

**FILED**

**JAN 07 2019**

**STATE BAR COURT  
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**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

In the Matter of	)	Case No. 16-O-12069
	)	
DIDDO RUTH CLARK,	)	OPINION
	)	
A Member of the State Bar, No. 79876.	)	
_____	)	

Diddo Ruth Clark is charged with three counts of misconduct related to her representation of her brother in an appeal: appearing for a party without authority, seeking to mislead a judge, and misrepresentation. The gravamen of these charges is that Clark continued to submit documents to the court on behalf of her brother after he had filed an incomplete substitution of attorney form and told Clark that he no longer wanted her to represent him.

The hearing judge found Clark culpable of one count, appearing for a party without authority, and recommended that she be actually suspended for 60 days. Clark appeals the judge's discipline recommendation, maintaining that she is not culpable. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and asks this court to uphold the judge's culpability finding and discipline recommendation.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we reject Clark's arguments and, like the hearing judge, find her culpable of appearing for a party without authority. We affirm the judge's findings of facts and law, and her aggravation and mitigation findings, except for one, and agree that a 60-day actual suspension is appropriate discipline.

## I. PROCEDURAL BACKGROUND

On March 10, 2017, OCTC filed a Notice of Disciplinary Charges (NDC), charging Clark with three counts of misconduct as described above. Trial was held on October 10, 12, 13, and 17. On December 20, 2017, the hearing judge issued her decision.

## II. FACTUAL BACKGROUND<sup>1</sup>

This matter arises from Clark's representation of her brother, Peter Clark, in his appeal of *In Re Clark Children Trust*, Contra Costa Superior Court No. MSP11-00688. That case involved Clark and Peter<sup>2</sup> on one side and their four siblings on the other. The four adverse siblings filed an amended petition to confirm the Clark Children Trust co-trustees and to approve the liquidation and monthly distributions of the beneficial interests of Clark and Peter. Judgment on the petition was entered on July 14, 2014.

Peter filed a notice of appeal of the judgment as he was not in agreement with aspects of the court's decision. He then hired Clark to represent him. On February 19, 2015, Clark substituted in as counsel for Peter, who had been proceeding in propria persona on appeal. (*Clark v. Clark*, Ct. App., First Dist. No. A142642.)

The appellate court extended Peter's deadline to file his opening brief several times. On August 12, 2015, the court dismissed his appeal for failure to file an opening brief. On September 10, upon motion, the court vacated the dismissal and gave Peter an additional 30 days. Clark submitted the brief on October 13, but the court did not file it because it exceeded the permitted word count. On October 16, the court gave Peter another 10 days to file his brief.

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<sup>1</sup> The factual background is based on the trial testimony, documentary evidence, and factual findings by the hearing judge, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

<sup>2</sup> For clarity and to distinguish him from his sister, we use Peter's first name throughout this opinion; no disrespect is intended.

Peter then decided that he did not want Clark to appear as his attorney in the appeal because he believed that the courts were prejudiced against her.<sup>3</sup> He discussed his feelings with Clark. He did not want her to be listed as his attorney on any filing, but he wanted her to continue as his attorney and to write any documents that he submitted to the court.

By October 20, 2015, Clark knew that Peter did not want her to be his attorney of record in the appeal. On October 25, Peter electronically served Clark with a substitution of attorney form at her email address, but Clark refused to sign it.

The court filed the substitution of attorney form on October 26. Peter indicated on it that Clark was his former legal representative and he intended to represent himself. Only Peter signed the form. The next day, Clark submitted "Peter Clark's Opening Brief," indicating that she was Peter's attorney of record, which the court did not file.

On November 9, 2015, the court filed Peter's in propria persona response to a motion to dismiss. Peter then filed another document in propria persona on November 13. On that same day, Clark submitted "Peter Clark's Opposition to Motion to Dismiss," which was received by the court but not filed. On December 27, Clark submitted a memorandum of points and authorities where she designated herself as "Respondent in Pro Per and Attorney for Appellant Peter Clark." The court filed this document on December 28, 2015.

