee agreement specifically provided: "Upon request, Client will receive billing setting forth the nature of services performed by the Attorney." (Ex. 37, p. 2.) Momeni deposited with Respondent the required $5,000 advance of attorney fees with a check dated September 26, 2014.

Respondent represented Momeni in the dissolution action until December 8, 2014, when Momeni terminated Respondent's employment via an email message. (Ex. 40, p. 1.) In this email, Momeni requested Respondent to refund the unearned portion of the $5,000 deposit and provide Momeni's file to him. Respondent acknowledges receiving notice of her termination in an email sent by her to Momeni on December 11, 2014.

On December 15, 2014, Respondent sent an email to Momeni, informing him that Form Interrogatories and a Request for Identification and Production of Documents had been received

by Respondent on December 11, 2014, in the dissolution action. In this email, Respondent offered to have her office assist Momeni in responding to the discovery requests. Momemi responded with an email, indicating that he merely wanted Respondent to forward to him the discovery and the copy of the substitution of attorneys.

On December 16, 2014, Respondent sent Momeni an email indicating that she accepted the termination of the relationship and would have her office staff send Momeni an electronic copy of the file. She also indicated that Momeni needed to provide her with a Substitution of Attorney form.

On December 19, 2014, Momeni sent an email to Respondent, attaching a Substitution of Attorney that removed Respondent as counsel of record and made Momeni an in pro per party. This substitution was subsequently executed by both parties and back-dated to December 15, 2014. (Exhibits 41 and 43, p. 1.) In the email accompanying this substitution, Momeni inquired about the status of his requested refund, which had not yet been received.

On December 20, 2014, Respondent responded to Momeni's refund request with an email stating, "I don't believe there is any refund though I believe there is about 178.34$ [sic] remaining unearned. I will instruct the bookkeeper to issue a check as such. Your file is closed." (Ex. 43, p. 1.) Later that same day, Momeni, via an email to Respondent, requested "the itemized list of what you charged."

On December 26, 2014, Momeni sent an email to Respondent in which he asserted that Respondent was obligated to refund more than what she had previously represented. (Ex. 44, p. 2.) Respondent responded that same day, inviting Momeni "to tell me how much you think is owed to you so that I can have our bookkeeper go from there." (*Ibid.*)

On January 5, 2015, Momeni sent Respondent an email, complaining that he had not yet received "anything back" from Respondent and that Respondent needed to check with her

bookkeeper regarding the requested refund. (Ex. 50, p. 1.) Respondent responded within minutes that same day with an email to Momeni stating, inter alia:

> An electronic copy of your file will be given to you no later than Friday.
>
> I also told you what refund is due you. You disagreed. I told you to give me an estimate of [what] you think is owed you. You did not.
>
> What do you think is owed to you before I pay my bookkeeper out of pocket to come and figure out what is owed to a client who received the best results he could have obtained but now wants his money back.

(*Ibid.*)

On Monday, January 12, 2015, Momeni sent an email to Respondent, demanding a refund of $3,185. This figure was based on Momeni's "guess" that Respondent had spent six (6) hours working on his case and an additional three hours in court. In this email, Momeni also stated that he had not yet received a copy of his file from Respondent, even though she had promised to have it emailed to him by the prior Friday. At the conclusion of this email, Momeni inquired, "Am I going to get my money back or do I need file a complain [sic] with the board or someone." (Ex. 50, p. 2.)

Later that same day, January 12, 2015, Respondent emailed a copy of Respondent's file to him. In her email, she also offered to pay Momeni $500 to bring the matter to closure. (*Id.* at pp. 2-4.) That offer was rejected by Momeni the same day, although he indicated a willingness to accept a refund of $2,500. (*Id.* at p. 5.)

On January 20, 2015, Momeni sent an email to Respondent, complaining that he had not heard back from Respondent after his prior email and again demanding a refund greater than $500. The email went on to state, "Base on you asking me how much I think you owe me tells me you don't have a keeping track of what you did, unless at this time you just make it up. You should at least pay me back half of what I paid you which is $2500. I want my money by this

Friday, 1/23/2015." (*Ibid.*) In an email response from Respondent to Momeni the next day, she merely stated:

> It appears to me that you believe some kind of professional misconduct has occurred and that is the basis of your emails to me.
>
> I can refer to The State Bar of California attorney complaint section so that you can file your appropriate complaint.

