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STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. 16-O-12958-YDR (16-O-10548)
	)	
LENORE LUANN ALBERT,	)	DECISION
	)	
A Member of the State Bar, No. 210876.	)	
	)	

Introduction[1]

In this contested disciplinary proceeding, Lenore LuAnn Albert (Respondent) is charged with eight counts of misconduct in two client matters. The charged acts of misconduct include: (1) failing to perform with competence; (2) failing to render an accounting of client funds; (3) failing to refund unearned fees ($20,000); (4) failing to cooperate in a disciplinary investigation; (5) failing to release client file; (6) seeking to mislead a judge; (7) committing an act of moral turpitude by making a misrepresentation to the State Bar; and (8) failing to obey a court order.

This court finds, by clear and convincing evidence, that Respondent is culpable of six of the charged counts of misconduct. In view of Respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that Respondent be suspended for one year, execution of that suspension is stayed, be placed on probation for two years, and be actually suspended for the first six months of probation and until she makes restitution.

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[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct that were operative until October 31, 2018. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

1. First Notice of Disciplinary Charges (Case No. 16-O-10548)

On September 9, 2016, the Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case No. 16-O-10548. On October 27, 2016, Respondent filed an answer.

On December 8, 2016, the court issued an order granting OCTC's motion to strike Respondent's answer. Respondent then filed a first amended answer on December 19, 2016.

2. Second Notice of Disciplinary Charges (Case No. 16-O-12958)

On March 6, 2017, a second NDC was filed in case No. 16-O-12958. On April 26, 2017, Respondent filed an answer.

Subsequently, OCTC filed a First Amended NDC on May 14, 2018. Respondent responded to the First Amended NDC on August 9, 2018.

A three-day trial was held September 19-21, 2018. The OCTC was represented by Deputy Trial Counsel Timothy G. Byer. Respondent represented herself. The court took this matter under submission on October 12, 2018. OCTC filed its closing argument brief on October 12, 2018, and Respondent belatedly filed hers on October 19, 2018.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 5, 2000, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the documentary and testimonial evidence admitted at trial.

Case No. 16-O-12958 – The Schwartz-Woods Matter

Facts

During September 2014, Dr. Nira Schwartz-Woods asked Respondent to represent her in connection with a patent litigation matter involving a patent Dr. Woods and her son, Nehemiah, co-invented for a device that would prevent a driver from making phone calls and texting while driving above a threshold speed.[2] Respondent informed Dr. Woods that Dr. Woods needed an attorney with patent litigation expertise and that Respondent would "work with" the patent litigator retained by Dr. Woods. Dr. Woods believed that she needed about $2 million to fund the patent litigation against major smartphone manufacturers, AT&T and other smartphone distributors and/or major carriers she believed to have in some way infringed her patent.

Respondent asked Dr. Woods to pay $20,000 as a retainer fee. Dr. Woods paid Respondent the $20,000 fee by check dated October 17, 2014. There was no valid, written fee agreement signed by both parties.[3]

Dr. Woods began to communicate with various patent litigation attorneys in an effort to identify an attorney who would represent her in the patent infringement litigation she wanted to pursue. Initially, Dr. Woods communicated with Robert Klinck, Esq., who Woods considered to be "a smart guy, knowledgeable about patents." Dr. Woods informed attorney Klinck that Respondent would "negotiate a retainer agreement on behalf of Woods and her co-inventor son, Dr. Nehemia Schwartz." Dr. Woods understood that to mean that Respondent's role would place Respondent in the position of lead counsel on the patent litigation.

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[2] Previously, in 2013, Dr. Nira Schwartz-Woods had retained Respondent to represent her in a wrongful death lawsuit. After obtaining a favorable outcome, Dr. Woods asked Respondent to represent her in the patent infringement dispute.

[3] Dr. Woods contended that she never received Respondent's October 6, 2014 purported retainer agreement letter. And she did not sign such an agreement.

On October 22, 2014, attorney Klinck forwarded Dr. Woods a draft retainer agreement. On October 23rd, Klinck emailed Respondent in an effort to schedule a meeting with her. Respondent replied on October 23, 2014, that she was unavailable to meet with Klinck. Pursuant to Respondent's instructions, her assistant emailed Klinck to advise him that Respondent would be unavailable to communicate with Klinck during the entire month of November and early December 2014. By November 2014, Klinck informed Dr. Woods that he would not go forward with the patent infringement litigation because it would be too difficult to communicate with Respondent.

