PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION



**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

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| In the Matter of<br><br>LENORE LUANN ALBERT,<br><br>A Member of the State Bar, No. 210876. | Case Nos. 15-O-11311 (15-O-11708, 15-O-12260)<br><br>OPINION |

A hearing judge found Lenore Luann Albert culpable of failing to cooperate with the State Bar investigation in this case and failing to obey four superior court orders to pay sanctions. At trial, the Office of Chief Trial Counsel of the State Bar (OCTC) urged a one-year stayed suspension, one year of probation, and a minimum 30-day actual suspension, continuing until Albert pays the sanctions. Albert sought a dismissal. The hearing judge recommended discipline including 30 days' actual suspension continuing until Albert pays the sanctions.

Albert requests review, claiming that she did not receive a fair trial due to judicial bias, and that OCTC failed to prove culpability and engaged in prosecutorial misconduct. She asks that we dismiss the case and award her costs and attorney fees. OCTC does not appeal and supports the recommended discipline, but opposes Albert's contentions on review.

After independently reviewing the record under California Rules of Court, rule 9.12, we find that Albert received a fair trial, failed to cooperate with the State Bar, and disobeyed three, not four, sanctions orders. Though we find slightly less culpability, we agree with the recommended discipline given Albert's misconduct, her indifference, and the applicable

disciplinary standard providing that an actual suspension is the minimum presumed sanction for willfully disobeying a court order.[1]

## I. PROCEDURAL BACKGROUND

Albert was admitted to practice law in December 2000, and has no prior record of discipline. She is a consumer advocate attorney and often represents homeowners in residential and/or mortgage litigation cases.

While this matter was pending in the Hearing Department, Albert was engaged in civil litigation against the State Bar, claiming retaliation for exposing its purported practice of prosecuting consumer advocates for revenue. At Albert's request, the hearing judge abated this disciplinary case while the lawsuit was pending. The superior court dismissed Albert's civil case on March 30, 2016. The hearing judge terminated the abatement on June 7, 2016, and scheduled trial for July 6, 7, and 8, 2016.

During a pretrial conference on June 27, 2016, the hearing judge directed Albert to tailor her proposed list of 63 witnesses (character and percipient) in order to manage the court's and the parties' time and resources. Ultimately, the judge permitted Albert to present 12 witnesses.

The trial commenced on July 7, 2016. At the outset of the trial, the hearing judge emphasized that she would admit only relevant evidence addressing the four counts of misconduct in the Notice of Disciplinary Charges (NDC) that related to Albert's alleged failure to cooperate with the State Bar and to obey court orders to pay sanctions. On July 7, OCTC presented two witnesses, whom Albert cross-examined extensively, but a third witness was unavailable that day. Though OCTC had not rested its case, the judge proceeded on July 8 with six of Albert's character witnesses. Since another day of trial became necessary, both parties

[1] At the June 14, 2017, oral argument, Albert was provided with a copy of OCTC's Notice of Errata related to two errors in its responsive brief, filed June 12, 2017. Neither error is substantive or affects our opinion herein.

agreed to July 22, after a discussion of witnesses and their availability. The judge advised that the trial would conclude on that day.

Despite Albert's consent to the new trial date, she filed a motion on July 21 to continue the trial, citing witness unavailability. OCTC opposed the motion, pointing out that the trial dates were noticed well in advance, and Albert kept changing her witness list and failed to explain the purpose of her witnesses. The judge denied Albert's motion as "unreasonable" considering the ample notice Albert had to prepare and make her witnesses available.

On July 22, the judge heard testimony from OCTC's final witness and from Albert's six additional character witnesses. Notably, Albert did not testify. The case was submitted on July 22, and the judge issued her decision on October 19, 2016. Both parties requested review, though OCTC later withdrew its request.

## II. ALBERT'S DUE PROCESS CLAIMS LACK MERIT[2]

As a threshold matter, we consider Albert's claims that she did not receive a fair trial.[3] Albert levies five specific attacks on certain of the hearing judge's procedural rulings, which she claims show the judge was biased against her in favor of OCTC. Albert asserts that these purportedly biased rulings resulted in "a bench crafted hearing," which denied her due process of law.