(*Ibid.*)

Momeni then filed his complaint with the State Bar. To date, Respondent has not refunded any money to Momeni, notwithstanding her continued acknowledgement since December 2014 that she owes him $178.34.

Count 1 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Rule 4-100(B)(3) requires a member to "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]"

In this count the State Bar alleges that Respondent failed to provide Momeni an accounting regarding the $5,000 advance of attorney's fees, despite the client's demand for such an accounting on or about December 20, 2014, in willful violation of rule 4-100(B)(3).

The evidence is clear and convincing that Respondent was terminated by Momeni on December 8, 2014; that he then repeatedly requested a refund and an accounting regarding the $5,000 advanced fee; and that Respondent failed to provide him with any such accounting. Respondent's failure to provide such an accounting constituted a willful violation by her of rule 4-100(B)(3). (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952 [culpability established for failure to account despite lack of formal demand for accounting].)

Although Respondent, after the instant disciplinary action was filed, produced a purported written accounting, dated December 14, 2014, and testified during trial that she provided this accounting to Momeni on December 14 or 15, 2014, that testimony was not credible. The testimony was credibly denied by Momeni, who denied ever seeing the accounting until it was provided to him by the State Bar. There is also no reference to any such accounting, which purports to show a balance of $176.77, in any of the emails between Respondent and Momeni after December 14, 2014. To the contrary, in Respondent's email of December 20, 2014, Respondent represented that the amount of unearned fee was "about $178.34." (Ex. 43, p. 1.) If Respondent's purported accounting had been prepared and provided to Momeni less than a week before this email, one would expect that Respondent would have referred to her accounting and used the precise final figure shown in it – "$176.77," not "approximately $178.34." Finally, and most significantly, the final entry in the purported accounting is for work described in the accounting as being done by Respondent in reviewing 20 emails from Momeni during the time period from December 11, 2014 to January 20, 2015 – more than a month after Respondent testified that the accounting was prepared and sent to her former client. (Ex. 1004.) When Respondent was asked at trial how the bill could include such work if it had been actually prepared in mid-December, she was at a loss to provide any explanation.

Respondent's failure to provide an accounting to her former client constituted a willful violation by her of rule 4-100(B)(3).

Count 2 – Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) provides: "A member whose employment has ended shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client's papers and property. 'Client papers and property' includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports,

and other items reasonably necessary to the client's representation, whether the client has paid for them or not [.]"

In this count the State Bar alleges:

> Respondent failed to release promptly, after termination of Respondent's employment on or about December 8, 2014, to Respondent's client, Arash Momeni, all of the client's papers and property following the client's request for the client's file on December 8, 2014, and April 23, 2015, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1).

The evidence at trial fails to provide clear and convincing evidence of any violation by Respondent of the above rule. Accordingly, this count is dismissed with prejudice.

Respondent testified credibly at trial that she provided Momeni with a copy of his file on January 12, 2015, after previously promising to do so. That testimony was corroborated by Momeni's copy of Respondent's email of that date, which expressly states that Momeni's files were being forwarded to him in two attachments to that email and also shows that two attachments of significant size were attached to the email. The first of these two attachments was shown in Momeni's copy of the email to require "6436K" of computer memory – as measured by Momeni's own computer;[2] the second attachment required "7844K." (Ex. 50, p. 4.) Momemi's email sent to Respondent later during the same day of January 12, 2015, makes clear that he received Respondent's earlier email. There is no contention made by Momeni at that time – or in any of his later emails to Respondent - that the copy of the files had not been sent by Respondent with her email.

Although Momeni initially testified that he was never provided by Respondent with any portion of his file, when he was confronted with his copy of Respondent's January 12, 2015 email, showing that he had received the two attachments, he acknowledged that he might have

[2] Respondent's copy of these same emails shows that two files are attached but does not show the size of those attachments. (See Ex. 1012.) This makes clear that the size of the attachments was measured during the course of the attachments being transferred to and received by Momeni.

been provided with the files at that time. The fact that he had been provided by Respondent with her files was buttressed by Momeni's testimony that, after he hired new counsel in May or June of 2015, his new counsel was provided with all, or at least a portion, of the file previously maintained by Respondent within a week of being retained. Because Respondent was incarcerated at all times from mid-April 2015 until November 2015, she was not available to provide her files to Momeni's new attorney in May or June of that year – a fact strongly suggesting that it was Momeni who had passed along the files to the new attorney.

