

**FILED JUNE 14, 2011**

**STATE BAR COURT OF CALIFORNIA  
REVIEW DEPARTMENT**

In the Matter of	)	Case Nos. 07-O-11231; 08-O-10413
	)	(Cons.)
KIM LOAN RYAN	)	
	)	OPINION
A Member of the State Bar, No. 169623	)	
_____	)	

**I. SUMMARY OF THE CASE**

A hearing judge found respondent Kim Loan Ryan culpable of nine counts of misconduct in two client matters, and recommended 90-days’ actual suspension. Ryan committed misconduct from 2005 to 2008 when she failed to: (1) communicate with two clients; (2) perform with competence; (3) maintain and distribute client trust account (CTA) funds and files; and (4) cooperate with the State Bar’s investigation. After finding four factors in aggravation and two factors in mitigation, the hearing judge applied standard 2.2(b),<sup>1</sup> which calls for three months’ actual suspension regardless of mitigation for failing to preserve the identity of client funds and property. This is Ryan’s second discipline case.

Ryan seeks review, denying culpability and requesting that the trial court’s decision be reversed, the recommended period of actual suspension be eliminated or the matter remanded for a re-trial. She also claims, for the first time on appeal, that the hearing judge committed

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<sup>1</sup> Unless otherwise noted, all references to “standard(s)” are to the Rules of Procedure of the State Bar of California, title IV, Standards for Attorney Sanctions for Professional Misconduct.

procedural due process errors. The Office of the Chief Trial Counsel (State Bar) supports the hearing judge's decision. We find no procedural errors and affirm the hearing judge's culpability findings and recommendation of 90 days' actual suspension, one-year stayed suspension and 18 months' probation as the discipline necessary to protect the public, the courts and the legal profession.

## **II. CONSOLIDATION**

The State Bar filed two NDCs arising from separate complaints. The first was filed on May 6, 2009, in case no. 07-O-11231, based on a complaint by Daremus Watts. The second was filed on October 15, 2009, in case no. 08-O-10413, based on a complaint by Jane Kishiyama. On November 16, 2009, the hearing department consolidated the NDCs into the case before us.

## **III. PROCEDURAL CHALLENGES**

Ryan raises two procedural challenges. First, she alleges that the hearing judge erred by permitting a witness to testify in Ryan's absence. Second, she complains that the hearing judge wrongly relied on "quasi-expert" testimony by two witnesses – Marc Gessford, opposing counsel in the Watts matter, and Howard McEwan, replacement counsel for Ryan in the Kishiyama matter. As detailed below, these challenges fail since Ryan never raised them at trial (see *Hizar v. State Bar* (1942) 20 Cal.2d 223, 227 [declining to address respondent's argument raised for first time on appeal where inconsistent with position at trial]), and she did not demonstrate prejudice (see *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 503 [procedural error claim rejected where no proof of prejudice]).

### **A. STATE BAR INVESTIGATOR'S TESTIMONY**

On the second day of trial, Ryan appeared by telephone and requested a continuance to obtain prescription medication for a headache. Since Watts had traveled from Mississippi to appear as a witness, the hearing judge agreed to postpone his testimony until the afternoon, and

permit only Chercheng Lo (Ryan's legal assistant) and attorney Michael Faber (one of Ryan's colleagues) to testify that morning. Ryan did not object. After Lo and Faber testified, the hearing judge permitted Dolores Ziegler, a State Bar investigator, to also testify.

When Ryan appeared for the afternoon session, neither the hearing judge nor the State Bar prosecutor told her that Ziegler had testified. During a break in the proceedings, however, Ryan found out and requested "the tape as to what her [Ziegler's] testimony was" to prepare for cross-examination. The judge agreed that Ryan could receive the transcript of Ziegler's testimony.

The trial was continued for six weeks. When it resumed, Ryan cross-examined Ziegler without further comment about a transcript, even though her questions revealed that she had not reviewed one. Ryan now asserts that the hearing judge violated her procedural due process rights by permitting Ziegler to testify in her absence.