We reject Albert's due process claims because she has failed to establish that the hearing judge demonstrated bias or went beyond the permitted exercise of "reasonable control" over this

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[2] We have considered and reject as meritless all other claims by Albert not specifically addressed in this opinion.

[3] Albert previously filed a motion in the Hearing Department to disqualify the hearing judge on similar grounds of bias and conflict of interest. The supervising judge of the Hearing Department considered the motion and the judge's response, and denied the motion. Albert did not seek interlocutory review of this order. (Rules Proc. of State Bar, rule 5.46(L) [ruling on motion for disqualification reviewable by petition for review under rule 5.150 within 10 days of service of ruling].) All further references to rules are to the Rules of Procedure unless otherwise noted.

disciplinary proceeding. (*Jones v. State Bar* (1989) 49 Cal.3d 273, 287; *In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279, 295.) More specifically, as analyzed below, Albert failed to establish that the hearing judge abused her discretion, committed an error of law, or caused prejudice to Albert. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard applies to procedural rulings]; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [party must establish actual prejudice when asserting violation of due process].)

First, the hearing judge did not err when she denied Albert's late-filed motion to continue the last day of the trial. Trial continuances will be granted only upon an affirmative showing of good cause and are generally disfavored in disciplinary proceedings. (*Jones v. State Bar*, *supra*, 49 Cal.3d at p. 287; State Bar Ct. Rules of Prac., rule 1131(a), (c).) Albert did not show good cause; she had notice of all trial dates, agreed in advance to the final trial date, and, except as to one witness, failed to present evidence of an emergency or other event that could not have been anticipated or avoided with due diligence. (See State Bar Ct. Rules of Prac., rule 1131(c) [identifying required showing and factors to be considered for grant of continuance].)

Second, the hearing judge did not err in allowing Albert to present only 12 witnesses. Beginning at the pretrial conference, the judge reasonably directed Albert to reduce her witness list to include 10 character witnesses and other necessary percipient witnesses. (See rule 5.104(F) [judge has discretion to exclude evidence if "its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time"]; see also Evid. Code, § 352.) Albert never clearly complied with this order but was nonetheless permitted to present 12 character witnesses. On review, she failed to articulate how she suffered prejudice because other witnesses did not testify, and we note that she did not testify in her own defense.

Third, the hearing judge did not err in sustaining multiple relevancy objections to Albert's proffered evidence. We find that the judge's rulings—made after several admonishments—properly limited irrelevant evidence.

Fourth, the hearing judge did not err by accepting testimony from Albert's character witnesses before OCTC rested its case. Albert complains this prevented her from proving, for mitigation purposes, that her character witnesses were aware of the full extent of her misconduct. (Std. 1.6(f) [mitigation for extraordinary good character testimony by witnesses who are aware of full extent of misconduct].) Rule 1250 of the State Bar Court Rules of Practice permits a hearing judge to order the presentation of mitigation evidence before the culpability phase has concluded. Given the unavailability of OCTC's final witness on July 8, the judge's decision to hear mitigation evidence on that day was appropriate to maintain the orderly progression of the trial. (See Evid. Code, § 320 ["Except as otherwise provided by law, the court in its discretion shall regulate the order of proof"]); *Gherman v. Colburn* (1977) 72 Cal.App.3d 544, 584 ["It is elemental that the trial court has power to control the order of proof and its rulings will not be disturbed on appeal unless there is an abuse of discretion"].)

Finally, the hearing judge did not err by requesting that Albert withdraw her exhibits that had not been admitted. After a short colloquy between the judge and Albert, the judge asked Albert to withdraw "those exhibits that [had] not already been either admitted or been denied with regard to admission." Albert agreed, and we find that the judge properly maintained the exhibits that were either admitted or denied admission.