On March 28, 2016, Clark submitted a motion to strike where she again designated herself "Respondent in Pro Per and Attorney for Appellant Peter Clark." The court filed the motion on that same date. Clark then submitted a motion for sanctions on April 4, using the same designation, which the court again filed on that same date. On April 5, Clark submitted, and the court filed, a request for judicial notice, using the same designation a third time.

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<sup>3</sup> Clark had previously been found to be a vexatious litigant in another family-related litigated matter, *Clark v. Clark Family Trust*, Contra Costa Superior Court No. C 06-01091.

On July 26, 2016, the court dismissed the appeal because Peter did not file an opening brief. The court found that Clark was “not authorized to act on behalf of appellant Peter Clark in this appeal after he discharged her and filed a substitution of counsel.” Therefore, the court determined that the October 25, 2015 opening brief Clark submitted for Peter “shall not be filed.”

Peter filed a motion to set aside the dismissal on August 8, 2016. Then, on August 23, the court filed Clark’s motion to vacate the dismissal. She indicated that she was filing as “Respondent in Pro Per and, perhaps, Attorney for Appellant Peter Clark.” The court then denied both her and Peter’s motions. On September 2, Clark filed a petition for review in the Supreme Court where she again designated herself as “perhaps” Peter’s attorney. The Supreme Court did not accept review of Clark’s case.

### III. CULPABILITY

#### A. **Count One: Appearing Without Authority (Bus. & Prof. Code § 6104)<sup>4</sup>**

In count one, Clark is charged with appearing without authority, in violation of section 6104, when she submitted several pleadings to the court as her brother’s attorney. Section 6104 provides that an attorney can be disbarred or suspended for “[c]orruptly or willfully and without authority appearing as an attorney for a party to an action or proceeding.” The NDC alleged that Clark violated section 6104 by submitting the following pleadings:

<u>Date Filed</u>	<u>Document</u>	<u>Respondent’s Designation</u>
10/26/15 <sup>5</sup>	Peter Clark’s Appellate Brief	Attorney for Appellant Peter Clark
12/27/15 <sup>6</sup>	Respondent / Appellant’s Counsel Attorney for Diddo Clark’s Motion for Judicial Notice	Respondent in Pro Per and Appellant Peter Clark

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<sup>4</sup> All further references to sections are to the Business and Professions Code unless otherwise noted.

<sup>5</sup> The evidence submitted at trial indicates that this was received and filed by the court on October 27, 2015.

<sup>6</sup> This document was received by the court on December 27, 2015, and filed on December 28, 2015.

03/27/16 <sup>7</sup>	Appellant's Counsel / Respondent Diddo Clark's Motion to Strike All of Appellate Respondents' Counsel Greggory Brandt's Appellate Pleadings	Respondent in Pro Per and Attorney for Appellant Peter Clark
04/04/16	Appellant's Counsel / Respondent Diddo Clark's Motion for Sanctions (Amended Motion to Strike All of Appellate Respondents' Counsel Greggory Brandt's Appellate Pleadings)	Respondent in Pro Per and Attorney for Appellant Peter Clark
04/04/16 <sup>8</sup>	Respondent / Appellant's Counsel Diddo Clark's Motion for Judicial Notice of the Facts that Candi Clark Is Not a Party and that her Attorney Lied to the Court about this Material Fact	Respondent in Pro Per and Attorney for Appellant Peter Clark
08/23/16	Respondent Diddo Clark's Urgent Motion to Vacate Dismissal and to be Heard on the Merits	Respondent in Pro Per and, perhaps, Attorney for Peter Clark
09/02/16	Petition for Review (California Supreme Court)	Past and, perhaps, present Appellate Attorney for Appellant Peter Clark <sup>9</sup>

The hearing judge found that, "From October 26, 2015, through September 2, 2016, [Clark] willfully and without authority, appeared as attorney for a party, Peter Clark, to an action or proceeding, namely *In Re Clark Children Trust . . .*" However, she also found that only five of the pleadings during that period violated section 6104: (1) the opening brief filed in October 2015, (2) the motion for judicial notice filed in December 2015, (3) the motion to strike filed in March 2016, (4) the motion for sanctions filed in April 2016, and (5) the motion for judicial notice filed in April 2016. She did not find that the August 2016 motion to vacate or the September 2016 petition for review violated section 6104. OCTC did not appeal these factual findings or the judge's culpability finding for this count.

