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JUN 21 2011

STATE BAR COURT  
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LOS ANGELES

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of	)	Case No. 03-C-01657
	)	
MARILYN KAYE FREEMAN,	)	AMENDED RECOMMENDATION OF
	)	SUMMARY DISBARMENT <sup>1</sup>
A Member of the State Bar, No. 119058.	)	
_____	)	

On April 5, 2011, the State Bar filed a request for recommendation of summary disbarment based on Marilyn Kaye Freeman's felony conviction. Freeman filed her opposition on April 15, 2011. We grant the request and recommend that Freeman be summarily disbarred.

**A. Conviction is Final for Purposes of Attorney Discipline**

On November 4, 2004, a jury found Freeman guilty of felony violations of Penal Code sections 459/460 (burglary of the first degree), 646.9, subdivision (a) (stalking), and 653f, subdivision (a) (solicitation to commit kidnapping).<sup>2</sup> As a result of Freeman's felony

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<sup>1</sup> We filed a recommendation of summary disbarment on April 29, 2011. On May 3, 2011, Freeman filed a motion for reconsideration, disputing, among other things, our finding that her conviction is final for purposes of attorney discipline. Although we denied her request for reconsideration, we now amend our recommendation to correct the procedural history of Freeman's criminal record, but this correction does not otherwise affect our recommendation. This amended recommendation of summary disbarment supersedes the prior recommendation.

<sup>2</sup> Freeman was also found guilty of misdemeanor violations of Penal Code sections 273a, subdivision (b) (cruelty to child by endangering health) and 242 (battery). Our recommendation is based only on Freeman's burglary conviction.



violations we placed her on interim suspension effective January 16, 2005, and she has remained on interim suspension since that time.

In February 2007, the Court of Appeal reversed Freeman's judgment of conviction. Then, in January 2010, the Supreme Court reversed the Court of Appeal's judgment and remanded the matter. In April 2010, the Court of Appeal affirmed Freeman's judgment of conviction. On May 20, 2010, Freeman filed a petition for review of the opinion on remand and two separate petitions for writ of habeas corpus. On August 11, 2010, the California Supreme Court denied the petition for review of her conviction, as well as both petitions for writ of habeas corpus. Freeman had 90 days to file a petition for certiorari with the United States Supreme Court after the California Supreme Court's entry of judgment denying her petition for review. (U.S. Sup. Ct. Rules, rule 13, 28 U.S.C.) The time for filing such petition has elapsed and no petition has been filed. Instead, Freeman filed a petition for writ of habeas corpus in federal district court in September 2010, which is still pending.

Rule 9.10(a) of the California Rules of Court states that, with respect to discipline of attorneys, "a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed." In the context of attorney discipline, the Supreme Court has held that a pending petition for writ of habeas corpus does not affect the finality of a conviction. (*In re Calaway* (1977) 20 Cal.3d 165, 167 [attorney disbarred even though "applied for a writ of habeas corpus in federal court . . . the pendency of this petition does not affect the finality of his conviction"]; *In re Utz* (1989) 48 Cal.3d 468, 480 [attorney disbarred despite pending appeal of a denial of his petition for writ of habeas corpus on conviction].) Because Freeman's pending federal petition constitutes a collateral attack rather

than a direct appeal, we reject her contention that the conviction is not final for purposes of attorney discipline. (Cal. Rules of Court, rule 9.10(a).)

**B. Grounds for Summary Disbarment are Satisfied**

After the judgment of conviction becomes final, “the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude.” (Bus. & Prof. Code, § 6102, subd. (c).) The record of conviction establishes that Freeman's conviction meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c).

First, the offense is a felony. (Pen. Code, §§ 17, subd. (a) [felony is crime punishable by state imprisonment] and 461 [first degree burglary is punishable by state imprisonment for two, four, or six years].) Second, the offense for which Freeman was convicted involves moral turpitude. Burglary is committed by every person who enters a house or other listed structure or vehicle with the intent to commit grand or petit larceny or any felony.<sup>3</sup> (Pen. Code, § 459.) “[W]hether or not the target felony itself evidences a moral defect, burglary remains in all cases the fundamentally deceitful act of entering a house or other listed structure with the secret intent to steal or commit another serious crime inside. A felony conviction of such an act demonstrates a ‘readiness to do evil’ and hence necessarily involves moral turpitude. [Citations.]” (*People v. Collins* (1986) 42 Cal.3d 378, 395, fn. omitted.) We recognize that *People v. Collins* is not an attorney disciplinary case. Nevertheless, a fundamentally deceitful act demonstrating a readiness to do evil clearly falls within the definition of moral turpitude for attorney disciplinary purposes. (See *In re Hurwitz* (1976) 17 Cal.3d 562, 567-568 [conviction for unauthorized entry under Pen. Code § 602.5 does not inherently involve moral turpitude, but attorney disbarred because he

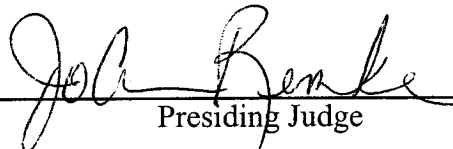
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<sup>3</sup> The record of conviction shows that Freeman’s target felony was stalking.

“committed acts in the nature of burglary, that the commission of these acts constitutes moral turpitude and dishonesty”].)

Once an attorney’s conviction satisfies Business and Professions Code section 6102, subdivision (c), the State Bar Court must recommend summary disbarment, and “the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for.” (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that Marilyn Kaye Freeman, State Bar number 119058, be summarily disbarred from the practice of law in this state. We also recommend that she be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 45 days, respectively, after the effective date of the Supreme Court’s order. Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

  
\_\_\_\_\_  
Presiding Judge

**CERTIFICATE OF SERVICE**

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 21, 2011, I deposited a true copy of the following document(s):

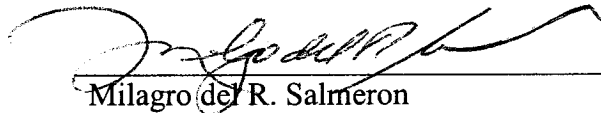
AMENDED RECOMMENDATION OF SUMMARY DISBARMENT  
FILED JUNE 21, 2011

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:  
  
MARILYN KAYE FREEMAN  
PO BOX 56843  
SHERMAN OAKS, CA 91413
- by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- by overnight mail at , California, addressed as follows:
- by fax transmission, at fax number . No error was reported by the fax machine that I used.
- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Murray B. Greenberg, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 21, 2011.



Milagro del R. Salmeron  
Case Administrator  
State Bar Court