## III. FACTS[4] AND CULPABILITY

In the NDC, OCTC alleges that Albert: (1) failed to cooperate with a State Bar investigation in 2015 (State Bar Court Case No. 15-O-11311); (2) disobeyed three superior court

[4] The facts are based on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rule 5.155(A).)

orders to pay sanctions of $2,675.50, $1,242.50, and $1,820 in 2012 (State Bar Court Case No. 15-O-11708); (3) disobeyed a superior court order to pay sanctions of $3,015 in a separate civil case in 2013 (State Bar Court Case No. 15-O-11708); and (4) disobeyed a superior court order to pay sanctions of $1,500 in a separate civil case in 2013 (State Bar Court Case No. 15-O-12260). The hearing judge found culpability on Counts One, Two, and Four. We find Albert culpable of Counts One and Two only.

## A. Albert Failed to Cooperate with State Bar (Count One) [Business and Professions Code Section 6068, Subdivision (i)][5]

### 1. Factual Background

In early 2015, Tim and Jodi Sisson filed a State Bar complaint against Albert. On July 7, 2015, an OCTC investigator, Caitlin Elen-Morin, sent a letter to Albert's membership record mail and email addresses. The letter directed Albert to provide written responses and supporting documentation to 17 questions related to the Sissons' complaint. The letter informed Albert that her response was due by July 21, 2015, but that she could request additional response time if needed. Albert received the letter, but neither responded by July 21 nor asked for more time. Elen-Morin followed up with Albert by leaving phone messages on July 27 and August 4, and sending an email reminder on July 29. Still, Albert did not respond.

At trial, Elen-Morin testified that beginning in late July 2015, Albert sent a flurry of emails to various State Bar employees and others outside the State Bar. For example, Albert sent an email on August 11, 2015, to Mark Hartman, a State Bar employee, asking him to forward the "complaint that you want to address with your questions in writing." Albert did not reference the Sissons' matter by name; instead, she attached a so-called "anti-retaliation" email that she had

[5] Section 6068, subdivision (i), provides that it is the duty of an attorney "[t]o cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against [the attorney]." All further references to sections are to the Business and Professions Code.

sent to several State Bar employees and members of the Board of Trustees of the State Bar (Board of Trustees) in 2014, which she declared to Hartman "remains in force."[6] Elen-Morin explained that she reviewed the emails she learned of and found that none responded to her July 7 inquiry letter regarding the Sissons' complaint.

On November 9, 2015, Albert sent an email to Elen-Morin (and numerous others including the Office of General Counsel of the State Bar and members of the Board of Trustees). Albert wrote that she had reread Elen-Morin's initial July 7 inquiry letter, which she said was "filled with lies" and would require "an extension to the eternity of time to answer this." While she acknowledged her response was coming "a few months after your letter," she accused Elen-Morin of ignoring emails Albert claimed she sent in July in response to the July 7 inquiry letter. Elen-Morin testified that she received no such emails. Albert also attached a 2014 letter to Sissons' counsel, which noted that Albert was "duped by Jodi Sisson," and warned that "[i]f you are not careful, you will be, too." Elen-Morin testified that she reviewed the email and attachments and concluded they did not substantively respond to her July 7 inquiry letter and, overall, only partially responded to one of the 17 questions Elen-Morin had posed in the Sissons' matter.

**2. Culpability**

The hearing judge found that Albert failed to cooperate with OCTC's investigation, in violation of section 6068, subdivision (i). We agree. Albert received the July 7 inquiry letter and reminders. Rather than respond substantively, she merely sent emails that accused OCTC of

[6] In this August 24, 2014, email, Albert complains about the State Bar's requests that she respond to complaints made against her. She demanded that "only legitimate complaints" be forwarded to her, and accused the State Bar of abusing its power by employing a "fishing expedition to try to conjure up a complaint" against her. She stated, "There will be no further response from me to your letters or phone calls for more information. I find your actions to be retaliatory." Albert copied this letter to the "California Supreme Court, [the] California Attorney General's Office, [and] the FBI."

wrongdoing. Albert's argument that she had insufficient time to respond fails as she never requested an extension of time.

