PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **CASSANDRA DENISE JONES,** **Member No. 170053,** A Member of the State Bar.	**Case No. 02-O-13728 – RAH;** **02-O-14380;** **02-O-15161;** **03-O-02298;** **03-O-03524** **[Consolidated]** **DECISION**

1. INTRODUCTION

In this disciplinary proceeding, Respondent Cassandra Denise Jones is charged with eleven counts of misconduct involving five clients.

The State Bar of California, Office of the Chief Trial Counsel ("OCTC") appeared by Deputy Trial Counsel Eli D. Morgenstern, and Respondent Cassandra Denise Jones ("Respondent") appeared and was represented by David A. Clare.

Finding that OCTC has failed to prove the charges by clear and convincing evidence, the Court dismisses ten of the counts with prejudice. However, the Court does find Respondent culpable in one count and, after considering any and all aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed; and that Respondent be placed on probation for one year on conditions including, inter alia, that she

be actually suspended from the practice of law for 30 days.

2. PROCEDURAL HISTORY

On September 4, 2003, OCTC filed a Notice of Disciplinary Charges ("NDC") against Respondent in case no. 02-O-13728; 02-O-14380; 02-O-15161.

On September 25, 2003, Respondent filed a Response to Notice of Disciplinary Charges in case no. 02-O-13728; 02-O-14380; 02-O-15161.

On December 8, 2003, OCTC filed a NDC against Respondent in case no. 03-O-02298; 03-O-03524.

In December 2003, the Court consolidated the cases.

On January 13, 2004, Respondent filed a Response to Notice of Disciplinary Charges in case no. 03-O-02298; 03-O-03524.

Trial was held on June 28-30, August 31, and September 1 and 10, 2004, and this matter was submitted for decision on November 8, 2004.

3. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction[1]

Respondent was admitted to the practice of law in the State of California on April 15, 1994, and since that time has been an attorney at law and a member of the State Bar of California.

B. The Chambers Matter – Case No. 02-O-13728, Counts One and Two.

1. Facts.

Nancy K. Chambers[2] was a Medical Staff Services Coordinator at Garden Grove Hospital. Both she and Respondent lived in Hampton Court, a condominium development located at 630 West Palm Avenue, Orange, California. Respondent and Chambers frequently

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[1]Pursuant to Evidence Code section 452(h), the Court takes judicial notice of Respondent's official membership records maintained by the Sate Bar of California.

[2]Nancy Chambers was also known as Nancy K. Richardson. In this decision, she is referred to as Nancy Chambers or "Chambers."

spoke to each other when passing at the condominium complex. Through this casual relationship, Chambers learned that Respondent was an attorney and, in fact, sought Respondent's advice on various matters. During the time that both lived at the condominium complex, Respondent helped Chambers with matters involving bankruptcy, real estate refinances, and, most significant, serious problems relating to Chambers's claimed default on homeowners association dues owed Hampton Court, A Townhome Association ("the Association".) Because of the close proximity of their residences, beginning in about 1996, Chambers and Respondent met and discussed Chambers's legal problems either in Chambers's or Respondent's condominium unit. As a result of this informal relationship, conversations were seldom documented in writing. As is described below, decisions were made by Chambers and Respondent as to litigation strategy during these meetings. However, because of this lack of a documentary trail, it is difficult to determine with absolute certainty the exact nature of these decisions.

In approximately November 1997, the Association recorded an assessment lien against Chambers's condominium unit and set a trustee's sale for January 9, 1998.[3] (Exhibit 2, page 17.) Chambers claimed that the assessments on which this notice of trustee's sale was based were not accurate.

Chambers retained Respondent to represent her in her defense of the claims made by the Association, as well as to file an independent action for an accounting and for damages arising out of the alleged improper assessment. (Exhibit 1.)[4] On January 8, 1998, (the day before the scheduled trustee's sale), Respondent filed a bankruptcy action (SA98-10292JB)[5] as well as a

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[3]The homeowners association claimed that Chambers had been in default on her homeowners association dues for several years. (Exhibit 2, pages 19-21.)

[4]Chambers signed a retainer agreement dated January 8, 1998. (Exhibit 3, pp. 7-11.)

[5]At trial, Chambers at first denied that the property was in foreclosure when she retained Respondent to prepare the bankruptcy and civil proceeding. While she was obviously incorrect on this point, what is more surprising is that she did not recall that this was the very reason she

complaint for breach of contract (with a related demand for an accounting), common counts, and negligence against the Association in Orange County Superior Court, entitled *Nancy K. Richardson aka Nancy K. Chambers v. Hampton Count, A Townhome Association,* case no. 98CV000085 ("The Hampton Court Matter")[6]. The bankruptcy filing had the effect of staying the pending foreclosure. A second, related bankruptcy proceeding was filed on February 22, 1999 (SA99-11715JB).

Attorney Bruce Gubersky ("Gubersky") represented Hampton Court throughout the litigation of the Hampton Court Matter. At the end of August 1999, the Association claimed that Chambers owed $2,325 on account of homeowners dues and late fees. In September 1999, a jury in the Hampton Court Matter awarded Chambers $4,000 in economic damages and $5,000 in non-economic damages, for a total of $9,000. The jury also found that Chambers was forty-five percent contributorily negligent, thereby reducing the judgment by that amount. As a result, the jury award totaled $4,950.

On October 1, 1999, Gubersky filed a motion for a judgment notwithstanding the verdict on behalf of Hampton Court ("Motion for JNOV").

On November 20, 1999, Respondent filed a motion for attorneys' fees in the Hampton Court Matter. (Exhibit 3.) On December 16, 1999, the trial court partially granted Hampton Court's Motion for JNOV by ordering that the economic damages awarded to Chambers be reduced by $1,100, from $4,000 to $2,900. After adding back in the non-economic damages of

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retained Respondent.

[6]Because of the bankruptcy proceeding, another retainer agreement with similar terms was signed on April 22, 1999. Both retainer agreements called for Chambers to pay on an hourly basis at the rate of $150 per hour. At trial, Chambers testified that, despite these agreements, she did not feel she was obligated to pay on an hourly basis, but that Respondent's fees would come out of an attorneys' fee award from the trial court. This assertion was contradicted, however, by Chambers's payment of small installments on account during the time of Respondent's representation of her. Despite these payments, as of November 1999, there remained owing to Respondent over $20,000 in unpaid fees and costs. (Exhibit 3)

$5,000 and reducing the total amount by Chambers's comparative negligence, the judgment was amended to the reduced net amount of $4,345.

On February 2, 2000, the trial court denied Respondent's Motion for Attorneys Fees on the grounds that the motion was untimely pursuant to California Rules of Court 870.2(b). On February 18, 2000, Respondent filed a Motion for Reconsideration of Order Denying the Motion for Attorneys Fees. This motion was later denied by the trial court in March 2000.

Respondent met with Chambers to discuss appealing the trial court's rulings on the motion for JNOV and the motion for attorneys' fees. Respondent testified that Chambers's husband was present at these meetings.[7] On December 16, 1999, with her client's knowledge and consent, Respondent filed a Notice of Appeal of the trial court's order partially granting the Motion for JNOV. On March 31, 2000, again with her client's knowledge and consent, Respondent filed a Notice of Appeal of the Trial Court's Orders Denying the Motions for Attorneys Fees.

On December 4, 2000, the Orange Court Superior Court, Appellate Division, dismissed the appeal of the trial court's orders denying the motions for attorneys fees on the grounds of Chambers's failure to prosecute. As a result of this dismissal, Hampton Court was awarded costs on appeal, including attorneys fees. On January 10, 2001, Hampton Court filed a Motion for Costs on Appeal incurred in connection with the appeal of the trial court's orders denying the motions for attorneys fees. On February 20, 2001, the trial court ordered that Chambers pay Hampton Court $1,500 in costs and attorneys fees incurred by Hampton Court in connection with the appeal of the trial court's orders denying the motions for attorneys fees.

