PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No. 16-J-15522-DFM
	)	
	)	DECISION
LYNNE ANN TORGERSON,	)	
	)	
	)	
A Member of the State Bar, No. 152720.	)	

Introduction[1]

This disciplinary proceeding is based on respondent Lynne Ann Torgerson's (Respondent) professional misconduct found in another jurisdiction. (Cal. § 6049.1; Rules Proc. of State Bar, rule 5.350 et seq.)

On October 21, 2015, after reviewing a referee's findings that Respondent had committed multiple acts of professional misconduct in the State of Minnesota, the Supreme Court of Minnesota filed an opinion suspending Respondent from the practice of law in that state for a minimum of 60 days beginning on November 4, 2015. (*In re Torgerson* (Minn. 2015) 870 N.W.2d 602.) Thereafter, on December 30, 2015, the Minnesota Supreme Court conditionally reinstated Respondent to the practice of law in Minnesota, effective January 3, 2016, and placed her on disciplinary probation for two years. (*In re Torgerson* (Minn. 2015) 872 N.W.2d 887.) Respondent successfully completed her two-year disciplinary probation in Minnesota.

[1] Unless otherwise indicated, all references to sections are to the California Business and Professions Code.

As discussed more fully below, in view of Respondent's misconduct and the evidence in aggravation and mitigation, including Respondent's almost 20 years of misconduct-free practice, this court recommends that Respondent be placed on one year's stayed suspension and two years' probation with conditions of probation including, inter alia, a thirty-day suspension from the practice of law in California.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) on November 15, 2017. On January 3, 2018, Respondent filed a 147-page response to the NDC.

The parties filed a partial stipulation as to facts and admission of documents on February 1, 2018. A one-day trial was held on February 1, 2018. After each party filed a closing brief, the court submitted the matter for decision on March 16, 2018.

OCTC was represented by Deputy Trial Counsel David E. Aigboboh and Senior Trial Counsel Hugh G. Radigan. Respondent represented herself.

Statutory Overview

This proceeding is a streamlined, expedited disciplinary proceeding governed by California section 6049.1. Under section 6049.1, a certified copy of a final order made by a court of record of a state of the United States, determining that a member of the State Bar of California committed professional misconduct in its state, is conclusive evidence that the member is also culpable of professional misconduct in California subject only to the following two exceptions: (1) the member's culpability in the sister state would not warrant discipline in California under the laws and rules of this state in effect at the time the attorney committed the misconduct in the sister state; or (2) the proceeding in the sister state lacked fundamental constitutional protection.

Unless the member establishes one of the foregoing two exceptions, the sister state's finding of misconduct conclusively establishes the member's culpability of misconduct in California. However, the discipline imposed in the sister state does not establish the appropriate degree of discipline to be imposed in California. Instead, this court must independently determine the appropriate degree of discipline to impose or recommend under California law just as it does in original disciplinary proceedings. (*In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 358, 362; *In the Matter of Kauffman* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 213, 217 [Under California "section 6049.1, the appropriate degree of discipline is not presumed by the other state's discipline, but is open for determination in this state."].)

Findings of Fact and Conclusions of Law

The following findings of fact are based on Respondent's response to the NDC; the certified copies of the Minnesota Supreme Court's October 21, 2015, opinion; the referee's November 5, 2014, findings of fact, conclusions of law, and recommendation for discipline that were admitted into evidence; and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 1991, and has been a member of the State Bar of California since that time.

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Background Facts

Respondent was admitted to the practice of law in Minnesota in 1990. Twenty-three years later, in December 2013, the Minnesota Office of Lawyers Professional Responsibility filed a petition for disciplinary action against Respondent, charging her

with multiple acts of misconduct in five separate client matters and a disciplinary proceeding involving another attorney.