In her effort to obtain litigation financing, Dr. Woods communicated with Peter Doumani, a member of a company that funds large litigation matters. However, Respondent did not respond to Dr. Woods' efforts to connect Respondent with Doumani. Similarly, Dr. Woods communicated with and sought to involve at least three to four other patent attorneys or law firms[4] but Respondent failed to communicate with any of them.

By the end of March 2015, Dr. Woods had grown frustrated with Respondent's lack of involvement in the patent infringement litigation and her failure to communicate with the patent infringement litigators proposed by Dr. Woods. On April 1, 2016, Dr. Woods emailed Respondent and asked Respondent to return the $20,000 fee she paid Respondent since Respondent did not intend to represent Dr. Woods in the patent infringement matter.

On April 5, 2016, Dr. Woods reiterated her decision to terminate Respondent's representation in the patent infringement matter and again requested return of the $20,000 fee Dr. Woods paid Respondent. On the same day, Respondent countered by stating that she had spent months researching various issues, she gave Woods advice on venue and she had spent multiple

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[4] Dr. Woods contacted patent attorneys, including Dax Anderson, David Johnson, and Jean-Marc Zimmerman.

hours consulting with attorneys at Dr. Woods' request. In large measure, this statement was incorrect as Respondent failed to communicate to Dr. Woods the results of any research she performed on the patent infringement matter and, Respondent's consultations with the patent infringement litigation attorneys Dr. Woods directed to Respondent were virtually non-existent.

Respondent did not return any of the $20,000 fee paid by Dr. Woods.

After Dr. Woods submitted a complaint to the State Bar, the State Bar forwarded a letter, dated June 3, 2016, to Respondent's membership records address. The June 3, 2016 letter sought a response from Respondent addressing information and supporting documentation regarding Respondent's view of Dr. Woods' allegations. Respondent forwarded sarcastic emails in response but did not address the substance of Dr. Woods' allegations regarding the patent infringement litigation.

More than a year after the termination of Respondent's employment, Dr. Woods sent Respondent an email on July 1, 2017, requesting the return of her case documents. Respondent has not, to date, released the client file to Dr. Woods.

Conclusions of Law

Count One – Rule 3-110(A) [Failure to Perform Legal Services with Competence]

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent argued that she performed services for Dr. Woods, claiming that she had spent months researching various issues, she gave Dr. Woods advice on venue and she had spent multiple hours consulting with attorneys at Dr. Woods' request.

The court does not find Respondent's claim credible. Dr. Woods specifically hired Respondent to represent her in a patent litigation matter. Yet, Respondent failed to communicate to Dr. Woods the results of any research she performed on the patent infringement matter and,

Respondent's consultations with the patent infringement litigation attorneys Dr. Woods directed to Respondent were virtually non-existent. Diligence includes best efforts to accomplish with reasonable speed the purpose for which the attorney was employed. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931.) Respondent failed to apply due diligence in her performance of any tasks she was retained to perform.

Therefore, Respondent failed to take any steps to advance the patent infringement litigation she was hired to coordinate. The OCTC established by clear and convincing evidence that Respondent neither acted as a liaison nor consulted with the patent infringement litigators in a manner that would advance the litigation on behalf of her clients. As such, by failing to perform services with competence on behalf of Dr. Woods, Respondent willfully violated rule 3-110(A). (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action to accomplish the purpose for which the client retained him].)

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

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

Respondent contended that she did not have to provide an accounting of the $20,000 advance fees since her retention was pursuant to a "true retainer."

"A retainer is a sum of money paid by a client to secure an attorney's availability over a given period of time. Thus, such a fee is earned by the attorney when paid since the attorney is entitled to the money regardless of whether [she] actually performs any services for the client." (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4.)

In this case, there is no evidence that Respondent devoted certain blocks of time to Dr. Woods' matter or that she turned away other business in order to proceed with her litigation

matter. Thus, Respondent was not excused from accounting for the $20,000 advanced fee on the ground that it was a retainer earned on receipt. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) Respondent was obligated to keep adequate records of her fees.

Therefore, by failing to provide Dr. Woods with an accounting or billing statement, Respondent failed to render an appropriate accounting to a client regarding all funds coming into her possession, in willful violation of rule 4-100(B)(3).