On or about May 3, 2001, the Orange County Superior Court, Appellate Division, dismissed the appeal of the trial court's order partially granting the Motion for JNOV, on the grounds of Chambers's failure to prosecute. As with the dismissal of the prior appeal, Hampton

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[7]Despite recalling Chambers as a rebuttal witness after this testimony of Respondent, Chambers's husband was never called as a witness in the trial.

Court was awarded costs on appeal, including attorneys fees. Hampton Court's Motion for Costs on Appeal was filed on July 16, 2001. As a result of that Motion, the trial court awarded Hampton Court $1,823 in costs and attorneys fees in connection with the appeal of the trial court's order partially granting the Motion for JNOV. (Exhibits 16 and 17).[8] Respondent did not appear at the hearing on this motion for costs on August 16, 2001.[9]

An order to appear in a judgment debtor examination was served by Gubersky's firm on Chambers in December 2001, scheduling a December 19, 2001 examination date. This was the first time Chambers learned of the cost award against her. At the judgment debtor examination, Chambers agreed to pay a total of $5,019.46 in attorneys fees and costs. Chambers has since paid the entire sum to Gubersky's firm.

2. Conclusions of Law.

Chambers – Case No. 02-O-13728. Count One, Business and Professions Code section 6104[10] and Count Two, section 6068(m).

Count One charges Respondent with wilfully violating section 6104. This section prohibits an attorney from corruptly or wilfully and without authority appearing as an attorney for a party to an action or proceeding. OCTC alleges that Respondent wilfully violated section 6104 in her representation of Chambers by failing to obtain Chambers's authority to appear as her attorney in the two appeals.

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[8]Respondent asserts she did not receive Exhibits 16 and 17, and supports this claim by pointing out that the proof of service on Exhibit 17 predates the filing date. However, it simply appears that the proposed order was served the day after it was prepared, and the trial court took approximately one week to sign and file the order.

[9]While Respondent's nonappearance at the attorneys' fee motion hearing in the trial court is not necessarily the preferred practice, given the small amount of attorneys' fees and costs requested ($1,823), the amount Respondent would have had to bill Chambers, coupled with the likelihood that the trial court would grant the motion, Respondent's failure to oppose the motion was perhaps a wise decision.

[10]Unless otherwise indicated, all future references to sections refer to provisions of the California Business and Professions Code.

Count Two alleges a violation of section 6068(m). Section 6068(m) requires attorneys to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in their cases. OCTC alleges that Respondent wilfully violated section 6068(m) by failing to keep Chambers informed of significant developments in her case by failing to inform Chambers that: (1) Respondent had filed two appeals in her matter; (2) the court had dismissed the appeals; and (3) the court had ordered Chambers to pay the attorneys' fees on appeal incurred by the Association.

Chambers and Respondent disagree as to whether Chambers's permission was obtained to file the appeals. Chambers contends that she never would have agreed to appeal the court order, and that she just wanted the whole ordeal to be over. However, Chambers testified that she was aware of the denial of the motion for attorneys' fees filed by Respondent and was aware that Respondent was going to file additional documents.[11]

It is clear that Respondent failed to document her many conversations with Chambers which occurred in the condominium complex. It is also possible that Respondent acted negligently in failing to timely file the motion for attorneys fees. In fact, it was questionable as to the advisability of filing the appeal in the Motion for JNOV, given the small amount by which the trial judge reduced the judgment.[12]

However, it is equally clear that Chambers herself was not particularly engaged in the attorney-client relationship. She disregarded, and at trial attempted to rewrite, the terms of her retainer agreement with Respondent. She appears not to have paid close attention at the informal meetings she had with Respondent, and the State Bar failed to bring to court her husband to rebut

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[11]If, in fact, it was Chambers's position that she never knew about the appeals, it is surprising that Chambers's husband was never called to rebut the testimony of Respondent that Chambers was fully informed of the appeals during meetings at which he was present. The Court did not find credible Chambers's testimony concerning her lack of knowledge of the appeals.

[12]However, the Office of the Chief Trial Counsel has failed to prove by clear and convincing evidence that it was Respondent who recommended this appeal.

the testimony of Respondent as to the conversations regarding appeals. She received extensive legal services from Respondent, but apparently does not feel compelled to pay for those services. As a result, the Court puts little value on Chambers' testimony.

Similarly, as the Court finds that Respondent filed the appeal with Chambers's knowledge and consent, the Court does not find Respondent culpable of failing to inform Chambers of significant developments (specifically, the filing of the appeals) in her civil matter. With respect to the allegation that Respondent wilfully failed to inform her client of significant developments in her legal matter by failing to inform her client that the court had dismissed the appeals, and that the court had ordered Chambers to pay the attorneys' fees on appeal incurred by the Association, the Court finds that OCTC failed to prove these allegations by clear and convincing evidence.

OCTC also seemed to assert that Respondent's nonappearance at the attorneys' fee motion hearing in the trial court was either charged misconduct or an aggravating factor. However, Respondent was not charged in the NDC with this alleged misconduct. Furthermore, OCTC failed to prove this alleged misconduct by clear and convincing evidence.

It is unclear the contribution that the testimony of Gubersky made to the trial. Aside from authenticating the documents involved in the trial and subsequent motions and appeals, his testimony did not illuminate any of the issues present in Count One or Count Two.[13]

For the above reasons, the Court concludes that the Office of the Chief Trial Counsel has failed to sustain its burden of proving a wilful violation of section 6104 in Count One or a wilful violation of section 6068(m) in Count Two of case no. 02-O-13728. Count One and Count Two in case no. 02-O-13728 are therefore dismissed with prejudice.

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[13]Indeed, given the nature of the charges (wilfully violating section 6104 [Appearing for party without authority] and section 6068(m) [Failure to inform client of significant development], it is unlikely that the opposing counsel in litigation would have any substantive information to add on these subjects.

C. **The Ponce Matter – Case No. 02-O-14380, Count Three.**

1. Facts.

Maria Ponce ("Ponce") retained Respondent to represent her in her marital dissolution in October 2001 and paid Respondent $2,200 for her services. The marital dissolution included custody issues involving Ponce's children. Complicating these issues was the fact that Ponce had been convicted of a felony involving domestic violence. Respondent, therefore, wanted to delay the finding on custody issues until Ponce had time to get counseling in order to support her contention that Ponce was rehabilitated so that Respondent could overcome the rebuttable presumption of Family Code section 3044. Toward that end, Respondent recommended a course of therapy to Ponce. At some point, a hearing was set for September 12, 2002 in the matter.

Ponce worked at the Board of Equalization as a Tax Technician. Her place of employment was within walking distance of Respondent's law office, which was a converted family home. As such, she would often walk over to the offices of Respondent without an appointment. There were times when she visited Respondent's offices when no one was there. On a few such occasions, she saw Respondent's son (and employee), Clayton Jones, in the area of the offices when the doors were locked. Clayton lived in the apartment above the garage of the law office. When Clayton would not answer her knocking at the door, it angered Ponce. Clayton explained, however, that on those occasions when she came without an appointment and he did not answer the door, the office was closed and he was not on duty.