We agree that the hearing judge erred. In deciding whether to attend the morning trial session, Ryan had a right to rely on the judge's statement that only witnesses Lo and Faber would testify. While the State Bar Court has inherent authority to exercise reasonable control of the proceedings (*In the Matter of Lapin* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 279, 295), and to set the order of proof in a trial (State Bar Ct. Rules of Prac., rule 1250), fairness demands that the court accurately inform parties of scheduled trial activities. Unfortunately, that did not occur.

Nonetheless, the hearing judge remedied her error by continuing the trial, ordering that Ryan could receive a transcript of Ziegler's testimony and permitting cross-examination. In addition, Ziegler's testimony was fully corroborated by other reliable evidence. In sum, we find that the hearing judge's error was harmless and Ryan's procedural due process rights were not violated.

## **B. TESTIMONY OF ATTORNEYS GESSFORD AND McEWAN**

Ryan alleges that Gessford gave “quasi-expert” testimony about legal principles. She also claims that McEwan provided similar quasi-expert testimony about his assessment of the legal work remaining to be done at the time he received the case from Ryan. These claims are without merit since the record establishes that Gessford and McEwan testified *only* as percipient witnesses.

## **IV. CASE NUMBER 07-O-11231 (The Watts Matter)**

### **A. FINDINGS OF FACT**

On April 4, 2004, Daremus Watts and his brother-in-law, Larry Miller, were injured in an auto accident in Sacramento. A semi-truck ran a red light, striking their vehicle. Watts, an uneducated man with a criminal history, hired Ryan in December 2004. Watts signed a contingency fee agreement,<sup>2</sup> and Ryan filed his civil lawsuit in April 2005. Miller retained his own counsel and filed a separate lawsuit. The cases were consolidated.

#### **1. Ryan Knew Watts’s Contact Information**

Ryan claims that these disciplinary proceedings stem from Watts being a difficult client who did not maintain contact with her. The record reveals, however, that from the outset of the attorney-client relationship, Watts regularly provided Ryan with his contact information. At their first meeting in December 2004, Watts listed on the client intake sheet both his former Sacramento address and his new home telephone number in Mississippi. Watts’s wife had secured their new Mississippi home in September 2004, and Watts was traveling back and forth until he permanently moved in August 2005. He met with Ryan on several occasions at her office, where she advanced him small sums of money.

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<sup>2</sup> Ryan was to collect 33-1/3% of the gross recovery before filing the complaint and 40% after filing.

Ryan also knew Watts's contact information from other reliable sources. For example, she received a copy of Watts's application to Law Cash in Mississippi in May 2005, which listed his address and telephone number. Six months later, Ryan sent a letter to Watts's former Sacramento address that was returned, listing his Mississippi forwarding address.

## **2. Ryan Fails to Communicate**

Throughout 2005, Watts and his wife called and wrote to Ryan but she did not regularly respond. Finally, on April 25, 2006, Watts faxed a letter to Ryan asking that she respond, informing her that he had permanently moved to Mississippi, and again listing his contact information. Watts closed his letter with a plea for communication: "I hope its [sic] not asking to [sic] much of you to call or write me back and let me know whatever you know even if its [sic] nothing. . . . Well I'll close this letter asking please respond."

Ryan did not respond to the letter and the civil case proceeded without Watts's participation. The superior court set an arbitration hearing for May 18, 2006. Although Ryan attended the hearing, she did not inform Watts about it. Consequently, Watts failed to appear and on June 9, 2006, the arbitrator issued a decision awarding him \$8,686.40, describing his case as "essentially worthless" given his lack of involvement.<sup>3</sup> Ryan did not tell Watts about the arbitrator's decision until one month after it was issued.

Ultimately, Watts rejected the arbitration award, and the defense scheduled his deposition in California. He failed to appear because Ryan did not inform him of the correct date. The defense then filed a motion to compel Watts's attendance and for sanctions. Again, Ryan did not inform Watts about the motion nor did she oppose it, reasoning that Watts would not prevail. The superior court granted the motion and ordered Watts to pay \$257.50 in sanctions. Ryan did

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<sup>3</sup> Miller and his attorney appeared at the hearing. Miller was awarded \$69,227.61, although his injuries were significant.

not tell Watts about the sanctions award but did notify him that his deposition had been rescheduled for November 30, 2006.