As for her contention that her later participation in these proceedings is a defense to her culpability, she is incorrect. An attorney who fails to respond to investigatory inquiries, without more, violates the statute. (See, e.g., *Bach v. State Bar* (1991) 52 Cal.3d 1201, 1208 [failure to respond to two successive investigators' letters violated § 6068, subd. (i), even when attorney later participated in disciplinary proceeding].)

Finally, Albert maintains that OCTC is prosecuting her to prevent her from helping financially troubled homeowners. She also alleges that during these proceedings, OCTC engaged in "Rambo style litigation and anarchy" by prosecuting void court orders in an effort to shut down her law practice. In particular, she contends that the OCTC prosecutor engaged in "foul behavior" by attempting to mislead, confuse, and deceive the court; by adding Count One (failure to cooperate) to increase aggravation; and by encouraging a witness to lie in court. We reject Albert's contentions as wholly unsupported by the record.

**B. Albert Failed to Pay Court-Ordered Sanctions (Count Two) [Section 6103][7]**

**1. The Sanctions Orders**

On May 14, 2012, 10675 S. Orange Park Boulevard, LLC, Inc., et al. (collectively, OPB) filed a complaint for an unlawful detainer against Norman and Helen Koshak.[8] Albert became the Koshaks' attorney of record by July 30, 2012. In August 2012, OPB's attorney, Jennifer Needs, filed three motions to compel discovery and for sanctions against Helen Koshak and "her counsel-of-record." The first motion requested $2,672.50 in sanctions, was filed on August 23,

[7] Section 6103 provides that: "A willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

[8] Orange County Superior Court Case No. 30-2012-00568954-CL-UD-CJC.

2012, and was served by overnight mail on Albert on August 22, 2012. The second and third motions requested sanctions of $1,820 and $1,242.50, respectively, were filed on August 24, and were personally served on Albert the same day.

On August 31, 2012, a superior court commissioner held a hearing on the motions. Needs appeared for OPB and Albert appeared for the Koshaks. The commissioner granted the motions and signed three orders prepared by Needs that corresponded to the minute order. The three orders directed that "defendant and her counsel-of-record, Lenore Albert . . . jointly and severally" pay sanctions of $2,675.50,[9] $1,242.50, and $1,820 to OPB within 30 days. On August 31, 2012, Needs served notices of entry of judgment and copies of the final orders on Albert by facsimile and by email, which Albert received. The record fails to establish that Albert successfully appealed the orders or received a stay of execution. Needs testified at trial that the sanctions have not been paid.

**2. Culpability**

We affirm the hearing judge's finding that Albert willfully disobeyed the superior court's August 31, 2012, orders by failing to pay the sanctions of $2,675.50, $1,242.50, and $1,820, in violation of section 6103. To establish a willful violation of this section, an attorney must know the orders were final and binding. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787 [attorney's knowledge of final, binding order is essential element of § 6103 violation].) Albert knew the sanctions orders were final and binding because she received notice of the motions, attended the hearing, was served with the notices of entry of judgment for her joint and several liability for all three orders, and did not successfully appeal them or receive a stay.

[9] Though the sanctions motion requested $2,672.50, the superior court ordered, and the NDC charged, that the sanctions due were $2,675.50.

Albert makes several arguments as to why she is not culpable, but each is unavailing. First, she contends that OCTC must prove a separate violation of an attorney's oath and duties in addition to a violation of a court order for her to be culpable under section 6103. Contrary to her contention, however, an attorney's willful violation of a court order, without more, constitutes a violation of section 6103. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 575, citing *Read v. State Bar* (1991) 53 Cal.3d 394, 406 [except for violation of court order, § 6103 does not define duty or obligation of attorney for discipline purposes; Supreme Court concluded petitioner could not violate § 6103 unless she violated court order].)