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<sup>7</sup> This document was received and filed by the court on March 28, 2016.

<sup>8</sup> This document was received and filed by the court on April 5, 2016.

<sup>9</sup> Clark also designated herself as a petitioner in propria persona.

Clark asserts a number of arguments that she is not culpable under section 6104. Primarily, she argues three points.<sup>10</sup> First, Clark argues that she had the authority to appear for Peter because the substitution form that he signed and filed was defective under Code of Civil Procedure section 284.<sup>11</sup> Specifically, she argues that her designation as Peter's attorney could not have been changed until the appeals court ruled on Peter's defective substitution request, and therefore she did not give her consent as required under the statute.

Clark's arguments are misplaced. Code of Civil Procedure section 284 is not the principle that should have guided her actions.<sup>12</sup> Rather, attorneys are required to advance their clients' lawful objectives as defined by the client. (See *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 418 [fundamental nature of attorney-client relationship is "one in which the attorney acts as agent for the client, who is the principal"].) We see nothing in the language of Code of Civil Procedure section 284 that absolved Clark of her fundamental duty to follow Peter's instructions.

Clark's second argument is that she had a duty not to withdraw from representing Peter under California Rules of Professional Conduct rule 3-700(A)(2) from the time he filed his substitution form in October 2015 until the appeals court issued its order in July 2016. Like her first argument, this one is also misplaced. She never sought to terminate her attorney-client

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<sup>10</sup> While we discuss her three most extensive arguments on appeal, the remaining ones not discussed have also been considered but are found to be unpersuasive.

<sup>11</sup> That section provides that an attorney in an action may be changed at any time as follows: "1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes; 2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other."

<sup>12</sup> Code of Civil Procedure section 284 is not relevant regarding Clark's authority to appear for Peter under section 6104. Code of Civil Procedure section 284 ensures that the parties are on notice as to when a party's representation has changed. The purpose of that section and its companion provision, Code of Civil Procedure section 285, "is to have the record of representation clear so the parties may be certain with whom they are authorized to deal. [Citation.]" (*McMillan v. Shadow Ridge at Oak Park Homeowner's Assn.* (2008) 165 Cal.App.4th 960, 965.)

relationship with Peter, and thus the rule's requirement that she take "reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client" never arose.

Her third argument, that Peter could not fire her as his attorney because she had an interest in the subject of the litigation beyond attorney fees, is also without merit. Both parties agree that an attorney may have a legal basis to prevent a client from terminating their relationship, where the attorney and client have entered into a representation agreement by which an irrevocable power coupled with a specific, present, and coexisting interest in the subject matter of the litigation is conveyed to the attorney. (*O'Connell v. Superior Court of San Francisco* (1935) 2 Cal.2d 418, 422–423.) However, as OCTC correctly argues, this limited exception would not apply to Clark's situation. Peter and Clark held separate, distinct interests in the trust that was the subject of the litigation, and Clark has not provided any evidence that Peter conveyed to her a power of agency over, or legal interest in, Peter's specific interest in the trust.

Clear and convincing evidence<sup>13</sup> from the record supports the fact that Clark knew Peter did not want her to appear for him in the appellate court proceeding as of October 20, 2015, when Peter specifically told Clark that he wanted her to stop filing documents and pleadings on his behalf. Peter had the right to prevent Clark from doing that regardless of the legal status of the substitution of attorney he filed. (See *Gage v. Atwater* (1902) 136 Cal. 170, 172 [client "has the right to employ such attorney as will in his opinion best subserve his interest"].)

Clark clearly appeared on Peter's behalf, despite his demand to the contrary, when she filed the opening brief on October 27, the motion for judicial notice in December 2015, the motion to strike in March 2016, the motion for sanctions in April 2016, and the motion for judicial notice in April 2016. Therefore, we conclude that Clark violated section 6104 when she

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<sup>13</sup> Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

willfully filed the brief and motions because she did not have the authority to do so. (See *In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 854 [§ 6104 violation when attorney continued to pursue appeal on behalf of clients who expressly told attorney they did not want to pursue it]; *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96, 104–105 [§ 6104 violation when attorney filed suit on behalf of client without consent].)