For reasons not clearly elaborated upon at trial, Ponce terminated Respondent as her attorney in late August 2002. Ponce hired Mildred Escobedo ("Escobedo")[14] to represent her in place of Respondent. Because of the upcoming hearing on September 12, 2002, Ponce requested that Clayton provide her with the file to give to her new attorney. Ponce met Clayton at the law office to pick up her file. Clayton copied the file and gave the copy to her. Later, she called

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[14]At the time Ponce retained Escobedo, she was an attorney in private practice. At the trial of this matter, Escobedo was a Juvenile Court Referee in the Los Angeles Superior Court.

Clayton and informed him she would be walking over to the office again, since some parts of the file were missing from the earlier copy. On that occasion, Clayton gave Ponce the original file after making a copy for Respondent's office records.

Respondent's office received a substitution of attorney form from Escobedo on approximately August 31, 2002. Within one day, Clayton obtained the signature of Respondent and returned it to the client. On September 10, 2002, Escobedo faxed a letter to Respondent demanding the file.[15] In addition, Clayton received a call from "Patty," Escobedo's secretary, requesting the file. Clayton informed Patty that the file had already been twice turned over to the client.

Escobedo testified that she never received the file and never received a substitution of attorney. She also stated that her calls to Respondent went unreturned. She stated that she was required to obtain an order of the court substituting her into the case. She also testified that Respondent never returned her phone calls.

2. Conclusions of Law.

Ponce – Case No. 02-O-14380. Count Three, rule 3-700(D)(1) of the Rules of Professional Conduct[16]

In Count Three, Respondent is charged with wilfully violating rule 3-700(D)(1) which required Respondent to promptly release to the client all of the client's papers and property, upon termination of her employment.

On the eve of the hearing in the family law matter, Ponce sought to change attorneys. No evidence was received as to the reason that this decision was made at such a late date.

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[15]See Exhibit 24. There was testimony that on September 5, 2002, Escobedo's office faxed a substitution of attorney form signed by Escobedo and Ponce to Respondent's office for her signature. However, that document reflected a fax cover sheet that had the wrong fax number for Respondent's office. As such, this fax was never received by Respondent.

[16]Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

Nevertheless, it appears to the Court that Respondent and her son/employee, Clayton, acted reasonably in responding to the client's requests. Despite Ponce's habit of not making an appointment, Clayton complied with her request for the file on two occasions. In the end, he gave her the original file.

While Escobedo's testimony was credible, it is not inconsistent with Respondent's or Clayton's testimony. The breakdown in communication appears to this Court to be attributable to Ponce. She is the person who received both the sets of files, and she is the person who was given the substitution of attorney. Apparently, those documents were not passed on to Escobedo. While the record does show that Respondent was not as responsive to the telephone calls made by Escobedo as she could have been, that conduct is not charged by OCTC.

On the contrary, Ponce was decidedly not credible. Her demeanor at trial was hostile and evasive. Apparently, she did not eventually obtain custody of her children, and appears to be angry at Respondent for that result. The Court also took into consideration her felony conviction in evaluating her credibility.

In light of the above, the Court concludes that OCTC has failed to sustain its burden of proving a wilful violation of rule 3-700(D)(1) in Count Three of case no. 02-O-13728, and Count Three is therefore dismissed with prejudice.

D. <u>The Flores Matter – Case No. 02-O-15161, Counts Four, Five and Six.</u>

1. Facts.

In June 2000, Irene Flores ("Flores") retained Respondent to handle the probate of her late husband's will. For these services, she paid an advance retainer of $1,000. Later, in January 2001, Flores retained Respondent to handle an unlawful detainer proceeding against her step-son. For the unlawful detainer, Flores paid an additional advance retainer of $700.

Flores originally came to Respondent's office in June 2000 seeking Respondent's assistance in the probate. Flores felt that a probate of the will was necessary to assure that title to her husband's house would pass to her, not to her step-children. It was Flores's belief that title to

the house was held solely in her husband's name. Apparently, the house was the only asset Flores felt needed to be probated. This information was given to Respondent in their first meeting. Respondent asked if she had a copy of the deed to the house, and Flores said she would bring it to the next meeting.

Pursuant to her client's wishes, Respondent commenced preparation of the Petition for Probate of Will and for Letters Testamentary and Authorization to Administer Under the Independent Administration of Estates Act, as well as related documents (Exhibit A).

When Flores finally produced the deed to Respondent, likely in August 2000, Respondent noticed that it showed title vesting in Flores and her deceased husband as joint tenants arising from a previous transfer from her husband, as sole owner, in 1992. As such, because of the joint tenancy, Flores was now the sole owner of the house by operation of law. Respondent advised Flores of this development in her matter, and Respondent performed no further services on the now unnecessary probate.[17]

The unlawful detainer matter which Flores retained Respondent to handle was against Flores's step-son, Henry Flores, Jr. Respondent prepared the form complaint and both Respondent and Flores signed the document. It appears that the matter was delivered by the County Sheriff's office to the residence of Henry Flores, Jr. on December 13, 2000 with a follow-up mailing on December 14, 2000. (Exhibit B.) Flores was afraid of her step-son, Henry. She felt he was a drug addict. At some point after service, Flores instructed Respondent to stop pursuing the unlawful detainer, changing her mind about pursuing the action because she feared her step-son's reaction. Respondent complied with this request. Later, Respondent received a request for the file from Roger Denny, Esq., the new attorney for Flores. Clayton Jones sent the

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[17]The Office of the Chief Trial Counsel contends that a refund was owed of part or all of the $1,000 retainer, characterizing as "preposterous" Respondent's position that all this money was earned. (State Bar closing brief at page 16.) Respondent testified that she spent at least six hours over four to five meetings with Flores. However, there is no allegation of a failure on Respondent's part to refund an unearned fee. (Rule 3-700(D)(2).) Therefore, this Court does not consider such a charge in this decision.

file to Mr. Denny upon his request.

There may have been one or two phone calls from Flores that were not promptly returned by Respondent. However, Flores's preferred method of communication with Respondent's office was not by calling and making an appointment. Rather, she would appear at the offices on breaks from, or after her workday. When she did call ahead and make an appointment, she would often miss the appointments. This happened at least three times. In addition, Flores also failed to return phone calls.

2. Conclusions of Law.

Flores – Case No. 02-O-15161, Counts Four, rule 3-700(A)(2); Five, section 6068(m); and Six, rule 3-700(D)(1).

Count Four alleges that Respondent wilfully violated rule 3-700(A)(2) by abandoning Flores. Rule 3-700(A)(2) prevents an attorney from withdrawing from employment until he or she takes reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. Count Five alleges that respondent wilfully violated section 6068(m) by ceasing to communicate with Flores. Section 6068(m) requires attorneys to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in their cases. Count Six alleges Respondent's failure to return important documents to Flores in violation of rule 3-700(D)(1). This rule requires attorneys upon termination to promptly release to the client, upon request, all the client's papers and property.

In the probate matter, Flores came to the first meeting without the necessary documents. However, Respondent commenced work on the client's case and stopped only when she saw the vesting in joint tenancy, eliminating the need for a probate of the will in order to effect a transfer of the house. In the unlawful detainer matter, Flores asked for Respondent's services, then changed her mind, fearing her step-son's reaction. In the interim, Respondent performed

services, including preparing, filing and serving the form complaint.[18]

When Flores sought to disengage from the relationship with Respondent, the evidence indicated that Clayton Jones timely delivered or sent her files as instructed.

Flores's tendency to drop in to Respondent's office without appointment, Flores's failure to return phone calls, and her frequently missed appointments indicate a client not fully engaged in the attorney-client relationship. While it is true that there were occasions where Respondent did not promptly return telephone calls to Flores, these minor lapses do not rise to the level of a violation of section 6068(m). Overall, the Court does not find that OCTC proved by clear and convincing evidence that Respondent did not respond promptly to her client's reasonable status inquires.