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

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent contended that the advance fee was actually a "retainer fee" and thus, it was earned on receipt.

On the contrary, as discussed in count two, there is no indication that the advance fee was a true retainer. There is no evidence that the fee was paid solely for the purpose of ensuring the Respondent's availability for the patent litigation matter. Notwithstanding Respondent's characterization of the fees, Respondent did not perform any services of value on behalf of Dr. Woods, did not earn any portion of the fees, and thus, had an obligation to return the unearned amount. Dr. Woods was entitled to a refund of the entire fee since she received nothing of value from Respondent. (*In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263, 268 [attorney not entitled to retain advance fee where her work was incomplete and never provided any work product or advice to the clients].)

Therefore, Respondent willfully violated rule 3-700(D)(2) when, upon termination of her employment on April 1, 2016, she failed to refund to Dr. Woods the unearned fee of $20,000.

Count Four – § 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

Respondent failed to give a substantive response to the allegations of misconduct contained in the State Bar's letter dated June 3, 2016. Instead, after she received the letter, Respondent sent acerbic emails that did not address the information sought regarding Dr. Woods' complaint.

By failing to forward a substantive response to the State Bar's June 3, 2016 letter, Respondent was culpable for the willful violation of section 6068, subdivision (i).

Count Five – Rule 3-700(D)(1) [Failure to Return Client Papers/Property]

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

A client's file, absent uncommunicated attorney work product, is the property of the client and must be surrendered to the client promptly upon request once the representation has been terminated. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 655.)

Here, Dr. Woods terminated Respondent's employment on April 1, 2016, and requested her file on July 1, 2017. Dr. Woods has yet to receive her file materials.

Therefore, Respondent willfully violated rule 3-700(D)(1) by failing to promptly release to Dr. Woods, upon the client's request and the termination of Respondent's employment, the client's property and papers.

Count Six – § 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

The OCTC alleged that Respondent violated section 6068, subdivision (d), by seeking to mislead this court when she attached a purported retainer agreement to her motion to quash subpoena on November 4, 2016. The OCTC contended that Respondent falsely declared under the penalty of perjury that the agreement was a "true and correct copy of [her] retainer with Nira Woods for $20,000.00," which she knew to be a false document at the time she made the declaration and provided it to the State Bar Court.

There is no clear and convincing evidence that the document attached to Respondent's declaration to the motion to quash was not Respondent's retainer agreement letter. Respondent in good faith believed that it was a valid agreement and thought that she forwarded the letter to Dr. Woods. While Dr. Woods did not receive or sign such an agreement, it does not mean that Respondent intentionally misled the court by creating a false document. Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.)

Therefore, there is no clear and convincing evidence that Respondent sought to mislead the court in willful violation of section 6068, subdivision (d).

Count Seven – § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

Similarly, as discussed in count six, there is no clear and convincing evidence that Respondent made a misrepresentation to the court by attaching the retainer agreement letter and

declaring it as a "true and correct copy of [her] retainer with Nira Woods for $20,000.00," in willful violation of section 6106. Respondent did not knowingly create a false document to mislead the court.

Case No. 16-O-10548 – The Fin City Foods Matter

Facts

Respondent represented plaintiffs in the matter of *Bonnie L. Kent and Teri Sue Kent Love in their capacity as Joint Trustees of the James Kyle Kent, Jr. "Spousal Trust" et al. v. Fin City Foods, Inc., et al.*, Orange County Superior Court, case number 30-2014-00713792-CU-MC-CJC (*Fin City Foods* matter). A discovery dispute developed, and by order dated February 10, 2015, the *Fin City Foods* court ordered Respondent to pay $875 in sanctions. Specifically, the court ordered that "[t]he sanctions are imposed upon counsel for Plaintiffs, Ms. Lenore Albert, and are to be paid to defendant Fin City Foods, through its counsel of record, Mr. Lucas, within thirty days after service of notice of this ruling." The notice of ruling was filed on February 18, 2015.

By letters dated March 20, 2015, and September 30, 2015, counsel for Fin City Foods informed Respondent that he had not yet received the sanctions payment and demanded that Respondent comply with the court order.

