PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed September 28, 2016

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of MARILYN SUE SCHEER, A Member of the State Bar, No. 132544.	))))))	Case Nos. 12-O-14071 (12-O-16633; 12-O-18068); 14-O-05451 (Cons.) OPINION

In Marilyn Sue Scheer's first disciplinary proceeding (*Scheer I*), we found her culpable of engaging in the unauthorized practice of law (UPL) in 26 client matters in 11 different states from October 2009 through January 2011, and of collecting illegal fees in those matters. For this misconduct, she received a two-year actual suspension to continue until she paid approximately $120,000 in restitution to her former clients. At this time, she remains on actual suspension for failure to pay this restitution.

In this consolidated review, Scheer appeals from Hearing Department decisions in her second and third disciplinary proceedings (*Scheer II* and *Scheer III*). In each, a hearing judge found Scheer culpable of misconduct that is substantially identical to the misconduct in *Scheer I*. Neither judge, however, recommended a new fixed period of actual suspension because the current misconduct occurred during the same time period as the misconduct in *Scheer I*. Rather, each judge recommended that Scheer should be actually suspended from the practice of law until she pays restitution to her former clients.

On review, Scheer challenges culpability and raises a series of legal challenges to the decisions, which largely duplicate the arguments she raised in *Scheer I*. The Office of the Chief

Trial Counsel of the State Bar (OCTC) does not appeal and renews its request that Scheer remain actually suspended until she pays restitution.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we find Scheer culpable as charged. Like the hearing judges, we do not find that a new fixed period of actual suspension is appropriate. We recommend that Scheer be actually suspended until she makes restitution to her clients.

I. RELEVANT DISCIPLINE AND PROCEDURAL HISTORY

Scheer was admitted to practice law in California in December 1987.

A. PRIOR DISCIPLINE: *SCHEER I*

On July 16, 2014 (effective August 15, 2014), the Supreme Court ordered Scheer suspended for three years, execution stayed; placed on probation for three years; and actually suspended from the practice of law for a minimum of two years and until she makes restitution of approximately $120,000 in illegal fees to her former clients. (*In re Marilyn Sue Scheer* (S218357); State Bar Court No. 11-O-10888.)[1] She was found culpable of 26 acts of out-of-state UPL (Rules Prof. Conduct, rule 1-300(B)),[2] and 26 acts of collecting illegal fees from that UPL (rule 4-200(A)),[3] in 11 different states, including Maryland, Washington, and New Jersey. Scheer was also found culpable of four acts of demanding and collecting fees prior to fully performing loan modification work in California (Civ. Code, § 2944.7; Bus. & Prof. Code, § 6106.3). Her multiple acts of misconduct, harm to her clients, and indifference were

[1] In her briefs, Scheer states that she sought review of *Scheer I* by filing a petition for certiorari with the United States Supreme Court, which was denied.

[2] Rule 1-300(B) states that "[a] member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction." All further references to rules are to the Rules of Professional Conduct unless otherwise noted.

[3] Rule 4-200(A) states that "[a] member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee."

considered in aggravation. She received mitigating credit for her discipline-free record, for entering into an extensive pretrial stipulation with OCTC, and for good character.

On review, Scheer objects that the hearing judges below improperly received into evidence the formal record in *Scheer I*. Her objection lacks merit. The hearing judge in *Scheer II* did not err by sua sponte reopening the evidentiary record after trial for the purpose of admitting into evidence the formal record from *Scheer I*. The Supreme Court has expressed concern that the record in attorney disciplinary matters should accurately reflect an attorney's prior discipline history. (*In re Mostman* (1989) 47 Cal.3d 725, 741.) Thus, the State Bar Court may take judicial notice, on its own motion, of prior State Bar Court proceeding records. And *Scheer I* is also properly before us because OCTC offered it and the hearing judge admitted it in *Scheer III*.

