PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed June 14, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 11-O-14764
	)	
BREYON JAHMAI DAVIS,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 269680	)	
	)	

Respondent Breyon Jahmai Davis was a newly admitted attorney when she improperly charged legal fees in two litigation matters. First, she collected a $20,666 contingency fee after she settled a wrongful foreclosure case, although her engagement letter did not provide for the contingency fee. When her clients objected to the $20,666 contingency fee, Davis restored only $6,666 to her client trust account (CTA). She also charged the same clients an hourly fixed fee totaling $14,250 in an unrelated employment termination matter prior to the award of a settlement or entry of a judgment. However, Davis's engagement letter provided only for a contingency fee in that case. After the clients complained to the State Bar, Davis refunded the entire $20,666 and discontinued her efforts to collect the $14,250 fixed fee.

The Office of the Chief Trial Counsel of the State Bar (State Bar) filed a Notice of Disciplinary Charges (NDC) alleging that Davis violated rule 4-200(A) of the State Bar Rules of Professional Conduct[1] when she charged and collected an unconscionable fee in the foreclosure case, and charged, but did not collect, an unconscionable fee in the employment termination case. The State Bar also charged Davis with violating rule 4-100(A) because she failed to maintain the amount of the contingency fee in her CTA once the clients disputed the fee.

[1] All further references to rules are to this source.

The hearing judge determined that Davis did not charge or collect unconscionable fees in either case because she held an honest, albeit mistaken, belief that she was entitled to them, and the fees were neither exorbitant nor disproportionate to the value of the legal services she had provided. However, the hearing judge found that Davis violated rule 4-100(A) when she failed to maintain the disputed funds in her CTA, and recommended that Davis be publicly reproved.

The State Bar appeals, arguing that the hearing judge improperly dismissed the unconscionable fee count, allowed too much weight in mitigation, and gave insufficient weight to the evidence in aggravation. It urges that Davis be suspended for six months.

Upon our independent review (Cal. Rules of Court, rule 9.12), we adopt the hearing judge's finding that Davis did not charge or collect an unconscionable fee in either the wrongful foreclosure case or the employment termination case. We also agree with the hearing judge that Davis violated rule 4-100(A) by her unwillingness to replace the disputed fee in her CTA. Having considered the facts unique to this case and guided by the standards[2] and decisional law, we order that Davis be publicly reproved, subject to conditions stated herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties stipulated to many material facts, as well as the admission of most of the trial exhibits. We add pertinent facts from the record that are relevant to our analysis.

A. THE FORECLOSURE LITIGATION

Attorneys Marc A. Fisher and Stephen C. Ruehmann (F & R) initially employed Davis as a law clerk and subsequently as an attorney when she was admitted to practice in June 2010. While at F & R, Davis worked on a wrongful foreclosure case on behalf of Pamela Hatch, *Hatch v. CitiMortgage, Inc., et al*., (the *CitiMortgage* case). Hatch agreed to pay F & R an initial retainer of $3,500, and a fixed fee of $1,500 per month up to a maximum of 12 months plus

[2] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

costs. In addition, Hatch agreed to a 25 percent contingency fee if F & R obtained a monetary settlement or judgment. The agreement did not provide for an offset of the retainer or fixed monthly fees against the contingency fee. On August 3, 2010, the superior court granted a preliminary injunction in Hatch's favor and ordered her to post a $20,000 bond, which she did with funds from the savings account of her husband, Jeffrey Hatch. At that point, Hatch had paid F & R in excess of $15,500 in fees and expenses.

Later in August, Davis left F & R and opened her own law office, taking 13 clients with her, including Hatch. On August 28, Davis drafted an engagement letter for Hatch and her husband Jeffrey in the *CitiMortgage* case. Davis used the previous agreement between Hatch and F & R as a template, which provided for the same $1,500 monthly fee. But due to Davis's drafting error, she omitted the contingency fee provision. There is conflicting testimony as to whether the parties verbally agreed to a 33-1/3 contingency fee, in addition to the monthly fee. The hearing judge found that the Hatches' testimony that they did not verbally agree to a contingency fee was to some extent not credible, and we give that credibility determination great weight. (Rules Proc. of State Bar, rule 5.155(A) [great weight afforded to hearing judge's findings of fact]; *Resner v. State Bar* (1967) 67 Cal.2d 799, 807 [testimonial credibility entitled to "considerable" weight because judge observed witness's demeanor].)