Respondent did not respond until March 16, 2016, almost a year after the sanctions were ordered and then, Respondent's emailed response was sent to a State Bar investigator after Respondent had become the subject of an investigation. Respondent informed the State Bar investigator that Respondent was forwarding eight "extortion" and "blackmail" checks for varied amounts which totaled $828.[5]

[5] The checks were made payable to Devin Lucas in eight different amounts: $99, $10, $1, $7, $414, $99, $99, and $99.

The same day that Respondent emailed her comments to Fin City Foods' counsel, Devin Lucas, Lucas sent an email to Respondent which reminded her that the sanctions should be made payable to his client, that the total amount of the sanctions ordered was $875, not $828, and that a balance of $47 remained due to his client. Respondent subsequently overpaid Fin City Foods when she forwarded a ninth check in the amount of $75. Lucas sent Respondent a reimbursement check in the amount of what he considered to be a $75 payment.

On March 18, 2016, Lucas requested that Respondent pay the $47 balance due to Fin City Foods. To date, Respondent has failed to pay the balance due on the sanctions order.

Count Eight – § 6103 [Failure to Obey a Court Order]

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.

The OCTC charged Respondent with willfully violating section 6103 by failing to timely pay the $875 in sanctions arising from the Fin City Foods discovery dispute within 30 days of the notice of ruling, filed February 18, 2015. Respondent was aware of the sanctions order, yet she failed to timely pay any of the sanctions or seek relief from payment until almost a year after its due date. (See *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868 [despite financial hardship, attorney culpable for misconduct for failure to pay court-ordered sanctions when attorney fails to seek relief from order.) Instead, Respondent paid $828 on March 16, 2016, in eight separate checks. She still owes $47.

Therefore, by failing to timely pay the full amount of the $875 sanctions in compliance with the February 10, 2015 court order in the Fin City Foods matter, Respondent willfully violated section 6103.

Aggravation[6]

The State Bar bears the burden of proving mitigating 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).)

On December 13, 2017, the California Supreme Court ordered that Respondent be suspended from the practice of law for one year, stayed, placed on probation for one year, and was actually suspended for 30 days; and she will remain suspended until she pays court ordered sanctions. Her misconduct included failing to obey three court sanctions orders issued on August 31, 2012, and failing to cooperate with the State Bar investigation in July 2015. Moderate mitigation included no prior record of discipline and good character. Aggravation included multiple acts of misconduct and indifference toward rectification. The review department found that Respondent's indifference warranted significant weight, based on her refusal to acknowledge or accept any responsibility for her misconduct. In its opinion, the court wrote: "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." (State Bar Court case Nos. 15-O-11311 et al.; Supreme Court case No. S243927.)[7]

Respondent's prior record of discipline is given less weight since it was imposed after commencement of the current disciplinary proceeding. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

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

[7] The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case. (State Bar exhibit 64 on Respondent's prior record of discipline was incomplete in that the review department opinion filed June 30, 2017, and the Supreme Court order filed December 13, 2017, were not included.)

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

Respondent's misconduct evidences multiple acts of wrongdoing in two matters, including failing to perform with competence; failing to render an accounting of client funds; failing to refund unearned fees of $20,000; failing to cooperate in a disciplinary investigation; failing to release client file; and failing to timely obey a court sanctions order. Respondent's commission of multiple acts of misconduct is an aggravating factor.

Indifference Toward Rectification/Atonement (Std. 1.5(k).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct. "The law does not require false penitence. [Citation.] But it does require that the [Respondent] accept responsibility for [her] acts and come to grips with [her] culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent's repeated indifference and lack of insight into the nature and seriousness of her misconduct was demonstrated in various ways, including her belief that this disciplinary proceeding resulted from her "poking the bear" criticisms of the State Bar rather than her misconduct.

"[A]n attorney's lack of insight into the wrongfulness of his actions" may be an aggravating factor. (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317.) Instead of acknowledging that she engaged in various incidents of misconduct, Respondent contended that her disciplinary proceeding arose as a result of the many rude and insulting remarks she made toward various members of OCTC when she "poked the bear." Respondent has yet to rectify her misconduct. She has not fully complied with the Fin City Foods sanctions order or returned the unearned fees and the client file to Dr. Woods. Respondent's lack of insight is a significant aggravating factor which raises concerns as to whether Respondent is likely to engage in similar misconduct in the

future. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Therefore, Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

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

Respondent failed to return any of the $20,000 of unearned attorney fees paid to her by Dr. Woods. The aggravating weight of her failure to make restitution is significant. She also failed to pay the balance of $47 due to Fin City Foods.