**B. Count Two: Seeking to Mislead a Judge (§ 6068, subd. (d))<sup>14</sup>  
Count Three: Moral Turpitude—Misrepresentation (§ 6106)<sup>15</sup>**

The hearing judge found no clear and convincing evidence demonstrating that Clark sought to mislead a judge or that she committed an act of moral turpitude. Therefore, the judge dismissed counts two and three with prejudice. OCTC does not challenge these dismissals on review. We agree with the hearing judge’s decision to dismiss counts two and three with prejudice as we find that the facts provide no alternative theory of culpability for these counts.

#### IV. AGGRAVATION AND MITIGATION

Standard 1.5<sup>16</sup> requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Clark to meet the same burden to prove mitigation.

**A. Aggravation for Prior Record of Discipline (Std. 1.5(a))**

The hearing judge found one aggravating circumstance for Clark’s prior record of discipline. On April 14, 2011, the Supreme Court suspended Clark for two years, stayed the suspension, and placed her on probation for three years subject to an actual suspension of 30 days. (Supreme Court No. S190329; State Bar Court No. 09-O-16931.) Clark stipulated to her misconduct, which occurred in January 2009 when she made false statements to the clerk of the

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<sup>14</sup> Section 6068, subdivision (d) provides that it is the duty of an attorney “never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.”

<sup>15</sup> Section 6106 provides that the “commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension.”

<sup>16</sup> Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.



court, in violation of sections 6068, subdivision (d) (misleading judicial officer), and 6106 (moral turpitude). In a letter to the clerk, Clark falsely stated that she had mailed her appellate brief when she had not and, in fact, had yet to complete it on that date. Five days later, Clark sent another letter to the court admitting to lying about mailing the brief and apologizing. No aggravating circumstances were established. She received mitigation for her lack of a prior record of discipline, candor and cooperation during the disciplinary proceedings, remorse, good character, severe financial stress, and family problems.

OCTC asserts that Clark's prior misconduct involved dishonesty to a court and occurred four and one-half years prior to her current misconduct. OCTC submits that therefore her prior record of discipline is a "significant factor in aggravation because it involved serious misconduct and is not remote in time." Clark argues that no aggravation should be found because the prior discipline was based on a "false confession," which had been improperly coerced by OCTC. We reject her argument because Clark stipulated to this prior misconduct. That matter is final, and we will not revisit it here.

Clark's prior misconduct was serious because it involved dishonesty. In addition, we find that her failure to accept responsibility for her past wrongdoing causes concern because it shows that she does not fully understand her professional duties nor appreciate the gravity of her prior misconduct. Thus, we conclude that Clark's prior discipline merits substantial weight in aggravation. (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 710–711 [prior discipline of actual suspension imposed in recent past entitled considerable weight where attorney had "not taken any steps to correct the problem or to indicate his reform"]; *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646 [attorney's inability to learn from past misconduct may be considered in aggravation]; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 ["part of the rationale for considering prior discipline as having an aggravating

impact is that it is indicative of a recidivist attorney's inability to conform his or her conduct to ethical norms"].)

## **B. Mitigation**

### **1. Good Faith (Std. 1.6(b))**

An attorney may be entitled to mitigation credit if he or she can establish a "good faith belief that is honestly held and objectively reasonable." (*In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653 [good faith established as mitigating circumstance when attorney proves belief was honestly held and reasonable].) The hearing judge found that Clark had a good faith belief that Code of Civil Procedure section 284 supported her position that she remained Peter's attorney until she signed the substitution form or the court issued an order relieving her of Peter's representation. The hearing judge determined that Clark was not unreasonable because the court did not issue an order regarding the substitution until nine months after Peter had filed the form. The judge assigned moderate weight in mitigation for Clark's good faith. While Clark does not seek more mitigation for this circumstance, OCTC argues that it should receive only minimal weight because her claims of having an honest, but mistaken, belief in the interpretation of Code of Civil Procedure section 284 are not reasonable when she clearly disregarded Peter's stated wishes.