Further, Albert claims that the sanctions orders were void because the commissioner who ordered them was later disqualified. She also accuses the OCTC prosecutor of removing such disqualification order from its trial exhibits. But Albert provided no evidence to support her claims, did not herself provide a copy of any disqualification order at trial, and failed to augment the record on review with such document before oral argument.[10] We have no reason now to go behind the final and binding superior court sanctions orders. (*In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 605].) Further, Albert may not disregard these orders simply because, as she claims, she honestly believes they were issued in error. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 952 ["no plausible belief in the right to ignore final, unchallengeable orders one personally considers invalid"]; *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar. Ct. Rptr. 1, 9, fn. 3 ["Respondent's belief as to the validity of the order is irrelevant to the section 6103 charge"]; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 403 ["In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the

[10] We reject Albert's improper and late request at oral argument that she be permitted to augment the record. (Rule 5.156 [setting out proper procedure for augmenting the record].)

order cannot be obeyed"].) Albert had ample opportunity to challenge the validity of the orders in the courts of record and failed to successfully do so.

Next, Albert argues that the Koshaks' bankruptcy petition extinguished her obligation to pay sanctions. However, the bankruptcy petition in evidence did not prove that the sanctions orders against the Koshaks were discharged. Even if they had been, Albert was "jointly and severally" liable to pay all the sanctions under each of the three orders, regardless of events in the Koshaks' bankruptcy. (See *Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 130 [two persons subject to order share burden of payment equally between themselves].)

Finally, though Albert did not testify, she suggests in her briefs on review that she was financially unable to pay the sanctions, and therefore cannot be culpable of willfully violating court orders. Financial inability, however, is not a defense to nonpayment of sanctions where, as here, Albert knew about the orders and failed to successfully challenge them. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [attorney with financial hardship culpable for failing to pay court-ordered sanctions where attorney did not seek relief from order in civil courts based on inability to pay]; *Durbin v. State Bar* (1979) 23 Cal.3d 461, 467 [willfulness does not require intent to violate law, injure another, or acquire advantage; only general purpose or willingness to commit act or permit omission is necessary].)[11]

### C. We Dismiss Counts Three and Four—Albert Not Culpable of Disobeying Sanctions Orders in Violation of Section 6103 in Other Civil Actions

OCTC also charged Albert with the failure to pay sanctions in two other, unrelated civil matters. The hearing judge dismissed Count Three (nonpayment of $3,015 in sanctions, ordered on January 18, 2013) for lack of evidence. OCTC does not challenge this dismissal, and we

[11] Albert's reliance on *Canatella v. Stovitz* (N.D.Cal. 2005) 365 F.Supp.2d 1064, 1074 to claim lack of culpability is misplaced. *Canatella* rejected constitutional challenges of overbreadth and vagueness to section 6103. As noted, Albert never challenged the validity, much less the constitutionality, of the sanctions orders at issue.

affirm, as OCTC did not prove Albert was given notice, Albert was not present at the related hearing, and the court's order did not have a proof of service attached.

The hearing judge found Albert culpable of Count Four (nonpayment of $1,500 in sanctions ordered on January 23, 2013). We reverse that finding and dismiss the charge—again for evidentiary reasons. The only evidence in the record that Albert was served with the sanctions order is the January 23, 2013, minute order that states "Court orders Clerk to give notice." But no proof of service of such order was submitted at trial and no testimony established that the notice was sent to Albert. Under these circumstances, we disagree with the hearing judge that the *presumption* under Evidence Code section 664 that a superior court clerk properly performed his or her official duty establishes by clear and convincing evidence that Albert received adequate notice of the January 23 sanctions order. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552 [clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command unhesitating assent of every reasonable mind]; *In the Matter of Maloney and Virsik*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 787 [clear and convincing evidence required to prove attorney knew of final, enforceable order where charged with violation of § 6103].)

## IV. AGGRAVATION OUTWEIGHS MITIGATION

Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct[12] requires OCTC to establish aggravating circumstances by clear and convincing evidence. Under standard 1.6, Albert has the same burden to prove mitigation.

[12] All further references to standards are to this source.

## A. Aggravation

### 1. Multiple Acts

The hearing judge found that Albert's multiple acts of misconduct are an aggravating factor, but assigned no weight to this factor. (Std. 1.5(b).) We agree and assign moderate aggravating weight because Albert failed to cooperate and violated three court orders, thereby committing different acts of misconduct at different times. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered multiple acts].)