The State Bar makes no contention in this case that Respondent's delay in forwarding the files until January 12, 2015, constitutes a failure to return the files promptly – in violation of rule 3-700(D)(1). Moreover, while there are cases holding that a delay of two months represents a violation of the obligation to return files promptly (see, e.g. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 377), in *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 558, the Review Department found that a period of delay in returning a client's files virtually identical to that present here does not violate the promptness requirement of the rule.

This count is dismissed with prejudice.

Count 3 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) provides that an attorney, on being terminated, must "promptly refund any part of a fee paid in advance that has not been earned."

Respondent has acknowledged, in both her dealings with Momeni in 2014 and in her response to the NDC in November 2015, that $178.34 of the $5,000 retained fee received by her from Momeni was unearned. Despite her awareness of that fact since late 2014, she has still not returned any portion of that unearned fee to him. She has also been aware since early 2015 that

her former client disputes her entitlement to retain all of the balance of the retainer. Despite that awareness, she has not taken any steps to take affirmative steps to resolve the fee dispute. This disregard by her of her duties under rule 3-700(D)(2) represents a willful violation by her of the rule. (See, e.g., *In the Matter of Yagman* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 788, 805, 807; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar. Ct. Rptr. 752, 758 [when attorney fee dispute arises with former client, attorney should take prompt action to resolve dispute].)[3]

Case No. 15-C-15241 (Criminal Conviction)

Factual Background

In April 2015, Respondent and her former spouse were involved in a contentious custody dispute over their son Dylan, who at that time was 12-years-old. During the course of this dispute, the family law court had granted both legal and physical custody of Dylan to the father and had issued a series of restraining orders significantly limiting Respondent's ability to be alone with her son. These restrictions included, inter alia, both a requirement that all visits be supervised by a court-appointed monitor and a prohibition against Respondent taking her son out of California without obtaining prior express authorization to do so.

On April 6, 2015, Respondent was scheduled to have a supervised 3-hour custodial visit with her son. The authorized monitor for that visit was Annette McCarthy (McCarthy), who had monitored more than a dozen prior visitations by Respondent with her son. The visit was scheduled to be at Respondent's house.

McCarthy and Dylan arrived together at Respondent's home in McCarthy's car. When they arrived, Respondent was standing next to Respondent's own car, which was running with

[3]The record is unclear as to how much, if any, of the $5,000 fee was earned. While it is undisputed that Momeni is entitled to a refund of at least $178.34, any further claims by him to an additional refund will need to be resolved in a more appropriate forum (i.e., civil action or fee arbitration).

the door open. As McCarthy and Dylan got out of McCarthy's car, Respondent quickly approached them in a manner that was concerning to McCarthy and that caused McCarthy to order Dylan to get back into McCarthy's car. In response, Respondent yelled at her son to get into Respondent's car "now." When Dylan started to comply with Respondent's instruction to get into Respondent's car, McCarthy followed him toward the car, urging him unsuccessfully not to get into it. Then, after Dylan had gotten into the passenger seat of Respondent's car, McCarthy both urged him to get out of the car and pulled on his arm to get him to do so.

When Dylan first got into Respondent's car, Respondent was already on the driver's side of the car. However, when McCarthy started trying to pull Dylan out of the car, Respondent walked around the car and engaged in a physical altercation with McCarthy, grabbing McCarthy's arms and both pushing and shaking her. After McCarthy struggled for more than 30 seconds to get loose from Respondent's grip, Respondent released her, hurried around the car to get into the driver's seat, and then drove away – with Dylan in the car and leaving the court-ordered monitor behind. This action violated the restraining order previously issued by the family law court and still in effect. McCarthy then notified the police of Respondent's actions.

After leaving her home, Respondent drove with her son out of Orange County and eventually went to the Los Angeles International Airport (LAX), where they boarded a plane and flew to Chicago. After they had taken off but before they arrived in Chicago, the police were successful in determining that Respondent and her son were flying to Chicago. As a result, when they landed in Chicago, Respondent was immediately taken into custody by the authorities there and Dylan was returned to his father in California.

Respondent was subsequently returned by the Illinois authorities to California, where she was charged on April 7, 2015, with criminal violations of Penal Code sections 278.5(a) (child

abduction), a felony; 240 (assault), a misdemeanor; 242 (battery), a misdemeanor; and 166(c)(1) (violation of protective order), a misdemeanor.