For the above reasons, the Court concludes that OCTC failed to sustain its burden of proving by clear and convincing evidence a wilful violation of rule 3-700(A)(2) in Count Four, section 6068(m) in Count Five, and rule 3-700(D)(1) in Count Six of case no. 02-O-15161. Counts Four, Five and Six of case no. 02-O-15161 are therefore dismissed with prejudice.

E. <u>The Padilla Matter – Case No. 03-O-02298, Count One.</u>

1. Facts.

Blanca Padilla ("Padilla") retained Respondent to represent her in her marital dissolution.[19] Padilla appears to have paid Respondent $2,500 in several payments.[20]

On October 23, 1997, both Padilla and Respondent appeared in family law court for trial. Apparently, the family law court was very busy on that day and, as a result, continued trial in the matter to December 11, 1997. An order was prepared by the family law court which reflected

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[18]Whether these services justified the fee would be the subject of a fee arbitration or a rule 3-700(D)(2) charge, neither of which is before this Court.

[19]Respondent substituted into the case, which had been handled by Padilla, in propria persona. (Exhibit 26.)

[20]See Exhibits 27 and 28. Again, however, OCTC has not alleged a violation of rule 3-700(D)(2).

this continuance, and further the court ordered that a judgment for status only be prepared to terminate the marriage, reserving only property issues for the continued trial date. (Exhibit 29.) Respondent had no knowledge of the portion of the order requiring her to prepare a judgment for status only and did not receive Exhibit 29, the court's minute order.[21]

The trial date was further continued, and on February 24, 1998, Respondent and the parties entered into a stipulation and order for judgment on reserved issues. (Exhibit 69, pages 14-17.)

2. Conclusions of Law.

Padilla – Case No. 03-O-02298, Count One, rule 3-110(A).

Respondent is alleged to have violated rule 3-110(A) by intentionally, recklessly, or repeatedly failing to perform legal services with competence. OCTC alleges that by failing to prepare and file a judgment for status only, as apparently ordered by the family law court, Respondent wilfully violated rule 3-110(A) and, as result of this misconduct, it is claimed that Padilla's son was denied necessary medical treatment.

While Respondent may not have prepared the judgment for status only pursuant to the family law court's October 23, 1997 order (Exhibit 29), there is no evidence that Respondent had knowledge of the order or ever received the order, and there is no evidence that failing to prepare and file a judgment for status only was significant or required to accomplish Padilla's goals. Furthermore, there is no evidence that the failure to prepare such an interim order had any impact

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[21]As counsel for Respondent pointed out at trial in this matter, the certified copy of the minute order, Exhibit 29, lacks a proof of service. At trial, OCTC did not supplement the exhibit with a proof of service. Indeed, it appears that even the same order in the complete court file lacks a proof of service. See Exhibit 69, page 28. Further, while Padilla did appear at the hearing on October 23, 1997, it is clear that she has limited English language skills. As such, it is unlikely that she would understand the significance of an order made by the court that counsel for defendant is to prepare a judgment for status only.

on Padilla whatsoever.[22]

As such, the Court concludes that OCTC failed to sustain its burden of proving by clear and convincing evidence a wilful violation of rule 3-110(A) in Count One of case no. 03-O-02298. Count One of case no. 03-O-02298 is therefore dismissed with prejudice.

E. The Fischer Matter – Case No. 03-O-03524, Counts Two, Three, Four and Five.

1. Facts.

On January 18, 2000, Respondent filed a personal injury action on behalf of Scott Fischer ("Fischer") entitled *Fischer v. Buschini*, Orange County Superior Court case no. 00CC01056 (" the Buschini lawsuit".) (See Exhibit 30.) Respondent began settlement discussions with Mercury Insurance, defendant's insurance carrier ("Mercury"). At some point in these discussions, the workers' compensation and property claims were resolved with the bodily injury claims left to be settled at a later time.

a. The Settlement Discussions with Mercury.[23]

Between May 2000 and October 2001,[24] several letters were sent to Respondent by Mercury concerning the bodily injury portion of the claim. All of these letters said essentially the same thing: that Mercury was willing to pay $9,675 to settle the bodily injury claim.

Several adjusters were involved in the claim before the above letters were sent, but there was no evidence in the file of any adjusters assigned to the claim prior to May 13, 2000, when

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[22]Padilla continued to get the assistance of the district attorneys of both Orange and San Bernardino counties in obtaining medical benefits for her son. Both of these agencies apparently relied on the stipulation and order for judgment on reserved issues (Exhibit 69, pages 14-17) as the relevant judgment.

[23]One of the key issues in resolving these claims against Respondent is whether she felt that the Buschini lawsuit had been settled, and therefore, so advised her client and the court in that case and did not serve the complaint.

[24]In March 2001, Respondent had emergency gall bladder surgery. She was out of the office while recovering for approximately six to eight weeks in that time period.

Stacy Walker was assigned to the matter.[25] In all, a total of 10-12 adjusters handled this claim. According to Respondent, after a settlement amount was agreed upon by one adjuster, subsequent adjusters did not honor the higher settlement amount.

Respondent believed that sometime during the summer of 2001, she and Mercury reached an oral agreement settling the case for $11,300.[26] Although Mercury's file does not memorialize this settlement agreement, the Mercury file on this claim appears to have records missing from it. Not only was there no information in the file on the adjusters who handled this matter prior to Stacy Walker, each of the letters after March 2001 requested documentation of the loss of earnings claim. This was repeatedly requested despite the fact that Respondent had already submitted that information on March 28, 2000. (See Exhibit E, stamped "received" by Mercury on March 28, 2000.) In addition, Justin Samson left the employ of Mercury in July 2001. Thereafter, the file contained a gap as to who was handling the case between July and September 2001 when Lisa Perini took over the claim. Between Respondent's last correspondence with Justin Samson (July 2001) and her first correspondence with Lisa Perini (October 2001), Respondent spoke with Gary Plashak ("Plashak"), a supervisor. Although nothing in the file reflects his participation in the claim, Plashak handled the claim during this period.[27] This fact is significant, since it is Plashak with whom Respondent claims to have agreed on the $11,300 settlement. The Court finds that Respondent honestly and reasonably believed that sometime during the summer of 2001, she and Mercury reached an oral agreement settling the case for

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[25]The adequacy of Mercury's file and follow-up systems was seriously called into question at trial.

[26]Fischer agreed that this amount was discussed with him by Respondent during this time period. The Court finds Respondent's testimony on this issue to be credible.

[27]It is undisputed that Respondent spoke to Plashak during this period, and Lisa Perini admitted at trial that Gary Plashak handled the claim during this period.

$11,300.[28]

b. Failure to Serve Complaint/Representations to the Court and to Fischer.

Respondent never served the defendant with the Buschini lawsuit.[29] After receiving the first of the above letters, on June 27, 2000, Respondent was served with an Order to Show Cause re: Dismissal ("OSC"), arising out of her failure to serve the complaint. She was out of town on vacation when this OSC arrived, and the hearing was not calendared in her office. The trial court dismissed the case; however, Respondent did not learn of this dismissal until later.

While reviewing the file in response to correspondence from the insurance company in December 2000, Respondent noticed the OSC. On January 18, 2001, Respondent filed a motion for relief under Code of Civil Procedure section 473. (Exhibit 31). This motion was granted and an evaluation conference was set for May 17, 2001. Respondent did not appear at this evaluation conference. The trial court then set an OSC re: dismissal or monetary sanctions for June 13, 2001 for failing to appear at the evaluation conference. This OSC was continued to August 16, 2001, and then to September 18, 2001, and then again to October 2, 2001. (See Exhibits 32, 33, 36, and 37.) A hearing was held on October 9, 2001, but Respondent did not appear at the hearing. The case was dismissed on October 9, 2001. However, Respondent did not have knowledge of the dismissal. Respondent was not present at or have knowledge of the October 9, 2001 hearing. (See Respondent's Closing Trial Brief, p. 20, footnote 49.)[30]

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[28]Gary Plashak was not called as a witness at trial and no explanation was given as to OCTC's failure to do so.