Mitigation

Respondent bears the burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds that Respondent has not established any mitigating circumstances by clear and convincing evidence.

Discussion

The primary purposes of attorney discipline are 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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.1.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

In addition, standard 1.7(b) states, "If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities."

Standard 1.8(a) provides that, when an attorney has one prior record of discipline, "the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust."

In this case, the standards provide for the imposition of a minimum sanction ranging from actual suspension to disbarment. Standards 2.2, 2.7(c), 2.12(a) and (b), and 2.19 apply in this matter.

Standard 2.2 provides that an actual suspension of three months is the presumed sanction for commingling or failing to promptly pay out entrusted funds. Reproval or suspension is the presumed sanction for any other rule 4-100 violation.

Standard 2.7(c) provides that reproval or suspension is the presumed sanction for communication, performance, or withdrawal violations, which are limited in time or scope. The degree of sanction depends on the degree of harm to the client(s) and the extent of the misconduct.

Standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of

an attorney under Business and Professions Code section 6068, subdivisions (a), (b), (d), (e), (f), or (h) is actual suspension or disbarment.

Standard 2.12(b) provides that the presumed sanction for a violation of an attorney's duties under Business and Professions Code section 6068, subdivision (i), (j), (l), or (o) is reproval.

Finally, standard 2.19 states, "Suspension not to exceed three years or reproval is the presumed sanction for a violation of a provision of the Rules of Professional Conduct not specified in these Standards."

The OCTC urges that Respondent should be actually suspended for two years and until she makes restitution, based on its argument that she had committed an act of moral turpitude in making a misrepresentation to the court regarding her fee agreement. However, the court did not find that Respondent is culpable of misleading the court (§ 6068, subd. (d)) or committing an act of moral turpitude (§ 6106).

Respondent seeks dismissal of all of the charges. She argues, among other things, that the OCTC did not meet its burden of proof, she was not afforded an attorney so she could take the Fifth Amendment, she was not afforded a jury trial, and the OCTC withheld exculpatory evidence from her.

This court finds no merit to Respondent's procedural or substantive contentions. As above, the OCTC has shown by clear and convincing evidence that Respondent is culpable of six counts of misconduct. Her constitutional rights were not violated. Because this is Respondent's second disciplinary proceeding, she should be familiar with the rules of procedures of this court and its function as an administrative arm of the California Supreme Court. State Bar proceedings are administrative in nature and the only due process requirement is to a fair hearing. (*Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.) An attorney in a disciplinary hearing has no

constitutional right to the assistance of counsel, except in section 6007, subd. (b)(3) proceedings (involving mental infirmity, illness, or habitual use of intoxicants). (See *In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468.) Moreover, attorney disciplinary proceedings are not criminal matters for purposes of invoking the Fifth Amendment prohibition against being compelled to be a witness in one's own criminal trial. Accordingly, the court rejects all of Respondent's claims.

Since Respondent's previous discipline included a 30-day actual suspension, a greater discipline is appropriate. Yet, OCTC's recommended discipline of two years' actual suspension is too harsh since there is no clear and convincing evidence that Respondent misled the court. Such a severe sanction is appropriate for egregious misconduct.

For example, in *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, the attorney was suspended for four years, stayed, placed on probation for four years, and actually suspended for one year for his misconduct in one client matter. He was culpable of failing to perform and communicate, improperly withdrawing from representation and committing an act of moral turpitude. The aggravating factors included multiple acts of misconduct, one prior instance of discipline, client harm and lack of candor toward the court and the State Bar investigator.

Like *Dahlz*, Respondent has a prior record of discipline and failed to perform in a single client matter. But unlike *Dahlz*, Respondent did not deliberately make misrepresentations to the State Bar or present false testimony in the court. Thus, Respondent's misconduct did not involve any act of moral turpitude and is less serious than that of *Dahlz*.