Penal Code sections 278.5(a) provides: "Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment."

Section 240 provides: "An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another."

Section 242 provides: "A battery is any willful and unlawful use of force or violence upon the person of another.

Section 166(c)(1) provides, in pertinent part:

> "A willful and knowing violation of a protective order or stay-away court order described as follows shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine: ... An order issued pursuant to Section 6320 or 6389 of the Family Code."

Respondent remained in jail until November 2, 2015, when she entered a nolo contendere plea to all four counts at the time the criminal matter was scheduled to commence trial. Before the nolo plea was entered, the Orange County Superior Court reduced the child abduction charge from a felony to a misdemeanor and sentenced Respondent, inter alia, to serve 420 days in the Orange County jail, with credit for Respondent's 210 days of prior incarceration. Sentencing on the assault conviction was stayed.

Conclusions

The parties have stipulated that the facts and circumstances surrounding Respondent's conviction do not involve moral turpitude, and this court agrees with that conclusion. (See, e.g., *In the Matter of Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, 287-288; *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 60; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589-591 [and cases discussed therein].)

However, with regard to the issue of whether Respondent's conduct, described above, constitutes misconduct warranting discipline, this court concludes that it does. As discussed in *Respondent O*, cited above, the Supreme Court "has repeatedly imposed discipline on attorneys for violent behavior that did not rise to the level of moral turpitude." (*Id.*, 2 Cal. State Bar Ct. Rptr at p. 590, citing *In re Larkin* (1989) 48 Cal.3d 236 [assault]; and *In re Otto* (1989) 48 Cal.3d 970 [assault]; see also *In the Matter of Stewart*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 60[battery]; and *In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406 [assault with firearm].) Moreover, Respondent's convictions of child abduction and violation of a protective order reflect her knowing violations of prior court orders and constitute misconduct that clearly reflects on her suitability to practice law, demeans the integrity of the legal profession, reflects and encourages disrespect for both the courts and the law, and constitutes a breach of her responsibility to society. (*In re Rohan* (1978) 21 Cal.3d 195, 201-204; see also *In the Matter of Jensen*, *supra*, 5 Cal. State Bar Ct. Rptr. 283 [child endangerment].)

Both before and during the trial of this matter, Respondent asserted that this court has no jurisdiction to determine whether she should be disciplined as a result of her criminal convictions. As reflected by the many cases cited above, that contention has no merit.

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

Multiple Acts of Misconduct

Respondent has been found culpable of multiple acts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.5

Significant Harm

Respondent's misconduct caused significant harm. (Std. 1.5(f).) At a minimum, her criminal conduct required Dylan's father to incur the cost of paying for Dylan to be returned by air from Chicago to California, and her physical attack of McCarthy was emotionally traumatic.

Lack of Candor

Respondent displayed a lack of candor with this court during this proceeding. Starting with her verified response to the NDC and continuing throughout the trial of the case, she repeatedly represented under oath that she provided an accounting to Momeni on or about December 14, 2014, when the very content of the purported accounting makes explicitly clear that she did not prepare the document until more than a month after that date. Such a lack of honesty with this court is a substantial aggravating factor. (Std. 1.5(l); *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-2); *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-3.)

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

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. (Std. 1.5(k).) She remains defiant and has no insight regarding her unethical behavior. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Respondent's continued insistence that her conduct with her son was justified is "particularly troubling" because it suggests her conduct may recur. (*In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595.) Also troubling is her ongoing failure to refund to her former client the $178.34 she acknowledges is owed to him, notwithstanding his complaint to the State Bar and the filing and trial of the instant disciplinary proceeding.

Mitigating Circumstances

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

No Prior Discipline

Respondent had practiced law in California for approximately 19 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.6(a); *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.)

Emotional Difficulties

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) During the trial, Respondent made passing reference to physical and emotional difficulties she had suffered at or about the time of her acts of misconduct.

The evidence offered by Respondent regarding the emotional difficulties she had in the past did not provide clear and convincing evidence that these problems are a mitigating factor here. There was no expert testimony, or other convincing evidence, showing the required nexus between Respondent's claimed emotional problems and her misconduct. Nor was there sufficient evidence for this court to conclude that any such emotional problems have now been satisfactorily resolved. (Std. 1.6(d).)