Separately, we reject Scheer's argument that the hearing judge in *Scheer III* erred by considering her prior disciplines in culpability. Pursuant to our obligation to conduct an independent review of the record (Cal. Rules of Court, rule 9.12), we find that *Scheer I* "tends to prove a fact in issue in determining culpability" (Rules Proc. of State Bar, rule 5.106(D)), and, therefore, consider *Scheer I* in our culpability, aggravation, and discipline analysis. We find no error with the hearing judge having done the same in *Scheer III*.

B. PROCEDURAL HISTORY OF PENDING CASES

1. *Scheer II*

On July 19, 2013, OCTC filed a six-count Notice of Disciplinary Charges (NDC) in *Scheer II* (State Bar Court Case Nos. 12-O-14071; 12-O-16633; 12-O-18068). OCTC charged Scheer with accepting employment in three client matters from residents of states where she is not admitted to practice (New Jersey, Washington, and Maryland) and holding herself out as

entitled to perform legal services in those states, thereby violating rule 1-300(B). She was also charged with collecting illegal fees in violation of rule 4-200(A).

The parties filed an extensive stipulation as to facts and admission of documents, and the trial took place on December 9, 2014.

On February 2, 2015, the hearing judge issued his decision and found Scheer culpable as charged. In aggravation, he considered her prior record of discipline, her multiple acts of misconduct, the significant harm she caused her clients, and her indifference. Scheer received mitigating credit for entering into an extensive pretrial stipulation and for good character.

In considering discipline, the judge did not apply standard 1.8(a),[4] which states that, subject to certain exceptions, if a member has a prior record of discipline, the sanction imposed in the current proceeding must be greater than the one imposed in the prior proceeding. The judge did not do so because the misconduct in *Scheer II* occurred during the same time period as the misconduct in *Scheer I*. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619 [if misconduct underlying prior discipline occurred during same time period as misconduct in present proceeding, the State Bar Court "consider[s] the totality of the findings in the two cases to determine what the discipline would have been had all the charged misconduct . . . been brought as one case"].)

Instead, the judge asked what would have been the appropriate discipline had *Scheer II* been tried in conjunction with *Scheer I*,[5] and concluded that "no additional minimum period of actual suspension should be required, but . . . that [Scheer] must remain actually suspended until

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[4] Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.8(a). The standards were revised and renumbered effective July 1, 2015. Because this request for review was submitted for ruling after that date, we apply the revised version of the standards. All further references to standards are to this source.

[5] The judge observed that OCTC offered no explanation as to why two of the three client matters in *Scheer II* had not been joined with the NDC in *Scheer I* given that they had been filed in time to be so joined.

she makes restitution to her former clients." The judge recommended that Scheer be suspended for two years, execution stayed; placed on probation for three years; and actually suspended until she makes restitution in the three client matters, and that if the resulting suspension lasted for two years or longer, Scheer must provide proof of her rehabilitation and fitness to practice pursuant to standard 1.2(c)(1).

2. *Scheer III*

On April 10, 2015, OCTC filed a two-count NDC in *Scheer III* (State Bar Court Case No. 14-O-05451). OCTC charged Scheer in one client matter with committing UPL in Maryland (rule 1-300(B)) and with collecting illegal fees in connection with her UPL (rule 4-200(A)). The parties filed an extensive stipulation as to facts and admission of documents, and trial took place on July 14, 2015. On October 30, 2015, the hearing judge issued his decision finding Scheer culpable as charged. In aggravation, he considered her prior record of discipline in *Scheer I*, as well as the significant harm she caused her clients and her indifference. Scheer received mitigating credit for entering into an extensive pretrial stipulation with OCTC and for good character.

As in *Scheer II*, the judge concluded that standard 1.8(a) did not apply under *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619. The judge recommended that Scheer "be suspended from the practice of law in California until she makes restitution" to her former clients, and, if she remains suspended for two years or longer, must also provide proof of her rehabilitation and fitness to practice pursuant to standard 1.2(c)(1).