[29]It was Respondent's position that, as a matter of courtesy, she would not serve defendant with the Buschini lawsuit while the parties were conducting settlement discussions.

[30]Actually, Respondent's counsel suggests that Respondent also did not know about the October 2, 2001 hearing. However, at trial, Respondent acknowledged being at the October 2, 2001 hearing, saying that the trial court advised her to "serve or settle" the case. Further, the minute order of the September 18, 2001 hearing (Exhibit 37) also appears to contradict counsel's suggestion. It notes the appearance of Respondent and also documents the continuance to the October 2, 2001 date. It does appear, however, that Respondent did not actually have knowledge of the eventual dismissal, since Lisa Perini testified that she learned of the dismissal in October

During the period of the continuances of the OSC from June through October 2001, Respondent continually advised the trial court and Fischer of the pending settlement discussions and eventual settlement. In November 2001, Respondent finally realized that Mercury had "reneged" on their offer. Respondent then immediately proposed to Fischer the filing of a bad faith case against Mercury. Respondent also offered to loan Fischer the $11,300 she felt she had negotiated with Mercury, as Respondent was aware that Fischer was in a difficult financial condition. (See Exhibit 41, page 28, lines 4-12.)[31] Fischer advised Respondent he would speak with his uncle (who was a judge) about the advisability of a bad faith case. No bad faith case was filed.

In June 2002, Fischer found out that the case had been dismissed. He immediately called Respondent. Respondent immediately called Lisa Perini of Mercury, who acknowledged that she was aware that it had been dismissed. Shortly thereafter, on July 17, 2002, Lisa Perini sent a letter to Respondent asking for proof from Respondent "if the court reinstates this case." (Exhibit 56)

Fischer filed a legal malpractice case against Respondent. (*Fischer v. Jones*, Orange County Superior Court case no. 03CC01701. After a court trial on January 26, 2004, that case went to judgment with Fischer being awarded $37,296.61.[32] Commissioner Eleanor M. Palk found that Respondent was professionally negligent in her handling of the Buschini lawsuit, but specifically did not find fraud.[33]

2001 but did not want to tell Respondent about it for fear the claim would be revived.

[31]Fischer's father had recently died, his step-mother decided not to give him an interest in a business she owned, and his wife had just had a baby.

[32]The transcript of the trial is marked as Exhibit 41.

[33]Exhibit 41, page 96, lines 17-19.

2. Conclusions of Law.

Fischer – Case No. 03-O-03524, Counts Two, rule 3-110(A); Three, section 6068(d); Four, section 6106; and Five, section 6106.

It is alleged that Respondent wilfully violated rule 3-110(A) [failure to act with competence] in her handling of the Buschini lawsuit by failing to take any action to prosecute the Buschini lawsuit or to settle the matter and by permitting the matter to be dismissed. (Count Two.) It is also alleged that Respondent wilfully violated section 6068(d) by misleading the judge in the Buschini lawsuit through continued representations that the matter had settled and that the settlement was being finalized. (Count Three.) In addition, it is alleged that Respondent committed an act of moral turpitude in wilful violation of section 6106 by misrepresenting to the judge in the Buschini lawsuit that a settlement had been reached. (Count Four.) Finally, it is alleged that Respondent committed a further act of moral turpitude by telling Fischer that the Buschini lawsuit was still pending. (Count Five.)

As was found by Commissioner Eleanor M. Palk in the legal malpractice case filed against Respondent, *Scott P. Fischer v. Cassandra D. Jones*, Orange County Superior Court case no. 03CC01701, Respondent was professionally negligent in her handling of the Buschini lawsuit. This Court agrees, and further, this Court is of the opinion that Respondent's failures constituted a violation of rule 3-110(A). Her repeated failures to serve the complaint, to calendar hearings, and to attend those hearings where the trial court was seeking the ultimate sanction – dismissal – is conduct that falls well below that expected of attorneys practicing in this State. Her behavior in this case cannot be completely explained away by her illness in March and April 2001.

But as Commissioner Palk noted, her loss of control of this case did not constitute fraud. She honestly thought the matter was settled and she acted accordingly, with both the trial court and her client. At no time did she seek to mislead a judge, nor did she seek to mislead her client. In particular, her actions with respect to Mr. Fischer were honorable – upon learning of the

dismissal, she immediately proposed filing a bad faith case and, because she knew of Fischer's compromised financial condition, offered to loan him the $11,300 she felt she had negotiated with Mercury. She has paid for her errors and presumably made Fischer whole through the $37,296.61 judgment in the malpractice claim.

As such, the Court concludes that OCTC has proven by clear and convincing evidence a wilful violation of rule 3-110(A) as alleged in Count Two of case no. 03-O-03524. OCTC has, however, failed to sustain its burden in that same case of proving by clear and convincing evidence a wilful violation of section 6068(d) in Count Three, and section 6106 in Counts Four and Five. Counts Three, Four and Five in case no. 03-O-03524 are therefore dismissed with prejudice.

A. LEVEL OF DISCIPLINE

A. Factors in Mitigation

In March 2001, Respondent had emergency gall bladder surgery. She was out of the office while recovering for approximately six to eight weeks in March and April 2001. However, the Court gives only very limited weight to this evidence, as this misconduct in this matter occurred several months after her surgery and recovery period, and there was no expert testimony offered to establish that Respondent's misconduct was directly related to her surgery or recovery period. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv) ("standard").)

Nevertheless, Respondent was also dealing with family issues concerning her mother during this period of time. (Standard 1.2(e)(iv).)

When Respondent finally realized that Mercury had "reneged" on their offer, she immediately proposed to Fischer the filing a bad faith case against Mercury. As she was also aware that Fischer was having financial difficulties, she offered to loan Fischer the $11,300 she felt she had negotiated with Mercury. This conduct demonstrates that Respondent promptly took steps which spontaneously demonstrate recognition of her wrongdoing in an effort to timely

atone for the consequences of her misconduct. (Standard 1.2(e)(vii).)

B. Factors in Aggravation

In aggravation, Respondent has two prior records of discipline. (Standard 1.2(b)(i).)[34]

1. On November 25, 2003, the Supreme Court filed an order in case no. S118768 (State Bar Court case no. 01-O-01078, etc.) suspending Respondent from the practice of law for two years; staying execution of said suspension; and placing Respondent on probation for two years subject to certain conditions of probation, including a 60-day period of actual suspension. Respondent was found culpable in this prior disciplinary matter of misconduct involving six clients. In all six of these client matters. Respondent was found culpable of violating section 6068(m); in four client matters she violated section 6068(i); and in three client matters she wilfully violated rules 3-700(D)(1) and 3-700(A)(2). In aggravation, harm to client(s), the public or the administration of justice was found. In mitigation, family problems were noted. Respondent's misconduct in this prior disciplinary matter occurred between July 1998 and approximately June 2002.

