

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos.: **08-C-12723-PEM**  
) 09-O-10824 (Cons.)  
**ELIZABETH M. BARNSON** )  
**KARNAZES** ) **DECISION**  
)  
**Member No. 118922** )  
)  
A Member of the State Bar. )  

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**I. Introduction**

This disciplinary proceeding involves two consolidated matters. The first matter is before the court on order of reference filed by the Review Department of the State Bar Court on December 19, 2008, for a hearing and decision as to whether the facts and circumstances surrounding a misdemeanor violation of Penal Code section 602, subdivision (o) (trespass), of which respondent **Elizabeth Karnazes** was convicted, involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

In the second matter, respondent is charged, in a single-client matter, with failing to maintain respect to the court and failing to mandatorily withdraw from employment when her mental or physical condition rendered it unreasonably difficult for her to carry out her employment.

The court finds, by clear and convincing evidence, that respondent is not culpable of the misconduct alleged in the second matter. The court, however, concludes that the facts and circumstances surrounding respondent's trespass conviction constitute other misconduct warranting discipline. Based on the nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends, among other things, that respondent be publicly reprimanded.

## **II. Pertinent Procedural History**

On December 19, 2008, the Review Department of the State Bar Court issued an order referring respondent's conviction for Penal Code section 602, subdivision (o), to the Hearing Department for a hearing and decision recommending the discipline to be imposed if the Hearing Department finds that the facts and circumstances surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline.<sup>1</sup> On February 18, 2009, respondent filed her response.

As to the single-client matter, the Office of the Chief Trial Counsel of the State Bar of California ("State Bar") initiated the proceeding by filing a Notice of Disciplinary Charges on June 16, 2009 ("NDC"). On August 10, 2009, respondent filed a response to the NDC.

The conviction matter and the NDC were subsequently consolidated. A five-day trial began on October 20, 2009. The State Bar was represented by Deputy Trial Counsel Treva R. Stewart. Respondent was represented by James A. Murphy. On November 12, 2009, following closing arguments, the court took this matter under submission.

## **III. Findings of Fact and Conclusions of Law**

The following findings of fact are based on the evidence, stipulations agreed to at the pretrial, and testimony introduced at this proceeding.

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<sup>1</sup> This order was augmented by the Review Department on February 6, 2009.

## **A. Jurisdiction**

Respondent was admitted to the practice of law in California on July 15, 1985, and has been a member of the State Bar of California since that time.

## **B. Respondent's Conviction – Case No. 08-C-12723**

### ***1. Findings of Fact***

Beginning on or about July 2007, respondent began treating with Dr. Mark Heitner, MD, MBA (“Dr. Heitner”), for severe major depression and post-traumatic stress disorder. Respondent’s condition was exasperated when she became the victim of an assault in August of 2007, while on vacation in Europe. Respondent was treated with antidepressants and psychotherapy, however, some of the antidepressants led to intolerable side effects.

### ***The Sears Incident***

On the morning of November 24, 2007, respondent went into Sears Department Store at Hillsdale Shopping Center in San Mateo, California (“Sears”), carrying a large black purse and wearing a furry red Santa Claus cap and snow boots.

While in Sears, respondent went to the electronics department where she removed multiple items from a display rack and put them in her purse. Respondent then went to the camera department and selected a digital camera, a memory card, and an audio splitter, and put those items in her purse. After leaving the electronics department she went to the hardware/tool department where she selected a pair of gloves and put the gloves in her purse. She then went to the women’s bathroom with all the merchandise in her purse. After respondent left the bathroom she re-entered the hardware department and bought a few items. Respondent then left the store. She did not pay for any of the merchandise she had put in her purse though she walked passed open manned registers.

After exiting the store, respondent was stopped at her car by a Sears loss prevention employee and was escorted to the store's loss prevention office where the items she had placed in her purse were recovered. Once inside the loss prevention office, respondent became highly upset and uncooperative. Respondent was therefore handcuffed.

San Mateo Police Officer Raymond Herman ("Officer Herman") arrived thereafter and spoke with respondent. Respondent stated that she was going to kill herself and that she was an attorney and could lose her license over the incident. Based on respondent's agitated state and her threatening to kill herself, Officer Herman decided to perform a 5150 hold under the Welfare and Institutions Code.<sup>2</sup> Respondent was then taken to a hospital for observation.