Davis drafted the complaint and amended complaint, defended against a demurrer, drafted an application for a temporary restraining order, defended three depositions, propounded and responded to discovery, and drafted various pleadings such as an opposition to a motion for summary judgment. In early March 2011, after a day-long mediation, the *CitiMortgage* case settled for $42,000 in cash, the issuance of a deed in lieu of foreclosure, and the removal of a notice of default from Hatch's credit report. The $20,000 bond was exonerated and returned to Hatch by the court. Davis deposited the funds into her CTA and sent a settlement statement to

the Hatches showing their distribution as $19,305 and Davis's fee of $20,666. She calculated her contingency fee based on 1/3 of $62,000, which included the $42,000 cash settlement plus the $20,000 bond.[3] On April 1, 2011, Davis withdrew $20,666 from the CTA, and four days later, she disbursed $19,305 to her clients.

The Hatches objected to the inclusion of the $20,000 bond in the contingency fee calculation, and an exchange of acrimonious letters and phone calls ensued. As the fee dispute escalated, the Hatches challenged Davis's right to any portion of the contingency fee, maintaining she was only entitled to the monthly fees, which they had already paid. Davis disagreed and faxed a letter to Hatch on April 8, 2011, stating: "I have reviewed our agreement, your file and all communications regarding settlement in an effort to propose a fair resolve. It is clear from my review that you understood in September 2010 that [the Davis law firm] would be entitled to 1/3 of the 'monetary' settlement amount. . . . [T]he $20K bond is part of the 'monetary' settlement award."

In the April 8th letter, Davis proposed to: (1) keep the $20,666 contingency fee; or (2) reduce her fee by $3,333 but collect an additional fee of $1,500 for the month of April plus unbilled costs in an unspecified amount. Hatch immediately responded: "Read YOUR contract with me that you wrote." Hatch made two counterproposals: (1) return the $6,666 portion of the contingency fee that represented 1/3 of the value of the $20,000 bond, or (2) "Live up to your contract of $1,500 per month for 9 months with no percentage of settlement amounts and return all money deducted." As these rancorous negotiations escalated, both the Hatches and Davis proposed that they end their attorney/client relationship, but they also continued to acknowledge their ongoing responsibilities associated with the employment litigation.

[3] The statement also included an additional charge of $2,027.88 for a past-due amount from a previous invoice.

Subsequently, Hatch asked Davis to put the entire contingency fee into a trust account and provide her with an accounting. Davis returned to her CTA only $6,666, which was 1/3 of the $20,000 bond. Davis offered to submit the matter to arbitration, but the Hatches declined her offer.

B. THE EMPLOYMENT TERMINATION CASE

On September 30 2010, Hatch signed a second engagement letter with Davis, retaining her on a contingency basis for an employment termination case. Hatch believed she had been wrongfully discharged as a real estate agent due to a sales commission dispute with her employer. The second engagement letter expressly provided for a sliding scale contingency fee of 25 percent of the net recovery if settled before filing a complaint, 30 percent if recovery was obtained before a trial or settlement conference, and 35 percent if recovery was obtained after a settlement conference or trial. The engagement letter also stated: "If there is no net recovery, Attorney will receive no attorney's fees."

Davis initiated a claim before the Department of Fair Employment and Housing after Hatch's former employer rejected her demand for $1.2 million. Davis also reviewed documents in preparation for filing a civil complaint. But, in early April 2011, she withdrew from the employment case due to the fee dispute in the foreclosure matter.[4] She then wrote to the Hatches, telling them that they owed her $14,250 because she was "entitled in Quantum Meruit to our hourly rate of $250.00 upon disengagement" for the 57 hours she had spent on the employment case. Davis sent invoices in April and May for the $14,250 fee asking for prompt payment "to avoid incurring late fees." Hatch responded: "We owe you nothing in this [employment] case. . . ." The Hatches followed up with a complaint to the State Bar.