2. On January 5, 2005, the Hearing Department of the State Bar Court issued an Order Granting Motion to Revoke Probation and Order of Involuntary Inactive Enrollment in case no. 04-PM-14982 and recommending to the Supreme Court that Respondent's probation pursuant to the Supreme Court order in case no. S118768 (State Bar Court case no. 01-O-10178, etc.) be revoked, that the previous stay of execution of the suspension be lifted, and that Respondent be suspended from the practice of law for two years, that said suspension be stayed, and that Respondent be placed on probation for two years on conditions including that she be actually suspended from the practice of law for the first year of probation. Respondent was

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[34]Pursuant to Evidence Code section 452(d) and 453, the Court takes judicial notice of Respondent's prior record of discipline in Supreme Court matter S118768 (State Bar Court case no. 01-O-01078, etc.). Pursuant to Evidence Code section 452(d), the Court also take judicial notice of the discipline recommendation of the State Bar Court in case no. 04-PM-14982 filed on January 5, 2005.

found culpable in case no. 04-PM-14982 of wilfully violating the conditions of probation ordered by the Supreme Court in case no. S118768 (State Bar Court case no. 01-O-01078, etc.) by failing to submit a written quarterly report due no later than October 10, 204; failing to promptly respond to a Probation Deputy's telephone message and correspondence; and failing to submit evidence of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics by a certain date.

OCTC contends that the court should find as a factor in aggravation that Respondent engaged in uncharged misconduct by failing to return Fischer's file. However, there is no clear and convincing evidence that Respondent wilfully failed to return her client's file. The Court therefore declines to find uncharged misconduct as an aggravating circumstance in this matter.

C. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the Court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of sanctions ranging from reproval to suspension. (Standards 2.4(b).) In addition, standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions."

Furthermore, standard 1.7(b) provides that if an attorney is found culpable of misconduct in any proceeding and the member has a record of two prior impositions of discipline, the degree

of discipline to be imposed in the current proceeding must be disbarment, unless the most compelling mitigating circumstances clearly predominate.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p.251.)

The State Bar recommends, inter alia, that Respondent be suspended from the practice of law for five years and until she complies with the requirements of standard 1.4(c)(ii); that execution of said suspension be stayed; and that Respondent be placed on probation for five years on conditions including that she be actually suspended for the first two years of the period of her probation. However, Respondent has only been found culpable of one of the eleven counts charged against her. Accordingly, the Court does not concur with the OCTC discipline recommendation.

Respondent has been found culpable in one client matter of one count of wilfully failing to perform legal services with competence in October 2001. However, in determining the appropriate discipline to recommend in this matter, the Court notes that Respondent's misconduct in this matter occurred within the same time period as the misconduct in Respondent's first prior disciplinary matter, and well before her misconduct in case no. 04-PM-14982. Thus, in determining the discipline to recommend in this matter, the Court gives no weight to the discipline imposed in case no. 04-PM-14982, as it could not have had any possible rehabilitative effect on Respondent, as the misconduct upon which it is based occurred well after the misconduct found in this matter. Furthermore, although Respondent's first prior record of discipline is still considered an aggravating circumstance, the aggravating force of Respondent's first prior discipline is diminished because the misconduct underlying Respondent's first prior record of discipline occurred within the same time period as the misconduct found in this matter. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619.) It is

therefore necessary for the Court to consider the totality of the findings in both Respondent's first prior disciplinary matter and in this matter to determine what discipline would have been imposed if all the charged misconduct had been brought as one disciplinary proceeding. (*Id.* at p. 619.)

In Respondent's first prior disciplinary matter, Respondent was found culpable in six client matters of violating section 6068(m); in four client matters, she was found culpable of violating section 6068(i); and in three client matters, she was found culpable of wilfully violating rules 3-700(D)(1) and 3-700(A)(2). The Supreme Court suspended Respondent from the practice of law for two years; stayed execution of said suspension; and placed Respondent on probation for two years subject to certain conditions of probation, including a 60-day period of actual suspension.[35] In this matter, Respondent has been found culpable of one count of wilfully failing to perform legal services with competence. In aggravation, Respondent has a prior disciplinary record which is discounted. In mitigation, Respondent was dealing with family issues, and her spontaneous actions towards Fischer demonstrated recognition of her wrongdoing and an effort to timely atone for the consequences of her misconduct. However, only very limited mitigating weight was given to Respondent's evidence of health problems.

Therefore, after considering the totality of the findings in both the current proceeding and in Respondent's first prior disciplinary matter, the Court finds that had this matter been brought as part of Respondent's first disciplinary proceeding, a 90-day period of actual suspension would have been an appropriate discipline recommendation in that first disciplinary matter. Thus, the Court finds it appropriate in this matter to recommend a period of stayed suspension and probation on conditions including a 30-day period of actual suspension.

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[35]In the first prior disciplinary matter, the parties entered into a Stipulation Re Facts, Conclusions of Law and Disposition and the Court issued an order recommending to the Supreme Court the 60-day period of actual suspension agreed to by the parties in the stipulation. The Court notes that, as in the current disciplinary proceeding, Respondent was represented in the first disciplinary matter by David A. Clare and the State Bar was represented by Deputy Trial Counsel Eli Morgenstern.

B. DISCIPLINE RECOMMENDATION[36]

Accordingly, it is hereby recommended that Respondent Cassandra Denise Jones be suspended from the practice of law for a period of one year; that execution of said suspension be stayed; and that Respondent be placed on probation for a period of one year, subject to the following conditions of probation:

1. That during the first 30 days of said period of probation, Respondent shall be actually suspended from the practice of law in California;

2. That during the period of probation, Respondent shall comply with all provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;

3. Within 10 days of any change, Respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the State Bar's Office of Probation in Los Angeles, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent shall submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report shall be submitted on the next following quarter date and cover the extended period.

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;

5. Subject to the assertion of applicable privileges, Respondent shall answer fully,

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[36]The Court makes this discipline recommendation irrespective of whether or not the Supreme Court adopts the State Bar Court Hearing Department's recommendation in case no. 04-PM-14982.

promptly, and truthfully, any inquiries of the State Bar's Office of Probation which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein;

6. Within one year of the effective date of the discipline herein, Respondent shall provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session, unless she was ordered to comply with this requirement by the Supreme Court in its order imposing discipline in case no. 04-PM-14982. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement ("MCLE"), and Respondent shall not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar);

7. Within one year of the effective date of the discipline herein, Respondent shall submit to the Office of Probation satisfactory evidence of completion of no less than 15 hours of MCLE approved courses in attorney general legal ethics, client relations and/or law office management. This requirement is separate from any MCLE requirement, and Respondent shall not receive MCLE credit for attending these courses (Rules Proc. of State Bar, rule 3201.)

8. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter;

9. At the expiration of the period of this probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent from the practice of law for one year shall be satisfied and that suspension shall be terminated.[37]

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[37]The Court will not act as a collection agency and recommend that the amount of the malpractice judgment awarded in favor of Fischer be paid as restitution. As the Review Department of the State Bar Court noted in *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, "[I]n *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct.

It is also recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners within one year after the effective date of the discipline imposed herein and furnish satisfactory proof of such to the State Bar's Office of Probation within said period, unless Respondent has been ordered by the Supreme Court to take and pass said examination in State Bar case no. 04-PM-14982.

B. COSTS

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, to be paid in accordance with section 6140.7 of that Code.

Dated: February 4, 2005

RICHARD A. HONN
Judge of the State Bar Court

Rptr. 631, 650, we held that it is inappropriate to use restitution as a means of awarding tort damages for legal malpractice. (Accord *King v. State Bar* (1990) 52 Cal.3d 307, 312, 315-316 [Supreme Court adopted review department's discipline recommendation, which recommendation deleted the hearing panel's probation condition requiring King to make restitution to a former client for the $84,000 legal malpractice judgment client obtained against King].)" (*In the Matter of Torres*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 153.) Accordingly, the Court declines to recommend the payment of restitution to Fischer in this matter.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 4, 2005, I deposited a true copy of the following document(s):

DECISION, filed February 4, 2005

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

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

DAVID A CLARE ESQ
4675 MACARTHUR CT #1250
NEWPORT BEACH CA 92660

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

Eli D. Morgenstern, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 4, 2005**.