After a six-day evidentiary hearing in which thirteen witnesses testified, a Minnesota referee filed a report on November 5, 2014, in which he found Respondent culpable of misconduct and recommended that Respondent be publicly reprimanded.[2]

Respondent appealed, challenging almost all of the referee's adverse findings and conclusions. The Supreme Court of Minnesota, however, rejected all of Respondent's challenges, concluding: "The record adequately supports the referee's conclusions that Torgerson violated a myriad of rules of professional conduct in five separate client matters and in the course of another attorney's disciplinary investigation." (Ex 7, pp. 17-18.) At the same time, however, the Minnesota Supreme Court rejected two of the referee's favorable mitigation findings and his recommended discipline of a public reprimand. Instead, the Minnesota Supreme Court concluded that Respondent's misconduct, which included making false statements, making unfounded accusations against a judge, charging an improper flat fee, disobeying a court order, and behaving belligerently toward a judge and court staff, warranted suspension from the practice of law for a minimum of 60 days.

The following is a review of the findings made in the Minnesota proceeding regarding the circumstances and nature of Respondent's misconduct in each of the separate matters, followed by this court's conclusions with regard to the contentions of

[2] The burden of proof in Minnesota disciplinary proceedings is the same clear-and-convincing-evidence evidentiary standard applicable in California disciplinary proceedings. (Ex. 7, p. 8.)

the OCTC that such misconduct should and would be the subject of discipline in this state as well.

K.B. Matter

Minnesota Findings of Facts

> Torgerson represented K.B. in a criminal matter in Ramsey County District Court. During trial, but outside the presence of the jury, Torgerson accused the judge of attempting to "intentionally prejudice [her] in the eyes of the jury." When jury deliberations began, the judge asked counsel for both sides to "be available within 10 minutes of a phone call. . . . [I]f there are questions from the jury, I'll have all of you come back to the courtroom, hear the question, and we'll discuss what [the] response might be." Torgerson did not follow the judge's instructions, but instead began driving to Minneapolis to conduct an interview. When the jury sent a note to the judge revealing that it had received a document that neither party had admitted into evidence, the judge had his law clerk contact the attorneys. The law clerk asked Torgerson to return to court, but she refused the request, stating that she would not come back unless she received additional information. The clerk then placed the judge on the telephone, but Torgerson continued to request additional information before she would consider returning to the courthouse. When court resumed the next morning, the judge declared a mistrial. The judge then held Torgerson in direct and constructive contempt of court and fined her $250, which she timely paid. [Fn. omitted.] Due to Torgerson's lack of compliance with the judge's requests, the jury reported to the courthouse for an unnecessary day of service.
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> Torgerson filed various pleadings after the trial alleging that the judge was biased, that [Attorney Gary Wolf] had told her that the judge was treating her poorly for "political reasons," that "the judge's goal was to make [her] look bad in front of the jury," and that "[the judge] was trying to set [her] up." The referee found that Torgerson made these statements with knowledge that they were false or with reckless disregard of their truth.

(Ex. 7, pp. 2-3.)

Conclusions of Law

The Minnesota referee found that Respondent violated Minnesota Rules of Professional Conduct,[3] rules 3.5(h)[4] and 8.2(a),[5] when she made statements impugning the integrity of the

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[3] All further references to Minnesota rules are to the Minnesota Rules of Professional Conduct.

[4] Minnesota rule 3.5(h) provides: "A lawyer shall not engage in conduct intended to disrupt a tribunal."

district judge. Notably, the referee not only rejected Respondent's testimony to the effect that she honestly believed that the district judge was trying to make her look bad in front of the jury for want of credibility, but also found that Respondent's testimony at the evidentiary hearing in her disciplinary action (together with the statement to the same effect that Respondent made to the district judge during K.B.'s criminal trial) was false based on the district judge's more credible testimony to the contrary. The referee also found that Respondent made that false statement with reckless disregard for the truth.