[4] As noted *ante*, due to the escalating acrimony between the Hatches and Davis, it is unclear whether Davis withdrew as a result of their mutual desire to end an intolerable relationship or whether Davis withdrew on her own initiative.

After the Bar commenced its investigation, Davis sought legal counsel. Upon his advice, she paid the Hatches the entire $20,666.66 contingency fee on January 11, 2012, and discontinued her efforts to collect the $14,250 fee. Subsequently, the State Bar filed an NDC on January 27, 2012, alleging in Count One that Davis charged unconscionable fees in violation of rule 4-200(A), and in Count Two that she violated rule 4-100(A) by failing to maintain disputed funds in trust. After a two-day trial, the hearing judge filed her decision on August 6, 2012. The State Bar is appealing.

II. CULPABILITY

A. COUNT ONE – CHARGING AND COLLECTING UNCONSCIONABLE FEES (RULE 4-200(A))

Rule 4-200(A) provides that a member of the State Bar shall not enter into an agreement for, charge, or collect an unconscionable fee. The State Bar alleges that Davis violated this rule in two instances: (1) by charging and collecting a 33 1/3 percent contingency fee in the foreclosure case; and (2) by charging an hourly fee totaling $14,250 based on quantum meruit in the employment matter. The hearing judge found that the State Bar failed to prove culpability in either instance. We agree.

1. The Wrongful Foreclosure Case

The State Bar alleged in the NDC that Davis's claim for and collection of $20,666 in the wrongful foreclosure case was unconscionable and amounted to overreaching. Its primary reasons are: (1) the amount collected was more than half the settlement funds and in excess of her written fee contract; (2) $15,000 had already been paid to Davis in monthly fees; (3) the fee was more than the Hatches would have paid under the F & R agreement; and (4) all of the bond money belonged to Hatch and should have been promptly returned to her. In essence, the State Bar is asserting that the fee was excessive and unauthorized. The hearing judge found that Davis

had an "honest, mistaken belief that she was entitled to one-third of the mortgage settlement" and therefore she did not charge and collect an unconscionable fee.

It is settled that a gross overcharge by an attorney may warrant discipline as an unconscionable fee under rule 4-200(A). (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.) A fee is unconscionable when it is "so exorbitant and wholly disproportionate to the services performed as to shock the conscience." (*In re Goldstone* (1931) 214 Cal. 490, 499.) However, "[i]n the few cases where discipline has been enforced against an attorney for charging excessive fees, there has usually been present some element of fraud or overreaching" that practically constitutes an appropriation of client funds under the guise of fees. (*Herrscher v. State Bar* (1935) 4 Cal.2d 399, 403.)

The record fails to prove that Davis's compensation was so disproportionate to the services performed as to "shock the conscience." The total fee collected amounted to $35,166 and the monetary recovery was $42,000, but the settlement involved additional non-monetary consideration, including the issuance of a deed in lieu of foreclosure and the removal of a notice of default from Hatch's credit report. Furthermore, a contingent fee " ' "may properly provide for a larger compensation than would otherwise be reasonable." ' [Citations.] This is because a contingent fee involves economic considerations separate and apart from the attorney's work on the case." (*Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 287-288.) Like the hearing judge, we do not find convincing evidence that the fee collected was unconscionable.

Our conclusion is reinforced after considering the 11 nonexclusive factors that are listed in rule 4-200(B), including the parties' professional relationship, the client's informed consent to the fee, the relative sophistication of the parties, the work performed, and the results obtained. The Hatches had established a relationship with Davis while she was at her previous law firm and remained with her after she began her own practice. They were familiar with the concept of

a monthly fee plus an additional contingency fee since they had agreed to this arrangement with their prior law firm. They were not unsophisticated clients; Hatch was a successful real estate agent, experienced in business and contractual matters. Davis had only been admitted to practice for a couple of months when she left F & R and entered into the fee arrangements with the Hatches. Davis provided substantial services to them and obtained a relatively quick monetary settlement as well as avoidance of foreclosure, both of which were important to the Hatches.