### 2. Indifference

We adopt the hearing judge's finding that Albert acted with indifference, warranting significant aggravating weight. (Std. 1.5(k) [indifference toward rectification or atonement for consequences of misconduct constitutes aggravating circumstance]; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511 [while the law does not require false penitence, it does require that an attorney accept responsibility for his or her misconduct and come to grips with his or her culpability].)

Albert's argument that the hearing judge confused indifference with "standing one's ground" is not persuasive. The judge's indifference finding, like ours, is based on relevant facts that establish Albert's refusal to acknowledge or accept any responsibility for her misconduct. To this point, Albert's misconduct is ongoing as she still owes sanctions nearly five years overdue. Of equal concern is the fact that she blames everyone but herself for her misconduct. By her estimation, OCTC is abusing its power since it never had any legitimate reason "to drag [her] through a State Bar disciplinary proceeding"; the OCTC investigator failed to do more follow-up when Albert did not respond to the July 7 inquiry letter; her former client, Jodi Sisson, lies to attorneys and "dup[ed]" her; and opposing counsel should have requested that she pay the

sanctions. (*Gadda v. State Bar* (1990) 50 Cal.3d 344, 356 [lack of insight shown by attempts to blame others for misconduct]; *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1, 14 [attorney who fails to accept responsibility for actions and instead seeks to shift responsibility to others demonstrates indifference and lack of remorse].)

## B. Mitigation

### 1. No Prior Record of Discipline

Mitigation is available where no prior record of discipline exists over many years of practice coupled with present misconduct that is not likely to recur. (Std. 1.6(a).) We agree with the hearing judge that Albert is entitled to moderate mitigation for her nearly 12 years of discipline-free practice before she committed misconduct. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant weight for more than 10 years of practice].) The judge correctly noted that "the mitigation is undercut by Respondent's indifference, making future misconduct more likely to recur." (*Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [where misconduct is serious, long-term discipline-free practice is most relevant where misconduct is aberrational].)

### 2. Good Character

Albert is entitled to mitigation if she establishes extraordinary good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of her misconduct. (Std. 1.6(f).) The hearing judge assigned only moderate, and not significant, mitigating credit for Albert's good character evidence. We agree, as analyzed below.

Albert presented 12 witnesses from the community who attested to her good character. Those witnesses included licensed real estate agents, a mortgage banker/broker, business owners, a worker at her family's company, a civil engineer, a vice-president at a title insurance company, clients, and an attorney. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [serious consideration given to attorneys' testimony due to their "strong interest in

maintaining the honest administration of justice"].) The witnesses convincingly described Albert as compassionate, honest, upright, fair, competent, engaged and respected in the community, someone who "fights for the little guy," and a zealous advocate. One witness viewed her as the "Erin Brockovich of homeowners" because of her expertise in representing homeowners during the mortgage crisis. Another described her as an "attorney par excellence."

Overall, we find that the quality of these endorsements is impressive and persuasive. Yet the hearing judge diminished the mitigating weight of this evidence because the witnesses did not represent a wide range of references in the legal and general communities *and* because several witnesses were not aware of the full extent of the misconduct. We diminish the weight of this mitigation solely because most witnesses were unaware of the extent of Albert's misconduct, which is required by the standard. In particular, we note that many witnesses knew nothing about the disciplinary charges, and others either misunderstood them or thought they were meritless. (*In re Aquino* (1989) 49 Cal.3d 1122, 1130-1131 [seven witnesses and 20 letters of support not significant mitigation because witnesses did not know details of misconduct].)

## V. 30-DAY ACTUAL SUSPENSION IS APPROPRIATE DISCIPLINE

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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

The hearing judge recommended discipline including a 30-day actual suspension. Albert contends that even if culpable, the recommended discipline is "too harsh" as she did not harm the public. OCTC sought a 30-day actual suspension at trial, which it reaffirmed at oral argument.