Likewise, the referee also rejected Respondent's testimony to the effect that Attorney Wolf had told her that the district judge was treating her unfairly for political reasons. Instead, the referee found that Respondent's testimony at the evidentiary hearing (together with Respondent's statement to the same effect in her post-trial pleadings in K.B.'s criminal case) was false based on the specific and the more credible testimony of Attorney Wolf. The referee further found that Respondent made that false statement knowing that it was false or with reckless disregard for the truth.

The Minnesota Supreme Court affirmed those findings and denied Respondent's challenges to them. In addition, the Minnesota Supreme Court held that "[a] reasonable attorney under [the] circumstances would not have made such serious, unsubstantiated allegations against a judge." (Ex. 7, p. 10.)

This court rejects Respondent's attempts to relitigate in this California proceeding the adverse culpability findings in Minnesota regarding Minnesota rules 3.5(h) and 8.2(a). Even in the absence of the statutory directive under California section 6049.1 to give the Minnesota Supreme Court's final opinion imposing discipline on Respondent preclusive effect in this

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[5] Minnesota rule 8.2(a) provides: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...."

proceeding, this court would give the Minnesota Supreme Court's opinion preclusive effect in this proceeding under common laws principles of collateral estoppel. (Cf. *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318 [principles of collateral estoppel are applicable in State Bar Court proceeding].)

In turn, this court concludes that the misconduct by Respondent giving rise to her the Minnesota culpability findings that she violated Minnesota rules 3.5(h) and 8.2(a) would also conduct violating Respondent's duty under California section 6068, subdivision (b), to maintain the respect owed to judicial officers. (*In the Matter of Anderson* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 775, 785 [false statements impugning the integrity of a judge made knowingly or with reckless disregard of the truth violate California section 6068, subdivision (b) and warrant discipline].)

As noted above, Respondent was found culpable of violating Minnesota rule 8.2(a) by making false statements impugning the integrity of the district judge at trial and in the post-trial pleadings she filed in K.B.'s criminal matter. Respondent's post-trial pleadings also violated Minnesota rules 4.1[6] and 8.4(c).[7] Those Minnesota culpability findings would also establish Respondent's culpability for engaging in acts involving moral turpitude and dishonesty in willful violation of California section 6106.

Finally, this court concludes that Respondent's conduct would not be protected by the Free Speech protection of the First Amendment to the federal constitution. As explained by the Review Department in its decision in the *Anderson* matter:

> The identification of dishonest judges and their prompt removal from office promotes a justified public confidence in the judicial system. However,

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[6] Minnesota rule 4.1 provides: "In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law."

[7] Minnesota rule 8.4(c) provides: "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

> indiscriminate accusations of dishonesty or corruption do not help eliminate such judges from the system. Instead, baseless accusations seriously impair the functioning of the judicial system because few litigants or members of the public can separate accurate from spurious claims of judicial misconduct. [Citation.]
>
> Neither a false statement made knowingly nor a false statement made with reckless disregard of the truth enjoys constitutional protection because there is no constitutional value in such false statements of fact. [Citations.]
>
> Rules of professional conduct "that prohibit false statements impugning the integrity of judges ... are not designed to shield judges from unpleasant or offensive criticism, but to preserve public confidence in the fairness and impartiality of our system of justice. [Citations.]" [Citations.] Therefore, when a personal attack is made upon a judge or other court official [by an attorney], such speech is not protected if it consists of false statements made knowingly or with a reckless disregard of the truth.

(*In the Matter of Anderson, supra*, 3 Cal. State Bar Ct. Rptr. at p. 782.)

The R.S. Client Matter

Minnesota Findings of Fact

> Torgerson represented R.S. in an expungement proceeding. Torgerson filed a petition for expungement on behalf of her client, but she did not file a certificate of representation. See Minn. Gen. R. Prac. 104 (requiring the filing of a certificate of representation when an action is commenced). Due to Torgerson's failure to file the certificate, the Stearns County District Court failed to notify her when it changed R.S.'s hearing date.
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> While on her way to the courthouse, Torgerson called to inform court staff that she was running late. When court staff told her the court had rescheduled the hearing to a later date, Torgerson responded by "yelling and screaming" at two different staff members. One of the staff members notified the judge about Torgerson's call, which caused the judge to offer to recess his current trial and hear R.S.'s petition that afternoon. When the staff member called Torgerson to inform her of the judge's proposal, Torgerson responded by yelling at the staff member again.