### **3. Ryan Settles Without Watts's Consent**

On November 27 and 28, 2006, Watts drove to California for his deposition. On November 29th, he met with Ryan and *tentatively* agreed to settle his claim for \$7,000 if she reduced her lien and gave him another cash advance. But the discussions broke down and Watts left the office without finalizing the settlement offer. He planned to attend the deposition the next day at 9:00 a.m. at the office of opposing counsel, Mark Gessford.

Early the next morning before the deposition, Ryan spoke with Gessford by telephone and agreed to settle Watts's case for \$7,000. When Watts arrived for his deposition, Gessford told him about the settlement. Although he was surprised and disappointed, Watts ultimately agreed to the settlement because he needed the money.

### **4. Ryan Fails to Promptly Pay Settlement Funds**

On December 6, 2006, Ryan received the \$7,000 settlement check, payable to both Ryan *and* Watts. For more than three weeks, Ryan did not tell Watts about the check; she deposited it into her CTA on January 5, 2007, without Watts's endorsement.

Watts called and wrote to Ryan asking for his portion of the settlement, which he believed should have been more than \$3,000. In May 2007, Ryan sent Watts a settlement check for \$2,875, along with a "Waiver of Liability and Hold Harmless Agreement" (HHA). Watts felt this amount was too low and he did not wish to sign the HHA, so he returned the check. Then, in July 2007, Ryan sent a second settlement check for \$987 (after paying the medical lien) and again included the HHA. Watts returned this check for the same reason, but offered to sign a "settlement form" when things were properly finalized.

Frustrated at not receiving his money, Watts requested that the Sacramento County Bar Association arbitrate his dispute with Ryan. On May 12, 2007, the arbitrator awarded Watts \$3,013.10, which Ryan paid on June 8, 2008, over 18 months after she had received the settlement proceeds.

#### **5. Ryan Fails to Cooperate with the State Bar Investigation**

Watts filed a State Bar Complaint against Ryan. As a result, on May 11, 2007, the State Bar requested in writing that Ryan respond to misconduct allegations. After agreeing to several extensions of time, the State Bar renewed its May 11<sup>th</sup> request for information on February 12 and 26, March 7 and 20, and April 1, 2008. Neither Ryan nor her attorney provided a full response to these requests.

#### **B. CULPABILITY**

##### **Count One – Rule 3-110(A)<sup>4</sup> (Failure to Perform Competently)**

Rule 3-110(A) prohibits intentional, reckless, or repeated failure to perform legal services with competence. Ryan violated this rule by: (1) failing to inform Watts about the arbitration or his deposition; (2) failing to oppose the motion to compel; and (3) settling Watts’s claim for \$7,000 without his authorization. An attorney must use best efforts to timely perform tasks for the client. (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931.) Ryan’s failures fell below a competent standard for legal representation and are grounds for discipline. (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action toward purpose client retained him to accomplish].) We reject Ryan’s claim that any incompetence was because Watts lost contact with her. To the contrary, it was Ryan who failed to communicate with Watts.

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<sup>4</sup> Unless otherwise noted, all references to “rule(s)” are to the Rules of Professional Conduct of the State Bar.

**Count Two – Section 6068, subdivision (m)<sup>5</sup> (Failure to Respond to Client Inquiries and Failure to Inform Client of Significant Development)**

Section 6068, subdivision (m) requires attorneys to promptly respond to clients' reasonable status inquiries and to keep them reasonably informed of significant case developments. We find that Ryan violated section 6068 because she failed to respond to Watts's telephone calls and written correspondence. Ryan also failed to timely inform him of significant developments in his civil case including: (1) the arbitration hearing and decision; (2) the trial-setting conference; (3) the defendant's motion to compel; (4) the sanctions issued against him; and (6) receipt of the settlement check.