3. *Scheer II* and *Scheer III* on Review

Scheer subsequently filed separate requests for review in *Scheer II* and *Scheer III*. After providing the parties with the opportunity to brief the issue and receiving no objection, we

consolidated the cases for the purpose of a single recommendation of discipline. (Rules Proc. of State Bar, rule 5.47.)

Oral argument was heard on June 16, 2016. Thereafter, we ordered the parties to submit supplemental briefing (State Bar Ct. Rules of Prac., rule 1333(b)) to address the effect of collateral estoppel as to issues decided in *Scheer I* and whether the application of collateral estoppel had been waived by OCTC. (See *In the Matter of Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 329 [State Bar Court may apply collateral estoppel principles].) Having considered the parties' supplemental briefs, we conclude that we should not apply the doctrine of collateral estoppel on review as a matter of fairness. OCTC did not raise the doctrine at trial and, therefore, Scheer was not given the opportunity to litigate that issue.

We conclude that the Hearing Department properly analyzed the facts and culpability issues in the respective cases and properly held OCTC to their evidentiary burden. We do not, however, consider Scheer's ongoing attempts to collaterally attack *Scheer I*. That case is final, and we treat it as such. Further, because the legal issues in all three cases are substantially identical, our legal analysis in *Scheer II* and *Scheer III* is substantially similar to the legal analysis in *Scheer I*.

II. FACTS

In the pending matters, the parties filed extensive stipulations as to facts and admission of documents; Scheer concedes these facts in the briefs she filed on review. As discussed below, we find that these facts establish her culpability.

From December 2009 through April 2010, Scheer entered into the four fee agreements at issue in these proceedings. Each fee agreement was titled "Residential Loan Modification Retainer Agreement" and prominently displays the logo: "Marilyn Scheer Law Group PC, a

California law corporation." The attorney signature block reads: "Attorney, Marilyn S. Scheer, President, Marilyn Scheer Law Group PC, a California law corporation."

In each agreement, in exchange for payment of a flat fee, Scheer offered to perform "a set (or any combination thereof) of legal services described below, to assist Client in obtaining an agreement to modify a loan or loans involving Client's residential real property (collectively, the 'Services')." "Legal services" were defined as:

> Client retains Attorney for the limited purpose of: (a) confirming Client's eligibility for obtaining a modification of the loan secured by the real property described [therein], analyzing and verifying Client's financial information; and reviewing lender's policies and guidelines governing Client's circumstances; (b) submission of the loan modification package to Client's lender and confirmation of the acceptability thereof; initiating contact with the lender and engaging in negotiations with the lender for purposes of obtaining a loan modification and providing Client with regular status reports thereof; and (c) finalization of the workout/trial plan modification between lender and Client (subject to Client's performance). Client may select any or all of the services described in the foregoing subparagraphs a, b, or c, with each set of services being billed for separately according to the attached schedules.

The agreements also stated that "*Attorney* will not provide *legal services* in any area *other* than Loan Modification without a separate written agreement with the Client." (Italics added.)

The fee agreements were between Scheer and residents of three states other than California: New Jersey; Maryland; and Washington. Scheer collected flat fees under the agreements as follows:

(1) $4,000 from Aderito Pereira, a resident of New Jersey ($2,000 on December 8, 2009, and $2,000 on March 20, 2010) (Case No. 12-O-14071);

(2) $3,500 from Bom-Singh and Sushila Ranabhat, residents of Washington, on January 15, 2010 (Case No. 12-O-16633);

(3) $4,500 from Maynard and Karen Osborne, residents of Maryland ($2,500 on April 7, 2010, and $2,000 on May 7, 2010) (Case No. 12-O-18068); and

(4) $6,000 from Lisa Hairston-Jones and Winston M. Jones, residents of Maryland, on March 17, 2010 (Case no. 14-O-05451).

Scheer has not returned any of the fees she collected in these four matters.