(Ex. 7, pp. 3-4.)

Conclusions of Law

The Minnesota Supreme Court concluded that Respondent's yelling and screaming at the court staff was an improper attempt to persuade the staff to move a hearing date to accommodate Respondent's schedule, was prejudicial to the administration of justice, and constituted a

violation by her of Minnesota rules 4.4(a)[8] and 8.4(d)[9] (conduct prejudicial to the administration of justice). Such conduct by Respondent would also violate Respondent's duty under California section 6068, subdivision (b). (Cf. *Thomas v. Tenneco Packaging Co.* (11th Cir. 2002) 293 F.3d 1306, 1323, fn. 27 [pattern of harassment and personal attacks against opposing counsel is disciplinable misconduct].)

The W.W. Client Matter

Minnesota Findings of Fact

> Torgerson represented W.W. in a criminal matter in Freeborn County. The State identified C.F., a Freeborn County deputy sheriff, as a potential witness in the case and stated that he had no criminal record. However, C.F. had previously pleaded guilty to disorderly conduct, Minn. Stat § 609.72, subd. 3 (2014), for sexually touching his 18-year-old adopted son.

(Ex. 7, p. 5.)

> At a hearing in W.W.'s criminal matter, Respondent stated:
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> Your Honor, I just-from, you know, my perspective, I can't tell you how improper it seems to me to have a-somebody who was investigated for criminal sexual conduct, a detective, who did a deal in this court with-you know, with this-these prosecutors' knowledge, with the presiding judge, all prosecuting my client. And then the prosecutors are filing false pleadings in the case about his prior history.

(Ex. 7, p. 13.)

> Torgerson filed disciplinary complaints with the Office of Lawyers Professional Responsibility ("OLPR") against the prosecutors in W.W.'s case, County Attorney C.N. and Assistant County Attorney D.W., alleging that the two of them had filed a false pleading and had engaged in other misconduct while litigating W.W.'s case. We discuss those disciplinary proceedings further below.
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> During a hearing in W.W.'s case, Torgerson alleged that the prosecutors had knowledge of a "deal" reached in C.F.'s criminal case. The referee found that Torgerson's statement was false, because the [Minnesota] Attorney General's

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[8] Minnesota rule 4.4(a) provides: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person."

[9] Minnesota rule 8.4(d) provides: "It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice."

> office, not the Freeborn County prosecutors, had handled the criminal case against C.F. Later, Torgerson and D.W. exchanged a series of hostile emails. In one of those emails, Torgerson stated that D.W. was "consistently a liar and unethical" and had "[l]ied and protected a pedophile."

(Ex. 7, pp. 5-6.)

Conclusions of Law

Respondent was found culpable of violating Minnesota rules 4.1 (knowingly making false statements of fact or law) and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) by making the above-quoted statement at the hearing in the W.W. case. Such misconduct would also violate the prohibition of California section 6106 against acts of moral turpitude.

The S.T. Client Matter

Minnesota Findings of Fact

> Torgerson represented S.T. in a criminal matter in Freeborn County. During a contentious omnibus hearing, Torgerson interrupted the judge multiple times.

(Ex. 7, p. 6.)

> [In addition,] Torgerson repeatedly interrupted ... D.W., the same prosecutor as in the W.W. matter, when she objected to D.W.'s oral argument and to the testimony of a witness. The judge repeatedly warned Torgerson not to interrupt D.W., but Torgerson did not heed the judge's warning.

(*Id.* at p. 14.)

> As a result, the judge imposed a $100 fine on Torgerson, which he later withdrew.

(*Id.* at p. 6.)