We agree with the hearing judge that Clark honestly believed that she remained Peter's attorney because she did not consent to the change as required by Code of Civil Procedure section 284. Between the time the substitution was filed and the court issued its order, Clark's actions concurred with her honest belief that Code of Civil Procedure section 284 permitted her to continue to act as she did. She designated herself as Peter's attorney during this time, and the court did not correct her until it issued an order nine months later. After that order, she changed her designation to "perhaps" Peter's attorney.

However, while she had an honest belief, it was not objectively reasonable for Clark to continue to disregard Peter's wishes and submit documents to the court on his behalf when he clearly told her not to do so. (*Davis v. State Bar* (1983) 33 Cal.3d 231, 238 [attorney "must always respect and defer to those decisions properly reserved to the client"].) We find that, overall, her actions do not meet both requirements, and thus we do not assign any mitigation credit under standard 1.6(b). (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331 [attorney's honest belief not mitigating circumstance because belief was unreasonable].)

## **2. Good Character (Std. 1.6(f))**

Under standard 1.6(f), a mitigating circumstance is "extraordinary good character attested to by a wide range of references in the legal and general communities, who are aware of the full extent of the misconduct." The hearing judge assigned significant weight in mitigation for Clark's good character. OCTC expresses its concern that Clark's "good character mitigation in her prior discipline matter was not an accurate predictor of future conduct," and therefore her current offer of good character mitigation "does not inspire great confidence that she will refrain from future misconduct." Notwithstanding OCTC's expressed concern, we conclude that Clark's good character evidence merits substantial mitigating weight under this standard.

Clark presented the testimony of three character witnesses and declarations from six other individuals who attested to her good character. Her witnesses represent a wide range of references, and they detailed their interactions with Clark in her daily life and their observations of her good character. Three of the declarations were from attorneys. We give serious consideration to this evidence because attorneys 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.) The attorneys affirmed their knowledge of Clark's good character, commitment to the law, and her record of community service.

Clark's six other character witnesses were from varied backgrounds and included a Contra Costa County special district commissioner, the president of a nonprofit organization, a childhood friend, a priest, the chairman of the Board of the Hispanic Chamber of Commerce, and her brother who is a property developer. These witnesses described her honesty, trustworthiness, compassion, and extraordinary good character. All but one of these witnesses knew about the charges against Clark. However, all of the remaining witnesses knew about the charges, and indicated that their high opinion of her was not altered. Therefore, substantial mitigating weight is deserved. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591–592 [significant mitigation for testimony on issue of good character where witness observed attorney's "daily conduct and mode of living"]; *In re Brown* (1995) 12 Cal.4th 205, 223 [mitigation considered for attorney's good character when witnesses aware of misconduct].)

### **3. Community Service**

Pro bono work and community service are mitigating factors, and not, as OCTC argues, duplicative of good character. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Clark testified about her community service. She has served on the Contra Costa County Democratic Central Committee since 2001. She also served as a pro tem judge in Contra Costa and Alameda counties from 1992 through 2006. She read to children in the Head Start program in Concord, California. Currently, she volunteers to walk with a 93-year-old man twice a week as a part of the Rossmoor Trails Club.

The hearing judge afforded modest weight for Clark's community service "because an ample part of her service occurred before the misconduct in this matter, and the level of some of her service cannot be quantified from the record." Clark challenges this finding on review, asserting that the level of her service can be quantified from the record. We reject her argument as it is not supported by the record. We agree with the hearing judge's determination and assign

modest weight in mitigation for Clark's community service. (*In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280, 287 [little weight given to pro bono activities where attorney gave minimal testimony regarding pro bono activities and evidence fails to demonstrate level of involvement].)

## V. DISCIPLINE

Standard 1.1 states that, "The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys." Our disciplinary analysis begins with the standards. While they are guidelines for discipline and are not mandatory, we give them great weight to promote consistency. (*In re Silvertown* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow the standards "whenever possible." (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We also look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

We first determine which standard applies to Clark's misconduct. Standard 2.18 applies to Clark's violation of section 6104 and provides for disbarment or actual suspension as the presumed sanction for "any violation of a provision of Article 6 of the Business and Professions Code, not otherwise specified in these Standards."