III. CULPABILITY

A. SCHEER'S SERVICES CONSTITUTED THE PRACTICE OF LAW

As a threshold matter, we reject Scheer's attempt to depict herself as a layperson providing non-legal services and therefore beyond our jurisdiction. She is mistaken that our jurisdiction is as narrow as she claims. For example, we may recommend discipline for attorneys' criminal conduct unrelated to the practice of law. (See *In re Kelley* (1990) 52 Cal.3d 487, 490-491, 494-496.) And, as in this case, we may discipline an attorney for merely holding oneself out as entitled to practice where not entitled. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 [UPL includes merely holding out as entitled to practice].) Further, by the language in her fee agreement, Scheer offered to provide "legal services" in the area of "loan modification," which *she* defined as including reviewing a lender's policies and guidelines and engaging in negotiations with the lender. And she drafted that agreement as the client contracting with "Attorney, Marilyn S. Scheer," not with a layperson. In this context, Scheer was holding herself out to provide, and did provide, legal services by her own terms and may be disciplined accordingly. (See *Crawford v. State Bar*, *supra*, at pp. 667-668 ["Although [loan modification] services might lawfully have been performed by . . . brokers, and other laymen, it does not follow that when they are rendered by an *attorney, or in his office,* they do not involve the practice of law. People call on lawyers for services that might otherwise be obtained from laymen because they expect and are entitled to legal counsel" (italics added)].)

B. WITHOUT AUTHORIZATION, SCHEER HELD HERSELF OUT AS ENTITLED TO PRACTICE

Scheer is not admitted to practice law in New Jersey, Washington, or Maryland, yet she held herself out as entitled to practice law, and practiced law, in each state in violation of rule 1-300(B). Common to each client matter, under the auspices of the "Marilyn Scheer Law Group PC, a California law corporation" and in her capacity as an "attorney," Scheer entered into attorney-client relationships with residents of these states to provide "legal services" involving property located in the clients' respective states. She prominently displayed her law firm's logo at the top of the agreements, and included it in her signature block. Although identifying herself as a California attorney, she failed to disclose that she was *not* licensed to practice in the specific client's state. And, upon execution of the agreements, Scheer collected fees and provided legal services, as defined by her, cementing the impression that she had the right to practice in each state. More specifically, we look to each state at issue to determine whether she has committed misconduct. (*In the Matter of Lenard* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 250, 255-258 [analyzing nine states' professional rules and regulations to determine whether California attorney's conduct was in violation of rule 1-300(B)].)

1. New Jersey

In New Jersey, an out-of-state lawyer who is neither admitted *pro hac vice* nor in-house counsel is nevertheless permitted to engage in the practice of law in New Jersey in five limited circumstances, known as the safe harbor provisions, none of which is applicable to Scheer's representation of Pereira. (N.J. Rules Prof. Conduct, rule 5.5(b)(3).) Even under the safe harbor provisions, out-of-state attorneys must *first* register with the Clerk of the New Jersey Supreme Court and pay certain assessments before they can practice. (N.J. Rules Prof. Conduct, rule 5.5(c)(3),(6).) The record contains no evidence that Scheer complied with these requirements. (See *In re Opinion No. 49 of the Committee on the Unauthorized Practice of Law*,

210 N.J.L.J. 234 (2012) ["out-of-state lawyers" must meet "all criteria in the pertinent 'safe harbor' subparagraph" of rule 5.5(b)(3)].) Nevertheless, Scheer held herself out to Pereira as entitled to practice in New Jersey in violation of its prohibition against holding oneself out as authorized to practice in the state. (N.J. Rules Prof. Conduct, rule 5.5(c)(4).)