The court finds guidance in *In the Matter of Seltzer* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 263. There, the attorney, who was previously disciplined with a 60-day actual suspension, was given a one-year stayed suspension, two years' probation, and six months' actual

suspension and until she paid restitution for failure to perform and failure to return the unearned portion of her attorney fees. Although the attorney performed some services for her clients, her work was incomplete and she never provided any work product or advice to them. Thus, the clients were entitled to a refund of all fees since they received nothing of value from the attorney. Aggravation included a prior record of discipline, uncharged misconduct of failure to maintain client funds, and lack of insight. The court had admonished respondent about her unwillingness to even consider whether her position was meritless, citing to *In re Morse* (1995) 11 Cal.4th 184, 209 [attorney "went beyond tenacity to truculence" when he was unwilling to consider the appropriateness of his position]. Seltzer's continued lack of insight was of serious concern. There was no mitigation.

Similarly, Respondent's lack of insight is particularly troubling to this court and weighs heavily in assessing the appropriate level of discipline. Moreover, the circumstances surrounding her misconduct – prior record of discipline, multiple acts, no recognition of wrongdoing, and failure to pay restitution of $20,000 to Dr. Woods – are evidence of serious aggravation. This court is also guided by standard 1.8(a), which calls for progressively more severe discipline than her previous discipline of 30 days' actual suspension, unless the prior discipline is remote in time and the offense was minimal in severity. Respondent's prior misconduct of failing to cooperate with the State Bar investigation and failing to obey court orders, is neither remote nor minimal.

Accordingly, after balancing all relevant factors, including the underlying misconduct, and particularly, the significant aggravating factors, the court concludes that a period of six months' actual suspension would be appropriate to protect the public and to preserve public confidence in the profession. Further, Respondent should remain suspended until she returns $20,000 plus interest to Dr. Woods and $47 to Fin City Foods.

Recommendations

It is recommended that Lenore LuAnn Albert, State Bar Number 210876, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions:

Conditions of Probation

1. Actual Suspension

Respondent must be suspended from the practice of law for a minimum of the first six months of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

a. Respondent makes restitution to Dr. Nira Schwartz-Woods in the amount of $20,000 plus 10 percent interest per year from April 1, 2016 (or reimburses 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 furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles;

b. Respondent makes restitution to Fin City Foods in the amount of $47 (or reimburses 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 furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and

c. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

3. Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

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

4. Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

5. Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in

person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

6. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

7. Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional

Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Proof of Compliance with Rule 9.20 Obligations

Respondent is directed to maintain, for a minimum of one year after the commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20(a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed

by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

9. State Bar Ethics School Not Recommended

It is not recommended that Respondent be ordered to attend the State Bar Ethics School because she was previously ordered to do so in Supreme Court order No. S243927.

Commencement of Probation/Compliance with Probation Conditions

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

Multistate Professional Responsibility Examination Not Recommended

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) because she was previously ordered to do so in Supreme Court order No. S243927.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[8] Failure to do so may result in disbarment or suspension.

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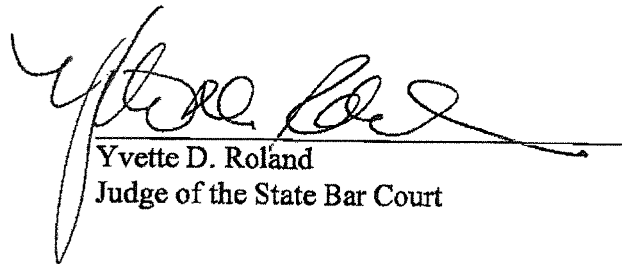
[8] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c), affidavit even if Respondent has no clients to notify on the date the Supreme Court filed 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, inter alia, cause for

Costs

It is further 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. Unless the time for payment of discipline costs is extended pursuant to section 6086.10, subdivision (c), costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: January 9, 2019



Yvette D. Roland
Judge of the State Bar Court

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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).)

CERTIFICATE OF SERVICE

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

I am a Court Specialist 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 January 9, 2019, I deposited a true copy of the following document(s):

DECISION

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

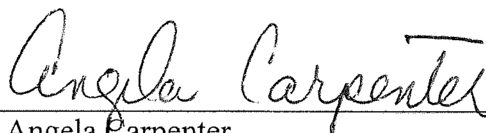
☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LENORE L. ALBERT
LAW OFC LENORE ALBERT
14272 HOOVER STREET
SP 69
WESTMINSTER, CA 92683

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

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 9, 2019.



Angela Carpenter
Court Specialist
State Bar Court