The matter was subsequently referred to the District Attorney's Office ("D.A.'s Office"). On December 12, 2007, the D.A.'s Office filed a complaint in Case No. NM371899. In the complaint, respondent was charged with a misdemeanor violation of Penal Code section 487, subdivision (a) (grand theft).

### **The Radio Shack Incident**

On December 24, 2007, respondent entered Radio Shack in Foster City, California ("Radio Shack"). While in Radio Shack the store manager, Charles Woods ("Woods") saw respondent holding an obsolete Kodak color cartridge/photo printer ("cartridge") valued at \$19.97. He then saw her exit the store to her car without paying for the cartridge. While attempting to drive away from the store, respondent's vehicle collided with another vehicle. The police were called.

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<sup>2</sup> Under section 5150 of the Welfare and Institutions Code, when any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

After the police arrived respondent re-entered the store and began to look for the cartridge. When asked by one of the police officers to give him the cartridge, she went to her car and retrieved the cartridge. The matter was forwarded to the D.A.'s Office for prosecution.

On February 20, 2008, the D.A.'s Office filed a complaint in Case No. SM355906. The complaint charged respondent with a violation of Penal Code sections 484/490.5 (misdemeanor theft of a merchant).

### **Disposition of the Sears and Radio Shack Incidents**

A hearing on both of respondent's criminal complaints was held on April 16, 2008. During the hearing, respondent's criminal defense attorney requested a mental competency evaluation under Penal Code section 1368.<sup>3</sup> As a result, the court suspended the criminal proceedings and appointed two potential doctors to perform an evaluation. Respondent was declared competent in both cases on June 6, 2008.

On August 1, 2008, respondent pled not guilty by reason of insanity in both cases. The court appointed two doctors to evaluate respondent. Respondent was declared sane in both cases on October 17, 2008.

On October 27, 2008, Case No. NM371899 was amended to include a violation of Penal Code section 602, subdivision (o) (misdemeanor trespass). Respondent pled *nolo contendere* to a violation Penal Code section 602, subdivision (o). The court found respondent guilty of that offense and she was placed on probation for a year, and ordered to pay a fine. In exchange for her plea, the charges relating to Penal Code sections 487, subdivision (a) (in Case No. NM371899), and 484 and 490.5 (in Case No. SM355906), were dismissed.

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<sup>3</sup> Under Penal Code section 1368, if counsel informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order that the question of the defendant's mental competence is to be determined in a hearing which is held pursuant to Penal Code sections 1368.1 and 1369. If counsel informs the court that he or she believes the defendant is mentally competent, the court may nevertheless order a hearing.

## ***2. Conclusions of Law***

A conviction of an offense stands as conclusive proof that respondent committed all the acts necessary to constitute the offense. In this case respondent was convicted of misdemeanor trespass. Clearly a conviction for trespass does not involve moral turpitude per se, inasmuch as the elements of fraudulent intent are lacking. The State Bar argues that respondent's conviction of misdemeanor trespass is a conviction for a theft-type crime which constitutes moral turpitude. The State Bar asks this court to examine the circumstances giving rise to her trespass conviction and conclude that respondent's whole course of conduct constitutes a conviction for a crime of moral turpitude.

The court does not find respondent culpable, by clear and convincing evidence of an act of moral turpitude in connection with the Sears and Radio Shack incidents. The court concludes that respondent was convicted of a misdemeanor trespass because the D.A.'s Office could not prove the elements of a theft crime.<sup>4</sup> Although the facts and circumstances surrounding respondent's conviction for a violation of Penal Code section 602, subdivision (o), did not rise to the level of moral turpitude, they did, nonetheless, involve other misconduct warranting discipline.

### **C. The Reese Matter – Case No. 09-O-10824**

#### ***1. Findings of Fact***

On December 27, 2005, respondent filed a complaint on behalf of herself and her son, Zachary Karnazes, in the matter *Zachary Karnazes and Elizabeth Karnazes v. Mountain Homes*

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<sup>4</sup> Respondent entered Sears wearing a furry Santa Claus hat, snow boots and a night shirt. Respondent clearly wanted to be noticed. After she was detained, respondent's behavior was so bizarre that she was hospitalized pursuant to a 5150 hold. As to the Radio Shack incident, respondent picked up an obsolete Kodak printer cartridge and had no memory of taking the Kodak printer cartridge out of the store until she got into her car. In addition, Dr. Heitner testified regarding respondent's inability to appreciate her actions and noted, in a March 4, 2008 letter, that her post traumatic stress disorder and depression "were undoubtedly a root cause" of the present misconduct.