**Count Three – Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)**

Ryan is culpable of violating rule 4-100(B)(4), which requires prompt payment, upon request, of client funds, securities or other property being held by the attorney. She withheld Watts's settlement funds for 18 months, despite his repeated requests for payment. This lengthy delay does not constitute "prompt" payment. (*In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 735 [six-week delay in distributing settlement funds without compelling reason violates rule 4-100(B)(4)].) A client's right to receive funds is absolute and cannot be conditioned upon a release such as the HHA that Ryan submitted to Watts with the settlement checks. (*In the Matter of Malek-Yonan* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627, 636 [rule 4-100(B)(4) requires attorney to pay client settlement funds when received, not when releases signed].)<sup>6</sup>

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<sup>5</sup> Unless otherwise noted, all further references to "section(s)" are to the Business and Professions Code.

<sup>6</sup> The hearing judge dismissed Counts Four and Five for lack of evidence. Count Four charged Ryan with a violation of rule 4-100(B)(3) (Failure to Render Accounts of Client Funds) and Count Five charged him with a violation of rule 3-700(D)(1) (Failure to Release File). The State Bar does not challenge these dismissals and we agree with and adopt the hearing judge's conclusions.



**Count Six - Section 6068, subdivision (i) (Failure to Cooperate in State Bar Investigation)**

Section 6068, subdivision (i), requires an attorney to participate and cooperate in any disciplinary investigation or proceeding. Ryan violated this requirement by failing to fully respond to the State Bar's requests for information on May 11, 2007, February 12 and 26, March 7 and 20, and April 1, 2008.

**V. CASE NUMBER 08-O-10413 (The Kishiyama Matter)**

**A. FINDINGS OF FACT**

On October 8, 2006, Jane Kishiyama hired Ryan to substitute in for another attorney in her marital dissolution case filed in Placer County. Kishiyama, an elderly and unsophisticated woman, lived in Sacramento County. She paid Ryan \$5,000 in advanced fees.

Between October 2006 and February 2007, Ryan performed only minimal legal services, including obtaining documents from the court, retrieving Kishiyama's file from former counsel, sending settlement correspondence to opposing counsel, and driving Kishiyama to and attending one court hearing. However, Ryan did not seek or obtain family law orders that Kishiyama requested, including: (1) increased spousal support; (2) unpaid spousal support; and (3) return of community funds Mr. Kishiyama had taken. Ryan also failed to complete a venue transfer from Placer County to Sacramento County, even though a stipulation and order had been filed in Placer County.<sup>7</sup>

The relationship between Ryan and Kishiyama deteriorated over time. Ryan stopped communicating and did not return Kishiyama's telephone calls. Ryan came to view Kishiyama

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<sup>7</sup> The hearing judge found that Ryan earned only \$1,000 of the \$5,000 advanced fees, and therefore owed Kishiyama a refund of \$4,000 in unearned fees. We do not adopt this finding since the amount of fees, if any, that Ryan earned for the minimal services she provided should be determined in fee arbitration.

as a “wacko” and “an extreme hoarder.” In March 2007, Ryan was injured in a car accident and did not perform any further legal services for Kishiyama.

On June 19, 2007, Ryan received a \$7,254.99 check payable to Kishiyama for a partial distribution of community property assets. Ryan deposited the check into an account she opened, listing Kishiyama as beneficiary. Under this arrangement, Ryan claimed Kishiyama could withdraw the funds herself. But Ryan was mistaken as the bank did not permit Kishiyama to do so.

On July 24, 2007, Kishiyama sent Ryan a letter terminating her services and requesting an accounting, a refund of unearned fees and the return of her file. Ryan never produced these items, and told Kishiyama to provide her own photocopy machine to make copies of her file.

In March 2008, Kishiyama hired attorney Howard McEwan to represent her. Between March and May 2008, McEwan and Kishiyama telephoned Ryan and sent letters requesting the \$7,254.99 in community property funds. Almost a year later, on May 12, 2008, Ryan sent Kishiyama \$7,208.57, which was the remainder in the account after monthly service charge deductions.