Julieta E. Gonzales

Julieta E. Gonzales
Case Administrator
State Bar Court

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **CASSANDRA D. JONES,** **Member No. 170053,** A Member of the State Bar.	**Case No. 04-PM-14982-RAH** **ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Jayne Kim appeared for the Office of Probation of the State Bar of California (Office of Probation). Respondent, Cassandra D. Jones, did not appear in person or by counsel.

Based upon alleged probation violations, the Office of Probation filed a motion to revoke the probation of Respondent imposed by the Supreme Court in its order filed on November 25, 2003, in case number S118768 (State Bar Court case number 01-O-01078 *et. al.*).

After considering the evidence and the law in this matter, the Court finds by a preponderance of the evidence that Respondent wilfully failed to comply with the terms of her probation. (Bus. & Prof. Code section 6093(c).)[1] The Court hereby grants the Office of Probation's motion to revoke Respondent's probation and its request to involuntarily enroll her as an inactive member of the State Bar pursuant to section 6007(d). The Court therefore recommends that Respondent's probation be revoked, that the previously ordered stay be lifted, and that Respondent be actually suspended from

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[1]Unless otherwise indicated, all further references to "section" refer to provisions of the Business and Professions Code.

the practice of law for one year. The Court also orders the involuntary inactive enrollment of Respondent pursuant to section 6007(d).

II. PERTINENT PROCEDURAL HISTORY

On October 26, 2004, the Office of Probation filed a motion to revoke Respondent's probation, accompanied by the declaration of Shuntinee Brinson, Exhibits 1-3 in support of motion, and a Probation Revocation Response form. A copy of the motion, declaration of Shuntinee Brinson, Exhibits 1-3 in support of motion, and the Probation Revocation Response form were properly served on Respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar pursuant to section 6002.1(c) and rules 60 and 563(a) of the Rules of Procedure of the State Bar of California (Rules of Procedure). The Office of Probation requested a hearing in this matter if Respondent responded to the motion, unless the Court, based upon the motion and response alone, determined that the Office of Probation's requested discipline was warranted.

On October 29, 2004, Respondent was properly served at her official membership records address with a notice advising her, among other things, that an initial status conference would be held on December 9, 2004.

Respondent did not file a response to the Office of Probation's motion to revoke probation, and the time for doing so expired. Respondent also did not appear at the December 9, 2004, status conference and Office of Probation Supervisor, Jayne Kim, indicated that her attempts to contact Respondent were unsuccessful. On December 14, 2004, the Court filed an order taking the matter under submission as of December 9, 2004. On that same date Respondent was properly served with a copy of the submission order at her official membership records address by first class mail, postage fully paid. The copy of the submission order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

III. FINDINGS OF FACT

Failure to file a response to a motion to revoke probation shall constitute an admission of the factual allegations contained in the motion and supporting documents. (Rules Proc. of State Bar, rule 563(b)(3).) The declaration of Shuntinee Brinson and Exhibits 1-3 are admitted into evidence

in accordance with rule 563(e) of the Rules of Procedure.

The Court's factual findings are based on the allegations contained in the motion, the declaration of Shuntinee Brinson, and Exhibits 1-3 in support of motion.

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on April 15, 1994. Respondent has been a member of the California State Bar at all times since.[2]

B. Facts

On November 25, 2003, the Supreme Court filed an order in case number S118768 (State Bar Court case number 01-O-01078 *et. al.*) suspending Respondent from the practice of law for two years, staying execution of suspension, and placing Respondent on probation for two years subject to probation conditions, including actual suspension for 60 days. The Supreme Court order became effective December 25, 2003. (Cal. Rules of Court, rule 953(a).) In absence of evidence to the contrary, the Court finds that the Supreme Court order was properly served on Respondent. (Cal. Rules of Court, rule 24(a); Evid. Code section 664.)

Pursuant to the Supreme Court order, Respondent was ordered to comply with the following terms and conditions of probation, among others, during the probation period:

1. 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, stating under penalty of perjury whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct and all probation conditions during the preceding calendar quarter;

2. Answer fully, promptly and truthfully, subject to assertion of applicable privileges, any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions; and

3. Submit to the Office of Probation, within 180 days of the effective date of the discipline,

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[2]The Court on its own motion takes judicial notice of State Bar membership records which establish that Respondent has been a California bar member at all times since April 15, 1994.

satisfactory evidence of completion of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics.

On December 5, 2003, Probation Deputy Shuntinee Brinson sent a letter to Respondent's official membership records address setting forth the terms and certain conditions of probation, including that quarterly reports were due beginning April 10, 2004, and proof of completion of the required 6 hours of MCLE courses was due by June 25, 2004. The letter set forth that Respondent's failure to timely submit reports or any other proof of compliance would result in a non-compliance referral. Enclosed with the letter were, inter alia, a copy of the Supreme Court order imposing discipline, a copy of the disciplinary terms and conditions of probation, and a Quarterly Report Instructions sheet setting forth the reporting period schedule, and a Quarterly Report form. Brinson's letter was not returned to the Office of Probation as undeliverable or for any other reason.

On May 6, 2004, Brinson faxed Respondent another copy of the December 5, 2003, letter with attachments pursuant to Respondent's request. Between June 2, 2004, and August 16, 2004, Respondent and Brinson communicated regarding Respondent's compliance with her probation conditions.

On September 1, 2004, Brinson sent a letter to Respondent at her official membership records address reminding Respondent that she had not responded to Brinson's telephone message of August 24, 2004, requesting Respondent to call regarding her non-compliance with probation conditions, specifically Respondent's 6 hours of MCLE and restitution. The letter requested Respondent to provide the required documentation forthwith and that if the delinquent probation conditions were not satisfied by September 10, 2004, the matter would be referred for further action. Brinson's letter of September 1, 2004, was not returned to the Office of Probation as undeliverable or for any other reason.

On September 23, 2004, Brinson received a courtesy copy of a letter sent to Respondent by Office of Probation Supervisor, Jayne Kim, requesting Respondent to contact the Office of

Probation.[3]

Respondent did not submit a written quarterly report due no later than October 10, 2004. Respondent also did not submit evidence of her completion of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics which was due no later than June 25, 2004. As of October 26, 2004, the date Brinson completed her declaration in support of motion, Brinson had received no contact from Respondent since August 16, 2004.

C. Legal Conclusions

A general purpose or willingness to commit an act or permit an omission is the threshold mental state necessary to justify discipline for violation of probation conditions, and bad faith is not a requirement for a probation violation to be wilful. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.) The Court finds by a preponderance of the evidence that Respondent wilfully violated the conditions of probation ordered by the Supreme Court by failing to submit a written quarterly report due no later than October 10, 2004, failing to promptly respond to Brinson's telephone message of August 24, 2004, and correspondence dated September 1, 2004,[4] and failing to submit evidence of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics by June 25, 2004. These violations warrant revocation of Respondent's probation.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

1. Respondent's prior record of discipline is an aggravating circumstance. (Standard 1.2(b)(i), Rules of Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct.)[5]

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[3]Although Brinson's declaration states that a copy of this letter is attached as part of Exhibit 3, no such letter was included with the motion filed with the Court.

[4]Based on the representations of Probation Supervisor, Jayne Kim, at the December 9, 2004, status conference, the Court concludes that Respondent made no attempt to answer Brinson's inquiries by contacting Kim.