DISCUSSION

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

In determining the appropriate level of discipline, this court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be

followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

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.

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.16(b), which provides: "Suspension or reproval is the presumed sanction for final conviction of a misdemeanor not involving moral turpitude but involving other misconduct warranting discipline." Similarly, standard 2.7(c) provides, "Suspension or reproval is the presumed sanction for performance, communication, or withdrawal violations, which are limited in scope or time. The degree of sanction depends on the extent of the misconduct and the degree of harm to the client or clients." Moreover, the degree of discipline ultimately imposed "must, of necessity, correspond to some reasonable degree with the gravity of the misconduct at issue." (*In the Matter of Burns* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406, 414.)

The State Bar recommends that Respondent be suspended for two years, stayed, and be placed on probation for two years, with conditions including one year of actual suspension. In support of that recommendation, it cites to *In re Larkin* (1989) 48 Cal.3d 236.

The Supreme Court's decision in *In re Larkin* involved many factors comparable to those present here. There, the respondent was convicted of misdemeanor assault with a deadly weapon and conspiracy to commit that assault. He had conspired with another, a client, to cause the

boyfriend of his estranged wife to be assaulted. In furtherance of the conspiracy, Larkin provided the co-conspirator with personal information about the boyfriend obtained by respondent through a subpoena duces tecum issued under false pretenses. Carrying out the conspiracy, the co-conspirator/client and another person struck the boyfriend on the chin with a metal flashlight, causing him to bleed. In the disciplinary proceeding resulting from the criminal conviction, compelling mitigating circumstances were found, including lack of prior discipline; good character evidence (including testimony of two superior judges); extensive community, pro bono, bar, and other civic activities (including serving as a pro tem judge); and prior emotional stressors that had then been overcome. Nonetheless, the Supreme Court found that the misconduct was serious, and it ordered discipline of three years' stayed suspension, three years' probation, and actual suspension of one year.

This court agrees with the State Bar's recommendation, which is consistent with the standards, the case law, and the overall circumstances of this case. While Respondent's criminal conviction arguably involves misconduct less serious that the convictions in *Larkin*, any distinction there is highly debatable and certainly not significant. Moreover, there were significantly greater mitigating factors present in *Larkin* than those here, and the misconduct in *Larkin* was limited to the events resulting in the criminal conviction. Here, Respondent is also culpable of misconduct in her dealings with a former client. This is not an insignificant fact. Finally, the respondent in *Larkin* had demonstrated to the satisfaction of that court that "it is unlikely that he would commit such acts in the future." (*Id.* at p. 243, fn. 9.) Given Respondent's ongoing indifference and defiance here, this court has just the opposite concern.

While there are many factors suggesting that the discipline here should actually be greater than that imposed in *Larkin*, this court is also mindful of the number of cases involving criminal assault in which discipline of less than one year of actual suspension has been imposed.

On balance, considering the totality of the circumstances, this court concludes that the discipline recommended by the State Bar is both appropriate and necessary to address the circumstances here.

RECOMMENDED DISCIPLINE

Actual Suspension/Probation

For all of the above reasons, it is recommended that **Sousan Alemansour**, State Bar No. 180216, be suspended from the practice of law for **two years**; that execution of that suspension be stayed; and that Respondent be placed on probation for **two years**, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions her probation.
3. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.
4. Within 30 days after the effective date of discipline, Respondent must correct her official membership address and other information, if she has not already done so, and provide proof to the Office of Probation of her compliance with this requirement. Thereafter, 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 her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

5. Respondent must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her 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 that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

7. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent shall not receive MCLE credit for attending such schools. (Rules Proc. of State Bar, rule 3201.)

8. Within the first 90 days of probation, Respondent must make restitution in the amount of $178.34 plus 10 percent interest per year from December 8, 2014, to Arash Momeni (or reimburse the Client Security Fund to the extent of any payment from the Fund to such

payee in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof of restitution to the State Bar's Office of Probation in Los Angeles.

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

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It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and 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.[5]

[5] Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify on the date the Supreme Court files its order in this proceeding. *(Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Costs

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

Dated: August 22, 2016

DONALD F. MILES
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 August 22, 2016, 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:

SOUSAN ALEMANSOUR
PO BOX 15313
IRVINE, CA 92623

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

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 22, 2016.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court