The record also fails to establish that Davis engaged in fraud or overreaching. Her problems began when she sent her engagement letter to the Hatches and inadvertently omitted a contingency fee provision, which must be in writing. (Bus. & Prof. Code, § 6147.)[5] The record is murky at best as to whether the parties verbally agreed to such a contingency fee. The hearing judge found the Hatches' testimony that no verbal agreement for a contingency fee existed was not entirely credible, and Davis's testimony that the parties had agreed to such a fee was credible. However, under section 6147, a verbal contingency agreement was voidable by the Hatches, although subdivision (b) also provides that Davis would still be entitled to collect reasonable compensation. The fact that Davis collected an amount based on her understanding that she was entitled to a percentage of the recovery does not support a finding of unconscionablity based on fraud or overreaching. (See *Spires v. American Bus Lines* (1984) 158 Cal.App.3d 211, 216 [allowing compensation based on recovery in quantum meruit despite absence of written agreement].)

Davis concedes on review that she "had an obligation to make sure the fee was expressly stated in the four corners of her agreement and because she did not, she had an ethical obligation to return the money to the Hatches – and she did." Without question, Davis wrongly and unreasonably refused to restore the full contingency fee to her CTA when the Hatches disputed

[5] All further references to sections are to the Business and Professions Code.

her fee. But that misconduct is more appropriately considered in Count Two as a violation of rule 4-100(A).

We accordingly adopt the hearing judge's finding that the State Bar's allegations of unconscionability in the wrongful foreclosure case were "neither persuasive nor supported by clear and convincing evidence." Davis's conduct simply does not represent the type of fraud or overreaching that shocks the conscience and warrants discipline as an unconscionable fee. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 285 [fee that "seems high" or is in fact high is not same as unconscionable fee]; *Herrscher v. State Bar, supra,* 4 Cal.2d at pp. 402-403 [mere fact that fee charged in excess of reasonable value of services will not of itself warrant discipline]; *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 273, 284 [medical malpractice fee of $266,850 in excess of statutory limit is illegal but not unconscionable because proportional to value of services rendered].)

2. The Employment Termination Case

The State Bar also alleged in the NDC that Davis charged, but did not collect, an unconscionable fee of $14,250 for quantum meruit services after she withdrew from the employment termination case. It claims that Davis's demand was improper because she and the Hatches had agreed on a sliding scale contingency fee rather than an hourly one. The contingency agreement specifically provided: "If there is no net recovery, Attorney will receive no attorney's fees." The State Bar asserts that Davis's fee was unconscionable since she pressed for payment *prior* to the Hatches obtaining a recovery. (*Fracasse v. Brent* (1972) 6 Cal.3d 784, 792 [discharged attorney's action for reasonable compensation accrues only when contingency in original agreement has occurred, i.e., client has had recovery by settlement or judgment].) The State Bar further contends that Davis engaged in overreaching because she

charged $14,250 in an effort to deter Hatch from pursuing her claim to the settlement funds in the wrongful foreclosure case.

The record contains little evidence addressing the employment termination case. In fact, no competent evidence establishes if or when Hatch received a recovery. We are thus left to speculate whether the timing and the amount of the invoice were unconscionable. Additionally, the hearing judge found that "there is no evidence to support respondent's charging $14,250 in the employment matter was an act of overreaching in an attempt to deter Hatch from pursuing her claim to the settlement funds." The hearing judge concluded that the primary issue in these proceedings amounted to no more than a fee dispute driven by Davis's "misguided behavior," as opposed to an unconscionable fee. Ultimately, the hearing judge found that Davis's $14,250 billing was not unconscionable. We agree.[6]