*Youth Ranch, et al*, San Mateo County Superior Court, Case No. CIV451889 (the “Mountain Homes matter”).

On January 30, 2006, respondent filed another complaint on behalf of her son Zachary Karnazes in the matter *Zachary Karnazes v. Odyssey School et al*, San Mateo County Superior Court, Case No. CIV452579 (the “Odyssey School matter”).

On March 19, 2007, Farmers Insurance filed a complaint against respondent, among others, in the matter *Farmers Insurance Exchange v. David Melchner, et al*, San Mateo County Superior Court, Case No. CIV461610 (the “Farmers Insurance matter”).

On August 29, 2007, respondent provided the San Mateo County Superior Court with a letter from Dr. Heitner stating that respondent was ill and unable to perform her full time duties as an attorney. The letter stated that although Dr. Heitner expected a full recovery, respondent would have to reduce her workload significantly until December 5, 2007.

On August 30, 2007, respondent filed a declaration in the Mountain Homes matter in support of her motion to amend her complaint. The declaration claimed that she had “serious health issues.” On that same date respondent filed a notice of unavailability in the Farmers Insurance and Odyssey School matters stating that respondent was unavailable from August 24, 2007 through December 5, 2007, due to “significant health issues.”

On October 3, 2007, respondent provided the San Mateo County Superior Court with a letter from Dr. Heitner indicating that respondent would not return to work until January 15, 2008, due to her health issues.

On November 13, 2007, respondent filed yet another notice of unavailability in the Mountain Homes matter from August 24, 2007 through January 21, 2008, claiming “significant issues” with her health. And on November 15, 2007, respondent provided the court with a letter

from Dr. Heitner to the San Mateo County Superior Court indicating that respondent could not work until January 15, 2008, due to traumatic events that occurred in August 2007.

In addition, on November 15, 2007, respondent requested a stay in the Mountain Homes, Farmers Insurance, and Odyssey School matters claiming she was “too ill to work.” On November 30, 2007, the court denied respondent’s ex parte request for a stay in the Mountain Homes matter. On December 5, 2007, the court granted respondent’s request for a stay until January 29, 2008, in the Odyssey School matter and noted on the order that “this is the last stay.”

On December 12, 2007, respondent was charged with misdemeanor theft for shoplifting items from Sears on November 24, 2007, in the matter entitled *People v. Karnazes*, San Mateo County Superior Court, Case No. NM371899 (the “Sears matter”). And on February 20, 2008, respondent was charged with misdemeanor theft for shop lifting items from Radio Shack on December 24, 2007, in the matter entitled *People v. Karnazes*, San Mateo County Superior Court, Case No. SM3555906. (the “Radio Shack matter”).

On March 19, 2008, respondent filed a notice of unavailability in the Mountain Homes matter from March 20, 2008 through April 11, 2008, claiming significant issues with her health.

On April 16, 2008, respondent’s criminal defense lawyer appeared for respondent in the Sears and Radio Shack matters and stated that there was a question as to respondent’s ability to stand trial due to doubts about respondent’s mental competence. Based upon her attorney’s statements, the court appointed a doctor to evaluate respondent’s mental competence to stand trial.

Prior to May 1, 2008, Nil Reese (“Reese”) was the plaintiff in a medical malpractice matter entitled *Reese v. Struck*, San Mateo County Superior Court, Case No. CV464017. Reese was represented in this matter by attorney Lawrence Moy (“Moy”). The trial in *Reese v. Struck* was set for May 5, 2008.



Reese was not satisfied with Moy's representation of her. She thought he was ill-prepared and unprofessional. Furthermore, because she did not want to take the offer, Reese thought Moy was going to abandon her. At the end of April, Reese searched court records and discovered that respondent had litigated a matter against Dr. Struck. Reese spoke with respondent about taking her case. Respondent told Reese about her problems in the criminal courts, including the charges, the issue of her competency, and the ensuing competency evaluation. She also told Reese that she could not take the case unless a continuance was granted.