> Over the course of the hearing, Torgerson became increasingly agitated and made repeated, improper objections to D.W.'s argument. When the judge asked to see a copy of a document containing drug-test results, Torgerson responded to the judge's request by saying "Dear, Lord." Torgerson's conduct throughout the hearing was both disruptive and disrespectful.

(*Id.* at p. 14.)

> Later, in a series of emails between Torgerson and D.W...., the two attorneys were once again hostile to one another. In one email, Torgerson stated that D.W. had "lied to the Board of Professional Responsibility" and was "just a loser."

(*Id.* at p. 6.)

Conclusions of Law

Respondent's conduct at the hearing in the S.T. client matter was found to have violated Minnesota rules 3.5(h) (conduct intended to disrupt a tribunal) and 8.4(d) (conduct prejudicial to the administration of justice). Such conduct would also establish Respondent's culpability for willfully violating her duty under California section 6068, subdivision (b), to maintain the respect owed to the courts and judicial officers. Contrary to Respondent's contentions, neither her repeated improper objections nor her unprofessional response of "Dear Lord" were protected by the First Amendment.

The E.W. Client Matter

In the E.W. client matter, Respondent was found culpable of violating Minnesota rule 1.5(b)(3), which deals with how advanced fees, including advanced flat fees, are to be described in fee agreements in Minnesota.[10] OCTC admits that California does not have a rule or statute that is equivalent to Minnesota rule 1.5(b). Accordingly, the culpability determination that Respondent violated Minnesota rule 1.5(b)(3) does not establish Respondent's culpability for violating any California rule or statute and, therefore, does not warrant the imposition of discipline for that in California for that misconduct in Minnesota.

The D.W. Disciplinary Investigation Matter

Minnesota Findings of Fact

> Torgerson filed an ethics complaint against D.W., the Assistant Freeborn County Attorney who had prosecuted the W.W. and S.T. matters. The referee found that

[10] Minnesota rule 1.5(b)(3) provides that "[f]ee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund." (Ex. 7, p. 14.)

four of Torgerson's statements in connection with the ethics complaint were false. First, Torgerson falsely alleged that the victim in the C.F. misconduct case was under the age of 18 when the sexual contact occurred. Second, Torgerson falsely stated that D.W. had engaged in an ex parte communication with the judge in the W.W. matter. Third, Torgerson claimed, again falsely, that D.W. had failed to notify her when he issued a subpoena to her client, W.W. Finally, Torgerson falsely asserted that, by subpoenaing W.W., D.W. had "forced [W.W.] under punishment of contempt" to show up in court and speak to state officials without counsel.

(Ex. 7, pp. 7-8.)

Conclusions of Law

The Minnesota court concluded that Respondent's conduct in the D.W. disciplinary investigation matter violated Minnesota rules 8.1(a);[11] 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (conduct prejudicial to the administration of justice). Those culpability determinations conclusively establish Respondent's culpability for willfully violating the proscription in California section 6106 of acts involving moral turpitude and dishonesty.

Aggravating Circumstances

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,[12] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct is an aggravating factor. (Cal. std. 1.5(b).)

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[11] Minnesota rule 8.1(a) provides as follows: "[A] lawyer ... in connection with a disciplinary matter, shall not ... knowingly make a false statement of material fact."

[12] All further references to California standard(s) or Cal. std. are to this source.

Lack of Insight

Respondent lacks insight into the wrongfulness of her conduct, which is a significant aggravating circumstance. Respondent's lack of insight is particularly troubling because it suggests that the misconduct will reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Cal. std. 1.6.) The court finds the following with regard to mitigating circumstances.

No Prior Record (Cal. std. 1.6(a).)

Respondent was admitted to practice in California in June 1991 and does not have a prior record of discipline. Respondent's 20 years of misconduct-free practice from 1991 until 2011, when Respondent's misconduct began, is a significant mitigating factor even though Respondent's misconduct is serious. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 and *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Respondent's Apology Letters

Respondent is entitled to very limited mitigation credit for her belated and curt apology letters to those she abused and harassed.