"[N]ot every instance of improper billing will result in an unconscionable fee under rule 4-200(A). [Citation.]" (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 851.) Davis prematurely charged, but never collected, $14,250 in quantum meruit fees. After the State Bar contacted her, she abandoned all efforts to collect her fee. Given the hearing judge's factual findings that Davis's conduct involved the "aberrational mishandling of disputed client funds," we are loath to resolve a fee dispute under the rubric of a disciplinary violation. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 237 ["a disciplinary proceeding is seldom the proper forum for attorney fee disputes"].) "Where a lawyer has contracted to provide services in exchange for a contingent percentage fee, calculation of the reasonable value of services rendered in partial performance of the contract

[6] The State Bar cites to *Hensel v. Cohen* (1984) 155 Cal.App.3d 563, 567-568 in support of an additional argument that Davis was not entitled to charge a fee based on quantum meruit because she voluntarily withdrew from the employment matter without justification. However, due to the rapid deterioration of the relationship between the Hatches and Davis, the record does not establish by clear and convincing evidence who or what occasioned Davis's withdrawal.

becomes a . . . complicated task." (*Cazares v. Saenz*, *supra*, 208 Cal.App.3d at p. 287.) The State Bar failed to prove clearly and convincingly that Davis's billing for quantum meruit services, albeit premature, amounted to an unconscionable fee.

B. COUNT TWO – FAILING TO MAINTAIN DISPUTED FUNDS IN TRUST (RULE 4-100(A))

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a CTA. Under this rule, if a client disputes the attorney's right to any of those funds, the disputed portion must not be withdrawn until the dispute is resolved. Once Davis became aware of the fee dispute in April 2011, she was obligated to redeposit the entire disputed portion into the CTA until the conflict was resolved. Although she returned $6,666 to her CTA, she did not restore the remaining $14,000 of the disputed fee until January 2012, more than nine months later. Davis thus willfully violated rule 4-100(A)(2).

III. AGGRAVATION AND MITIGATION

The hearing judge found only client harm in aggravation and three factors in mitigation – candor and cooperation, good character, and remorse. We do not find any aggravation but agree with the hearing judge's mitigation findings.

A. NO AGGRAVATING FACTORS

1. Harm to Client (Std. 1.2(b)(iv))

The hearing judge found that Davis's failure to maintain the disputed funds in the trust account deprived the clients of their money for more than nine months, thereby harming them. However, even if the funds had been properly maintained in the CTA, the Hatches would not have had access to them until their fee dispute was resolved. Moreover, there is no evidence that the Hatches suffered significant financial harm because of the delay in receiving the disputed funds. On this limited record, we do not find clear and convincing evidence that the client was "harmed significantly" under standard 1.2(b)(iv).

B. THREE MITIGATING FACTORS

1. Candor/Cooperation (Std. 1.2(e)(v))

Davis responded immediately after she received a letter from the State Bar investigator regarding the Hatch complaint. She was candid and cooperative with the State Bar during the disciplinary investigation and proceedings, including filing a joint pretrial statement and stipulating to facts. We give her modest mitigation for her cooperation.

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

Davis presented two declarations and seven character witnesses who testified as to her good character. The witnesses included one judge, three attorneys, and five friends, all of whom praised Davis's integrity, dedication, and honesty. They also attested to her high moral character, strong work ethic, and dependability. Almost all of the witnesses observed that Davis had admitted her mistake and was extremely remorseful for her poor judgment. The hearing judge found Davis's character evidence to be an "extraordinary" demonstration of good character by a wide range of references in the legal and general communities who were aware of the full extent of the charges against Davis. While we do not view the character evidence as extraordinary, we do find that it is entitled to great weight, especially because the attorneys and the judge who testified have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319; *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403 ["[t]estimony of members of the bar . . . is entitled to great consideration"].)

3. Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii))

Davis's conduct was unreasonable, but it was due in large measure to her inexperience, not to any ill-will or intent to injure her clients. (*Crawford v. State Bar* (1960) 54 Cal. 2d 659, 669 [mistakes due to youth and inexperience may be considered as mitigation].) When the

Hatches, who were among her first clients, vigorously asserted their interests, Davis's lack of experience and judgment caused her to dig in her heels. But once she obtained the advice of experienced State Bar defense counsel, she saw the error of her ways and immediately paid the entire $20,666 contingency fee to her clients. She also ceased her efforts to collect the fee in the employment termination case. At trial, Davis acknowledged her wrongdoing, demonstrated sincere remorse for her conduct, and apologized to her clients. We assign significant mitigation to this factor.

IV. DISCIPLINE ANALYSIS

We begin our discipline analysis by examining the standards, which we afford "great weight." (*In re Silverton* (2005) 36 Cal.4th 81, 92.) However, we are not bound to follow the standards in a talismanic fashion. (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Ultimately, we are guided by the purposes of disciplinary proceedings, which are the protection of the public, the courts, and the legal profession, maintenance of high professional standards by attorneys, and preservation of public confidence in the legal profession. (Std. 1.3)

Standard 2.2(b) states that 'irrespective of mitigating circumstances," a minimum three-month actual suspension applies to violations of rule 4-100. "[W]here appropriate, the Supreme Court will not hesitate to impose a level of discipline lower than that specified by a standard's seemingly mandatory language, even when the standard expressly provides for a minimum discipline 'irrespective of mitigating circumstances.'" (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 996.) The hearing judge departed from standard 2.2(b) because she found that Davis made an honest mistake. The hearing judge recommended a public reproval after considering discipline cases that involved trust account violations or the mishandling of trust funds due to a dispute over the funds. (E.g., *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092 [public reproval for commingling and failure to promptly pay funds to client due

to honest mistake]; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335 [private reproval for mistakenly mishandling client funds and failing to keep disputed legal fee in trust account aggravated by uncharged conflict of interest, but mitigated by good faith, candor and cooperation, no harm, community service, passage of significant time since misconduct, and good character evidence]; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 716 [private reproval for negligent handling of client's check and failing to restore disputed funds to trust account for one year after discovery of mistake, mitigated by no prior disciplinary record, extensive pro bono activities and community involvement, and strong character evidence].)

Ultimately, in determining the appropriate discipline, we are guided by the Supreme Court which will "temper the letter of the law with considerations peculiar to the offense and the offender. [Citations.]" (*Howard v. State Bar, supra,* 51 Cal.3d at pp. 221-222.) We consider that Davis had only been practicing law for less than a year when she was retained by the Hatches in the two matters and was inexperienced with the ethical and professional considerations of client billing. Although Davis provided substantial services to her clients, her inexperience reflected a lack of judgment about how to properly and reasonably resolve an increasingly acrimonious fee dispute with her clients. But once she obtained the advice of experienced State Bar defense counsel, who advised her of the error of her ways, she immediately rectified the matter by returning the full amount of the disputed fee in the foreclosure case and ceased any effort to collect a fee in the employment matter. Additionally, she provided significant mitigation evidence, including her recognition of wrongdoing, sincere remorse, and strong character evidence.

We therefore agree with the hearing judge that a departure from the standards is justified and that imposing a public reproval would be appropriate to protect the public and to preserve public confidence in the profession.

ORDER

Breyon Jahmai Davis is ordered publicly reproved. The public reproval will be effective 15 days after service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(A).)

Further, Davis must comply with the specific conditions set forth in this order. (Cal. Rules of Court, rule 9.19; Rules Proc. of State Bar, rule 5.128.) Failure to comply with any condition 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.

Davis is ordered to comply with the following conditions for a period of one year following the effective date of this order:

1. She must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

2. 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.

3. Within one year of the effective date of this public reproval, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she will not receive MCLE credit for attending Ethics School or Client Trust Accounting School.

4. 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.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Davis 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 in this matter 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)(2).)

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 Business and Professions Code section 6140.7 and as a money judgment.

EPSTEIN, J.

WE CONCUR:

REMKE, P. J.

PURCELL, J.