In making her discipline recommendation, the hearing judge properly relied on standard 2.12(a), which directly addresses disobedience of a court order.[13] But the case law relied upon by the hearing judge, *In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. 592 (private reproval for violating superior court order) and *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. 862 (private reproval with conditions for violation of superior court order to pay sanctions), does not provide guidance for two reasons. First, these cases were based on former standard 2.6, which allowed for a stayed suspension for violating a court order, while current standard 2.12(a) calls for an *actual* suspension at a minimum. Second, these cases are distinguishable from Albert's matter. *In the Matter of Respondent X* involved violation of one court order with no factors in aggravation and several in mitigation, while *In the Matter of Respondent Y* involved a violation of one court order to pay sanctions of $1,000. In contrast, Albert violated three court orders totaling $5,738, and OCTC established several aggravating factors, including Albert's indifference to her misconduct.

We find that a 30-day actual suspension in this case is not too harsh as it is at the low end of the range for actual suspensions. (Std. 1.2(c)(1) [actual suspension generally for 30 days, 60 days, 90 days, six months, one year, 18 months, two years, or three years]).[14] Importantly, the Supreme Court has emphasized that violations of court orders are serious misconduct (*Barnum v.*

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[13] Standard 2.12(b) also applies and calls for a reproval for the failure to cooperate. We follow standard 2.12(a) because it calls for more severe discipline—disbarment or *actual* suspension. (Std. 1.7(a) [when multiple sanctions apply, the most severe shall be imposed].) Section 6103 itself requires a suspension (violations of court orders "constitute causes for disbarment or suspension").

[14] Contrary to OCTC's assertion in its responsive brief, we do not treat each violation of a court order as worthy of a separate 30-day suspension.

*State Bar* (1990) 52 Cal.3d 104, 112 ["Other than outright deceit, it is difficult to imagine conduct in the course of legal representation more unbefitting an attorney"]), and Albert has yet to accept she has committed the present misconduct. At the same time, she practiced law without discipline for 12 years before committing this misconduct and is entitled to mitigation for her good character attested to by a dozen witnesses.

On balance, we conclude that the hearing judge's recommended discipline, including that the suspension continue until the sanctions are paid in full, is appropriate and necessary to protect the public and the courts and to maintain high professional standards. Requiring Albert to pay restitution (the sanctions) as a condition of probation is rehabilitative because it forces the attorney to "confront, in concrete terms, the harm [her] actions have caused." (*Brookman v. State Bar* (1988) 46 Cal.3d 1004, 1009, citing *Kelly v. Robinson* (1986) 479 U.S. 36, 49, fn. 10; *In the Matter of Respondent Y*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 869 [disciplinary condition requiring attorney to pay sanctions reinforces obligation under § 6103 to obey court order].) Finally, the one-year probation period with conditions should emphasize to Albert the importance of strictly following court orders. (See *In the Matter of Boyne*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 403 ["Obedience to court orders is intrinsic to the respect attorneys and their clients must accord the judicial system"].)

## VI. RECOMMENDATION

For the foregoing reasons, we recommend that Lenore Luann Albert be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first 30 days of her probation and remain suspended until the following conditions are satisfied:

    a. She pays the following sanctions (or reimburses the Client Security Fund, to the extent of any payment from the Fund to the payees, in accordance with

section 6140.5), and furnishes proof to the State Bar Office of Probation in Los Angeles:

> The $2,675.50, $1,242.50, and $1,820 sanctions awards issued on August 31, 2012, by the Superior Court of Orange County in case number 30-2012-00568954-CL-UD-CJC, plus 10 percent interest per year from August 31, 2012; and

b. If she remains suspended for two years or more as a result of not satisfying the preceding requirements, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to 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.

4. Within 30 days after the effective date of discipline, she 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.

5. She 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, 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, she 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, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the tests given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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 Albert has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

## VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Lenore Luann Albert be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

## VIII. RULE 9.20

If Lenore Luann Albert remains suspended for 90 days or more, we further recommend that she 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 120 and 130 days, respectively, after the effective date of the Supreme Court order in this proceeding.

## IX. COSTS

We further recommend that costs be awarded to the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, P. J.

WE CONCUR:

HONN, J.

STOVITZ, J.*

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* Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.