Despite respondent's criminal problems, Reese wanted her to take the case.<sup>5</sup> Respondent agreed to represent Reese in the *Reese v. Struck* matter. At the time that respondent agreed to represent Reese, she was aware that trial was set to begin on May 5, 2008.

On May 5, 2008, respondent substituted in as counsel for Reese and appeared before Judge Robert D. Foiles in the San Mateo County Superior Court.<sup>6</sup> Respondent's request for a trial continuance was denied. Respondent advised Judge Foiles that she would therefore proceed to trial so that Reese's case would not be dismissed.

On May 6, 2008, respondent appeared before Judge Carol Mittlesteadt and the parties discussed motions in limine and jury selection. The issue of respondent's competency subsequently surfaced. As a result on May 12, 2008, Judge Mittlesteadt continued the *Reese v. Struck* matter until June 9, 2008, to set the matter for trial.

On June 6, 2008, the criminal court received respondent's mental competency evaluations. Respondent was declared competent and the criminal proceedings were reinstated.

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<sup>5</sup> The court found Reese's testimony to be credible.

<sup>6</sup> At the time respondent substituted in, Moy was facing an order to show cause for sanctions relating to his failure to appear at the settlement conference and his failure to file a settlement conference statement. Moreover, Moy had filed a motion to continue the May 5, 2008 trial and had drafted, but not filed, a motion to withdraw as attorney of record for Reese.

On June 9, 2008, the court reset the *Reese v. Struck* matter for trial on November 3, 2008. Between May 12, 2008 and July 11, 2008, respondent performed services for Reese to prepare the matter for trial.

On July 11, 2008, respondent filed a notice of unavailability in *Reese v. Struck* from July 18, 2008 through September 3, 2008, citing significant issues with her health and respondent's travel plans. Also on July 11, 2008, respondent filed a notice of unavailability in the Mountain Homes and Odyssey School matters from July 18, 2008 through August 12, 2008, and from August 21, 2008 through September 3, 2008, citing significant issues with her health and respondent's travel plans.

On July 18, 2008, the court in the Sears and Radio Shack matters denied respondent's request that the terms of her supervised OR release be modified to permit her to travel outside the country.

On August 1, 2008, respondent entered pleas of not guilty by reason of insanity in the Sears and Radio Shack matters. On or about August 1, 2008, after respondent entered her plea, the court appointed two doctors to evaluate respondent's mental competency.

Between August 1, 2008 and October 9, 2008, respondent regularly performed services for Reese in the *Reese v. Struck* matter. On October 9, 2008, the parties in the *Reese v. Struck* matter reached settlement.

On October 17, 2008, the court appointed doctors in the Sears and Radio Shack matters found respondent legally sane at the time she took the merchandise out of the stores.

On October 21, 2008, the court dismissed the *Reese v. Struck* matter with prejudice as a result of the settlement. Reese was completely satisfied with respondent's representation.

## **2. Conclusions of Law**

### ***Count One: Failure to Maintain Respect to the Courts***

Business and Professions Code section 6068, subdivision (b),<sup>7</sup> provides that it is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers. The State Bar alleges that respondent's repeated claims that she was unable to perform competent services due to health issues were inconsistent with her acceptance of employment in the *Reese v. Struck* matter and that her actions caused delays and interfered with the orderly processes of the court, and constituted a violation of section 6068, subdivision (b). The court disagrees.

At the time respondent accepted representation of Reese, she was lawfully permitted to practice law and nothing in the record demonstrates otherwise. It is questionable, at best, whether respondent's actions interfered with the orderly processes of the San Mateo County Superior Court. In fact, the evidence tends to show that respondent substituted into a bad situation and helped to facilitate a prompt resolution that was satisfactory to Reese. For at the time of respondent's substitution, Reese was highly dissatisfied with Moy. Although Moy was not called to testify, the evidence before the court implies that he was not adequately prepared to proceed to trial.<sup>8</sup> Upon respondent's substitution into the case, however, the *Reese v. Struck* matter settled in less than six months—without the need for trial. Consequently, there is little evidence supporting the State Bar's assertion that respondent's conduct equated to a failure to maintain respect due to the court.<sup>9</sup>

Count One is therefore dismissed with prejudice.