## **B. CULPABILITY**

### **Count One – Rule 3-110(A) (Failure to Perform Competently)**

Ryan violated rule 3-110(A) because she performed incompetently by failing to:

(1) timely distribute community property proceeds; (2) seek increased spousal support and recover arrears; and (3) move the case to Sacramento County from Placer County.<sup>8</sup>

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<sup>8</sup> The hearing judge dismissed Count Two for lack of evidence. This count charged Ryan with a violation of section 6068, subdivision (m) (Failure to Respond to Client Inquiries). The State Bar does not challenge the dismissal and we agree with and adopt the hearing judge’s conclusion.

**Count Three – Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**  
**Count Four – Rule 4-100(B)(3) (Failure to Render Accounts of Client Funds)**  
**Count Five – Rule 3-700(D)(1) (Failure to Release File)**  
**Count Six – Rule 4-100(B)(4) (Failure to Pay Client Funds Promptly)**

Ryan is culpable of Counts Three through Six. She never refunded unearned fees or provided an accounting of client funds despite Kishiyama's requests. Ryan also delayed paying Kishiyama her community property distribution for 18 months. We reject Ryan's argument that Kishiyama could have withdrawn the funds herself since the bank did not permit it and, according to rule 4-100(B)(4), the *attorney* is responsible for paying client funds promptly when requested. Finally, we find that Ryan failed to release Kishiyama's file upon the client's request.

## **VI. MITIGATION AND AGGRAVATION**

The State Bar must establish aggravating circumstances by clear and convincing evidence while Ryan has the same burden to prove mitigating circumstances. (Std. 1.2(b) and (e).) The hearing judge found four factors in aggravation and two factors in mitigation. Ryan does not challenge, and we agree with, those findings as summarized below.

### **A. MITIGATING FACTORS**

#### **1. Extreme Emotional or Physical Difficulties (Std. 1.2(e)(iv))**

Ryan suffered emotional or physical difficulties at the time of her misconduct, which is a mitigating factor. In 2007, Ryan was injured in a car accident and spent time in a wheelchair. She also suffered a further injury in 2009. We assign only modest weight to these circumstances because Ryan failed to prove that they were directly responsible for her misconduct in the Watts and Kishiyama matters.

#### **2. Good Character (Std. 1.2(e)(vi))**

Good character is a mitigating factor if established by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct. Ryan presented two character witnesses, an attorney and a retired sheriff, who each testified that she

was honest and provided legal services to poor and often difficult clients. But neither witness knew the full extent of her misconduct, nor do they comprise a wide range of references. We therefore assign only limited mitigation for good character. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [character evidence entitled to limited mitigative weight where declarants not fully aware of extent of attorney's misconduct]; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar. Ct. Rptr. 153, 171 [testimony from only three character witnesses not entitled to significant weight in mitigation].)

## **B. AGGRAVATING FACTORS**

### **1. Prior Discipline Record (Std. 1.2 (b)(i))**

Ryan was admitted to practice law in California in 1993 and has one prior record of discipline in January, 2004, having stipulated to a private reproof with conditions for violating rule 4-100(A) (Commingling and Failing to Maintain Client Trust Funds). In mitigation, Ryan had no prior discipline, caused no harm to clients or to the administration of justice and displayed candor and cooperation. No aggravating circumstances were present.

### **2. Multiple Acts of Misconduct (Std. 1.2(b)(ii))**

Ryan committed nine acts of misconduct in two client matters over three years. We assign significant aggravating weight to these multiple acts of wrongdoing because many of them were repetitious.

### **3. Significant Client Harm (Std. 1.2(b)(iv))**

Ryan significantly harmed her clients by delaying payment of client monies to Watts and Kishiyama. Further, Watts could not fully participate in his civil case because Ryan failed to inform him about important hearing dates, rulings and negotiating the \$7,000 settlement.<sup>9</sup>

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<sup>9</sup> The \$257.50 sanctions award against Watts was waived as part of the case settlement.

#### **4. Indifference toward Rectification (Std. 1.2(b)(v))**

Ryan's case is aggravated by her display of indifference and lack of remorse. At trial, she made derogatory remarks about both clients, labeling Watts as a drug addict who "occasionally just lied for the heck of it," and Kishiyama as a "wacko" and a "hoarder." Such insulting client references reveal that she does not understand her clients' circumstances and has little or no insight into her own misconduct.