Given Clark's disciplinary history, we also look to standard 1.8(a), which calls for increased discipline if the attorney has a prior record. It provides that, "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust." We agree with the hearing judge's determination that Clark's prior misconduct does not fall within the exception to standard 1.8(a). She was previously disciplined in 2011 for dishonesty, which is serious

misconduct, and her present misconduct took place in 2015 and 2016. Accordingly, it is appropriate for the sanction here to be greater than the 30-day actual suspension Clark received in her prior discipline.

Standard 1.2(c)(1) generally requires that an actual suspension be “for a period of thirty days, sixty days, ninety days, six months, one year, eighteen months, two years, three years, or until specific conditions are met.” Since the weight of the mitigating circumstances outweighs that of the aggravating circumstances, a lesser sanction is appropriate. (Std. 1.7(c).) We find that a 60-day actual suspension is appropriate discipline in this matter as it is the next level in discipline under standard 1.2(c)(1). Further, we see no reason to deviate from the hearing judge’s recommendation. This recommendation complies with standards 2.18, 1.8(a), and 1.2(c)(1); is consistent with comparable case law;<sup>17</sup> and recognizes that a discipline at the lower end of the suspension spectrum is justified.

## VI. RECOMMENDATION

For the foregoing reasons, we recommend that Diddo Ruth Clark, State Bar No. 79876, be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year with the following conditions:

1. Clark must be suspended from the practice of law for the first 60 days of her probation.
2. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Clark must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to her compliance with this requirement, to the State Bar’s Office of Probation in Los Angeles (Office of Probation) with her first quarterly report.

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<sup>17</sup> The hearing judge relied on *In the Matter of Regan, supra*, 4 Cal. State Bar Ct. Rptr. 844 for guidance. Regan was culpable of violating section 6104 when he continued to pursue an appeal on behalf of clients who had expressly asked him to stop. He was actually suspended for 75 days. Regan’s misconduct included several other disciplinary violations and was much more serious than Clark’s. Further, his aggravation was more considerable than Clark’s. Therefore, Clark’s discipline should be less than the 75-day actual suspension in *Regan*.

3. Clark must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of her probation.
4. Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Clark must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has her current office address, email address, and telephone number. If Clark does not maintain an office, she must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Clark must report, in writing, any change in the above information to ARCR, within 10 days after such change, in the manner required by that office.
5. Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Clark must schedule a meeting with her assigned probation case specialist to discuss the terms and conditions of her 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, she may meet with the probation case specialist in person or by telephone. During the probation period, Clark 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.
6. During Clark's probation period, the State Bar Court retains jurisdiction over her to address issues concerning compliance with probation conditions. During this period, she must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to her official membership address, as provided above. Subject to the assertion of applicable privileges, she must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
7. Quarterly and Final Reports
  - a. **Deadlines for Reports.** Clark 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, Clark must submit a final report no earlier than 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.** Clark must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether she 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.** Clark is directed to maintain proof of her 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 her actual suspension has ended, whichever is longer. Clark is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

8. Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Clark must 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. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Clark will not receive MCLE credit for attending this session. If Clark provides satisfactory evidence of completion of the Ethics School after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Clark will nonetheless receive credit for such evidence toward her duty to comply with this condition.
9. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the probation period, if Clark has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

## VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Diddo Ruth Clark be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order 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).) If Clark provides satisfactory evidence of taking and passage of the MPRE after the date of this opinion but before the effective date of the Supreme Court's order in this matter, Clark will nonetheless receive credit for such evidence toward her duty to comply with this condition.



### VIII. COSTS

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

McGILL, J.

WE CONCUR:

PURCELL, P. J.

HONN, J.

## 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 January 7, 2019, I deposited a true copy of the following document(s):

OPINION FILED JANUARY 7, 2019

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

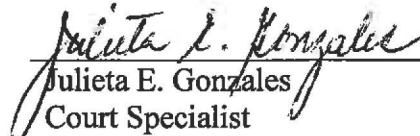
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DIDDO RUTH CLARK  
LAW OFFICE OF DIDDO CLARK  
3527 MT DIABLO BLVD # 131  
LAFAYETTE, CA 94549

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

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 7, 2019.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Court Specialist  
State Bar Court