Character Evidence

Respondent provided numerous "letters of reference" as character evidence in this matter. The bulk of these letters were dated in 2014 or before, and none of the authors indicated having any awareness of the discipline imposed on Respondent by the Minnesota court or the charges pending in this proceeding. As a result, . while the court accords Respondent some nominal mitigation credit for this evidence, it is not significant. (*In re Aquino* (1989) 49 Cal.3d 1122,

1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct]; *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305.)

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. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

In determining the appropriate level of discipline, the court looks first to the California standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Although the California standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all

relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

California standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in California standards 2.11 and 2.12(a).

California standard 2.11 provides:

> Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

California standard 2.12(a) provides:

> Disbarment or actual suspension is the presumed sanction for ... violation of ... the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).

OCTC, citing *Bach v. State Bar* (1987) 43 Cal.3d 848, asserts that one year's stayed suspension and one year's probation on conditions, including ninety days' actual suspension, is the appropriate level of discipline. Respondent unrealistically asserts that no discipline is warranted.

The court finds that *Bach v. State Bar*, *Sorensen v. State Bar* (1991) 52 Cal.3d 1036 and *In the Matter of Scott* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 446 are relevant on the issue of discipline.

In *Sorensen v. State Bar*, the attorney sued a court reporter for fraud and deceit in response to a minor (about $45) fee dispute regarding the reporter's bill. The attorney

was found culpable of maintaining an unjust or illegal action and of commencing or continuing an action from a corrupt motive of passion or interest. In aggravation, the attorney lacked insight into the wrongfulness of his misconduct, and the attorney's misconduct cause significant harm to the victim. There were no mitigating circumstances. The discipline in *Sorensen* was one year's stayed suspension and two years' probation on conditions, including thirty days' actual suspension. In addition, the attorney was ordered to pay restitution totaling $4,375 to the court reporter for the expenses she incurred as result of his misconduct.

In the Matter of Scott, the attorney was culpable of single violations of California section 6068, subdivisions (c) and (g), with respect to his filing and pursuing four civil actions. In aggravation, the attorney's misconduct harmed the administration of justice and the attorney was indifferent towards rectification for his misconduct. In mitigation, the attorney had no prior record of discipline in eight years of practice, and he presented good character evidence. The discipline in *Scott* was two years' stayed suspension and two years' probation on conditions, including sixty days' actual suspension.

On balance, the court concludes that the appropriate level of discipline for the established misconduct is one year's stayed suspension and two years' probation on conditions, including thirty days' actual suspension.

Recommendations

Discipline

It is recommended that **Lynne Ann Torgerson**, State Bar Number 152720, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that Respondent be placed on probation for two years with the following conditions.

Conditions of Probation

Actual Suspension

Respondent must be suspended from the practice of law for a minimum of the first 30 days of Respondent's probation.

Review Rules of Professional Conduct

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and California Business and Professions Code sections 6067, 6068, and 6103 through 6126 and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.

Maintain Valid Official Membership Address and Other Required Contact Information

Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.

Meet and Cooperate with Office of Probation

Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the

next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics

Because Respondent resides outside of California, within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to

the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete 8 hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.

Commencement of Probation

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 probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this decision, but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward her duty to comply with this condition.

Costs

It is further recommended 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. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Dated: June 13, 2018.

DONALD F. MILES
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on June 13, 2018, I deposited a true copy of the following document(s):

DECISION

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

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

LYNNE A. TORGERSON
ATTORNEY AT LAW
222 S 9TH ST STE 1600
MINNEAPOLIS, MN 55402

LYNNE A. TORGERSON
1106 – 26th AVENUE N.E.
MINNEAPOLIS, MN 55418

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

DAVID E. AIGBOBOH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 13, 2018.

Mazie Yip
Court Specialist
State Bar Court