### **VII. LEVEL OF DISCIPLINE**

The purpose of attorney discipline is not to punish the attorney but to protect the public, the courts and the legal profession. (Std. 1.3.) To determine the appropriate discipline, we begin with the standards. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.) The Supreme Court has instructed that we should follow the standards "whenever possible" (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and give them great weight as they promote "the consistent and uniform application of disciplinary measures." [Citation.] (*In re Silverton* (2005) 36 Cal.4th 81, 91.)

Several standards guide us here, including 2.2(b) [minimum three months' actual suspension for CTA violations], 2.4(b) [reproval or suspension for willful failure to perform services], 2.6(a) [disbarment or suspension for lack of communication with clients or State Bar] and 2.10 [reproval or suspension for failure to release file or return unearned fees]. And when multiple acts of misconduct call for different sanctions, standard 1.6(a) directs that we apply the most severe sanction.

Standard 2.2(b) applies here since Ryan committed several rule 4-100 violations and the standard calls for a minimum three-month actual suspension "irrespective of mitigating circumstances." This language suggests that more than *ordinary* mitigation must justify a deviation. Ryan requests that if we find culpability, we "reduce the discipline . . . by excising the

requirement for actual suspension.” We decline to do so since Ryan’s misconduct is only slightly mitigated by emotional and physical difficulties and nominal good character. Indeed, Ryan has not presented reasons for us to depart from the standard’s guidance, particularly since she has a prior record of discipline and the aggravating circumstances greatly outweigh those in mitigation. (See *In re Silverton, supra*, 36 Cal.4th at p. 92 [burden on attorney to demonstrate “extraordinary circumstances” in disbarment case for lesser sanction than standard provides].)

In addition to the standards, we must look to case law to guide our disciplinary analysis. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.) The hearing judge did not cite any decisional law to support her recommendation. However, after conducting our own research, we find that comparable cases where standard 2.2(b) has been applied support the hearing judge’s decision.<sup>10</sup> And we have added probation requirements directly related to Ryan’s trust account violations. Further, the recommended 90-day suspension is appropriately progressive under standard 1.7(a)<sup>11</sup> since Ryan received a public reproof for her 2004 misconduct. Finally, we emphasize to Ryan that if she commits future misconduct, she may face further progressive discipline or even disbarment. (Std. 1.7(b) [disbarment for third discipline unless compelling mitigation].)

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<sup>10</sup> See, e.g., *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47 [90-day actual suspension under std. 2.2(b) for numerous CTA violations including negligent misappropriation of \$12,000, failing to communicate and failing to perform competently resulting in loss of client’s claim]; *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91 [90-day actual suspension under std. 2.2(b) for CTA violations over five years with attitude of indifference]; *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 428 [90-day actual suspension under std. 2.2(b) for “serious and prolonged” misuse of CTA and writing NSF checks].

<sup>11</sup> Standard 1.7(a) provides: “If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline . . . , the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time . . . and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

## VIII. RECOMMENDATION

We recommend that Kim Loan Ryan be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Ryan be placed on probation for 18 months on the following conditions:

1. She must be suspended from the practice of law for a minimum of the first 90 days of her probation.
2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.
6. She must comply with the following reporting requirements:
  - a. If she possesses client funds at any time during the period covered by a required quarterly report, she must file with each required report a certificate from her certifying that:
    - i. She has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account;" and
    - ii. She has complied with the "Trust Account Record Keeping Standards" as adopted by the Board of Governors pursuant to rule 4-100(C) of the Rules of Professional Conduct.
  - b. If she does not possess any client funds, property or securities during the entire period covered by a report, she must so state under penalty of perjury in the report filed with the

Office of Probation for that reporting period. In this circumstance, she need not file the certificate described above.

- c. The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct.
7. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending Client Trust Accounting School.
8. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School.
9. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if she has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

#### **IX. PROFESSIONAL RESPONSIBILITY EXAMINATION**

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

#### **X. RULE 9.20**

We further recommend that Kim Loan Ryan be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.



## **XI. COSTS**

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

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.