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<sup>7</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

<sup>8</sup> As noted previously, Moy failed to appear at the settlement conference and failed to file a settlement conference statement. In addition, Moy filed a motion to continue the trial date and drafted a motion to withdraw as counsel for Reese on the eve of trial.

<sup>9</sup> The court did not hear testimony from either Judge Foiles or Judge Mittlesteadt. The transcripts admitted into evidence do not establish, by clear and convincing evidence, a willful violation of Business and Professions Code section 6068, subdivision (b).

### ***Count Two: Mandatory Withdrawal***

Respondent is charged in Count Two with a violation of rule 3-700(B)(3) of the Rules of Professional Conduct of the State Bar of California,<sup>10</sup> which provides that a member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if the member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. The State Bar alleges, as an alternative to Count One, that by accepting employment from Reese and then failing to withdraw from employment when her mental condition rendered it unreasonably difficult for respondent to represent Reese, respondent violated rule 3-700(B)(3). The court disagrees.

The facts before the court fail to establish, by clear and convincing evidence, that respondent's mental or physical condition rendered it unreasonably difficult for her to effectively represent Reese. On the contrary, the evidence before the court indicates that despite respondent's period of unavailability, she provided satisfactory representation to Reese and promptly settled Reese's matter within five months of accepting representation. Consequently, the court concludes that respondent provided effective representation to Reese, and that there is no indication that respondent's representation of Reese was "unreasonably difficult." Therefore, Count Two is dismissed with prejudice.

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>11</sup> standard 1.2(e).) Respondent has demonstrated the following factors in mitigation.

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<sup>10</sup> All further **Error! Main Document Only**.references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

<sup>11</sup>All further references to standard(s) are to this source.

***1. No Prior Record of Discipline***

Respondent was admitted to the practice of law in the State of California on July 15, 1985, and has no prior record of discipline. (Standard 1.2(e)(i).) Respondent's present misconduct began in approximately 2008. Respondent's 23 years of discipline-free practice prior to the present misconduct warrants significant weight in mitigation.

***2. Extreme Emotional Difficulties***

Additionally, respondent presented evidence demonstrating the extreme emotional difficulties that she was suffering from at the time of the misconduct. (Standard 1.2(e)(iv).) The testimony of Dr. Heitner established that respondent's severe major depression and post-traumatic stress disorder were directly responsible for the present misconduct. Furthermore, respondent has since managed to successfully treat and control her depression and post-traumatic stress disorder through psychotherapy and antidepressants.

**B. Aggravation**

It is the State Bar's burden to establish aggravating circumstances by clear and convincing evidence. (Standard 1.2(b).) The court finds that the State Bar did not establish, by clear and convincing evidence, any factors in aggravation.

**V. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In a conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.) Where an attorney has been convicted of a crime involving moral turpitude, especially one involving theft, all authorities agree that at least some period of actual suspension is warranted. Here, however, where the elements of moral turpitude have not been established and the issue of respondent’s intent is very much in question, a period of suspension does not appear necessary to safeguard the interests of public protection. (See also standard 3.4.)

Respondent’s 23 years of discipline-free practice coupled with the on-going treatment she has received for her depression and post traumatic stress disorder leads the court to conclude that the present misconduct is unlikely to reoccur. Based on the unique facts and circumstances reflected in this matter, the court orders, as outlined below, that respondent receive a public reproof.

## **VI. Recommended Discipline**

It is ordered that respondent Elizabeth M. Barnson Karnazes is hereby publicly reproofed. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public reproof will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions

being attached to the public reproof imposed in this matter. Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California.

Respondent is hereby ordered to comply with the following conditions attached to her public reproof for a period of two years following the effective date of the public reproof imposed in this matter:

1. During the two-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within thirty (30) days after the effective date of her public reproof, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to her public reproof. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the two-year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request.

3. Within ten (10) days of any change, respondent must report to the Membership Records Office 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 during which these conditions are in effect. Under penalty of perjury, respondent must state whether she has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to her reproof within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that

report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to her personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproof;

6. Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of one time per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue throughout the period during which these conditions are in effect, or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or the Office of Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification; and



7. Within one year of the effective date of this public reproof, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar 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 the session. 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 (“MCLE”) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.).

It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination (“MPRE”) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the public reproof imposed in this matter. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

## **VII. Costs**

The court orders that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**IT IS SO ORDERED.**

Dated: January \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court