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

In Supreme Court case number S1118768, the underlying matter, effective December 25, 2003, Respondent was suspended for two years, stayed. Respondent was placed on probation for two years on condition that she be actually suspended for 60 days. Respondent stipulated to ethical violations involving her representation of six clients. In several instances Respondent stipulated that she improperly withdrew from employment, failed to adequately communicate with clients, failed to return client files, and failed to cooperate with the State Bar's investigation of client complaints.

2. Respondent's violation of multiple probation conditions constitutes multiple acts of misconduct and is an aggravating factor. (Standard 1.2(b)(ii); Cf. *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 76 [Violating three separate conditions of probation constituted misconduct involving multiple acts of wrongdoing].)

3. Since Respondent did not belatedly file her probation report or evidence of MCLE completion, she made no attempt to rectify or atone for the consequences of her misconduct. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702 [Failure to rectify misconduct by belatedly filing probation reports and proof of CLE completion in reproval matter demonstrates indifference towards rectification].)

4. Respondent's lack of cooperation during a disciplinary proceeding, evidenced by her failure to participate in this proceeding, is an aggravating circumstance. (Std. 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.) The court notes that the conduct relied on for this finding closely equals the misconduct giving rise to the finding that Respondent violated probation conditions and correspondingly assigns less weight to this factor in aggravation. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225 [Respondent's failure to participate in disciplinary proceeding before entry of default found to be aggravating factor warranting little weight since conduct relied upon for the finding in aggravation so closely resembled the conduct relied upon for culpability finding under section 6068(i)].)

B. Mitigating Circumstances

Since Respondent did not appear in person or by counsel in this disciplinary proceeding, no mitigating evidence was offered or received into evidence on her behalf and none can be gleaned from the record.

C. Discussion

The purpose of disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard 1.3.)

Public protection and rehabilitation of the attorney are the primary goals of disciplinary probation. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) Violating probation conditions significantly related to the misconduct for which probation was given warrants greater discipline than violating less significant conditions that do not call into question an attorney's progress toward rehabilitation or raise concerns about the need for public protection. (*In the Matter of Potack, supra,* 1 Cal. State Bar Ct. Rptr. 525, 540.) In determining the appropriate level of discipline, the Court also considers the total length of stayed suspension which could be imposed as actual suspension and the total amount of actual suspension imposed earlier as a condition of the discipline when probation was granted. (*Ibid.)* Furthermore, according to rule 562 of the Rules of Procedure, any actual suspension recommended cannot exceed the entire period of stayed suspension.

Respondent has been found culpable of failing to comply with the terms of her probation. There is no mitigation. In aggravation, the Court has found a prior record of discipline, multiple acts of misconduct, indifference toward rectification or atonement, and failure to participate in the proceeding.

The Office of Probation recommends, among other things, actual suspension of the entire period of stayed suspension.

In determining its disciplinary recommendation, the Court notes that the probation condition requiring Respondent to provide evidence of completion of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics is significantly related to Respondent's underlying misconduct involving her failure to properly withdraw from representation and adequately communicate with clients. Respondent's violation of this condition calls into question her progress toward rehabilitation.

After considering Respondent's misconduct and the law, and balancing the aggravating and

mitigating factors, the Court recommends that Respondent's probation be revoked and that Respondent be actually suspended for one year.

V. DISCIPLINE RECOMMENDATION

The Court hereby recommends to the Supreme Court that Respondent's probation pursuant to the Supreme Court order in case number S1118768 (State Bar case number 01-O-01078 *et. al.*) be revoked, that the previous stay of execution of the suspension be lifted, and that Respondent, CASSANDRA D. JONES, be suspended from the practice of law for two years, that said suspension be stayed, and that Respondent be placed on probation for two years and that during said probation, Respondent satisfy the following conditions:

1. Respondent must be actually suspended from the practice of law for the first year of probation.

2. Comply with the State Bar Act and the Rules of Professional Conduct.

3. Within ten (10) days of any change, report to the Membership Records Department of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639 **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to Respondent

personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein.

6. Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance of the State Bar Ethics School and passage of the test given at the end of that session.

7. Within one-hundred eighty (180) days of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than six hours of MCLE approved courses in law office management, attorney client relations and/or general legal ethics.

8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

It is recommended that Respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing Respondent's compliance with said order.

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, and provide proof of passage to the Office of Probation within one year of the effective date of the discipline herein or during the period of actual suspension, whichever is longer.

VI. ORDER REGARDING INACTIVE ENROLLMENT

The Office of Probation requests that Respondent be involuntarily enrolled inactive pursuant to section 6007(d). Since Respondent is subject to a stayed suspension, she has been found to have violated probation, and it has been recommended that she be actually suspended due to the probation violation, the requirements of section 6007(d)(1) are satisfied.

IT IS THEREFORE ORDERED that Respondent, CASSANDRA D. JONES, be involuntarily enrolled as an inactive member of the State Bar of California in accordance with section 6007(d). This enrollment shall be effective three days after this order is filed.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided in section

6007(d)(2).

IT IS FURTHER RECOMMENDED that Respondent's actual suspension in this matter commence as of the date of her inactive enrollment pursuant to this order. (Bus. & Prof. Code section 6007(d)(3).)

VII. COSTS

It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10 and that those costs be payable in accordance with section 6140.7.

Dated: January 4, 2005

RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 5, 2005, I deposited a true copy of the following document(s):

ORDER GRANTING MOTION TO REVOKE PROBATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed January 5, 2005

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

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

CASSANDRA D JONES ATTORNEY AT LAW
1202 N BROADWAY
SANTA ANA CA 92701

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

Jayne Kim, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 5, 2005**.

Julieta E. Gonzales

Julieta E. Gonzales
Case Administrator
State Bar Court

The Committee to Expose Dishonest and Incompetent Judges, Attorneys and Public Officials

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Attorney Cassandra Jones of Santa Ana, CA; incompetent boob, ethical gremlin

Sadly Cassandra Jones was provided with a law license by the California Supreme Court in 1994. Subsequently, she engaged in the egregious misconduct set forth below.

1st bite at the Attorney Misfit Apple Tree

In 2003, Jones was found guilty by the California Bar Court for misconduct involving six (6) clients. In those cases she failed to communicate with her clients, return files to them and improperly withdrew from her representation of them (abandoned them). She was also found guilty of refusing to cooperate with the State Bar's investigation of her multiple instances of misconduct.

For this total abandonment of her six clients, the losers sitting on the California Bar Court punished Jones by suspending her for 60 days. Apparently, they bought Jones' BS defense that her misconduct came about because she was caring for and was the trustee for her mother who was suffering from serious medical problems, which negatively affected her sworn duty to represent her clients.

2nd bite at the Attorney Misfit Apple Tree

In July 2005, the State Bar again found attorney Cassandra Jones guilty of egregious misconduct in failing to perform legal services competently. Surprised?

She was also found guilty of abandoning her clients by failing to appear at hearings, which caused the clients cases to be dismissed.

For this continuing misconduct, the enablers at the Bar Court merely suspended Jones' law license for 30 days. This after an earlier suspension in 2003 for 60 days!

I suppose that when Jones is found guilty of the same type of misconduct in the future that, the Bar Court will punish her by providing her with an all-paid family vacation to Tahiti. That'll teach her, right?

Again, the apologists sitting on the Bar Court bought into Jones' defense she used in 2003 that she was dealing with family issues at the time of her repeated misconduct.

If ya live anywhere in Orange County, California, I would strongly urge you to avoid any contact with this certified loser!

Attorney

The Committee

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Judicial Misfits: A Factual Expose of an Industry Answerable Only to Itself

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