2. Washington and Maryland

Both Washington and Maryland have adopted rule 5.5(b)(2) of the American Bar Association Model Rules of Professional Conduct (ABA Model Rules). The rule provides that a "lawyer who is not admitted to practice in this jurisdiction shall not [¶] . . . [¶] hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction."[6]

Although Scheer is not admitted to practice law in either state, she held herself out as entitled to do so in both. Under the auspices of the "Marilyn Scheer Law Group PC, a California law corporation" and in her capacity as an "attorney," she entered into written fee agreements with the Ranabhats of Washington and the Osbornes and Joneses of Maryland, to provide "legal services" involving property located in the clients' states. She prominently displayed her law firm's logo at the top of the agreements, and included it in her signature block. Although identifying herself as a California attorney, she failed to disclose that she was *not* licensed to practice in the specific client's state. And finally, upon execution of the agreements, Scheer provided legal services and collected fees.

The states' temporary practice exceptions do not apply.[7] None of the legal services Scheer provided to her Washington or Maryland clients was reasonably related to her practice in California or involved the application of California law. Instead, the legal services she provided

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[6] Wash. Rules Prof. Conduct, rule 5.5(b)(2); Md. Rules Prof. Conduct, rule 5.5(b)(2).

[7] Under the temporary practice exception, a lawyer admitted to practice law in another United States jurisdiction may provide legal services on a temporary basis in a foreign jurisdiction arising out of or reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

related to her clients' residential properties, located outside of California. Further, Scheer had not previously represented these clients, and they had no prior contact with California. (See Wash. Revised Code, § 2.48.180(2)(a); Wash. Practice of Law Board (Dec. 30, 2009, No. 09-35) [UPL when California lawyer agreed to renegotiate residential mortgage loan for client residing in Washington]; *Attorney Grievance Com'n. of Md. v. Ambe* (Md. 2012) 38 A.3d 390, 399 [out-of-state attorney held himself out as authorized to practice by failing to indicate he was not licensed to practice in Maryland].)

3. Federal Practice Exception Does Not Apply

As we did in *Scheer I*, we reject Scheer's claim that she was authorized to provide loan modifications services under federal law. Our review of the Home Affordable Modification Program (HAMP) finds no authority for the proposition that HAMP preempts a state's UPL rules or licensing regulations. Instead, we observe that it governs the relationship between mortgage servicers/lenders on the one hand and borrowers on the other. (See, e.g., 12 U.S.C. § 5219a.) Scheer is neither a lender nor a borrower in the cases before us. And, although HAMP may *allow* nonattorneys to provide loan modification services under certain circumstances, it does not appear to *authorize* out-of-state attorneys to hold themselves out as permitted to provide legal services in states where they are not admitted.[8]

C. SCHEER COLLECTED ILLEGAL FEES

We also find that Scheer was not entitled to charge or collect her fees in the four out-of-state client matters since the legal services provided in those matters constituted UPL. Her fees were illegal under rule 4-200(A). (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar

[8] The Making Home Affordable Program Handbook defines "Authorized Advisors" as advisors duly authorized *by the borrower* (e.g., HUD-approved housing counseling agencies, non-profits, consumer advocacy organizations, legal guardians, powers of attorney, and legal counsel) and directs mortgage servicers/lenders to communicate with these advisors. (Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Version 3.2, June 1, 2011) section 2.1, p. 50.)

Ct. Rptr. 896, 904-905 [attorney not entitled to recover fees for UPL committed in violation of rule 1-300(B) and ordered to refund fees].)

IV. MITIGATION AND AGGRAVATION

Scheer must establish mitigation by clear and convincing evidence (std. 1.6), while OCTC has the same burden to prove aggravating circumstances (std. 1.5).

A. TWO FACTORS IN MITIGATION

1. Cooperation (Std. 1.6(e))

We agree with the hearing judges that Scheer is entitled to some mitigation for entering into extensive stipulations of facts, even though she admitted no culpability. (Std. 1.6(e) [spontaneous candor and cooperation to State Bar warrants mitigation].)

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

Standard 1.6(f) provides for mitigation where an attorney establishes "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." In *Scheer I*, Scheer presented eight witnesses on her behalf. In the present proceedings, she introduced the transcript of her good character witnesses' testimony from the *Scheer I* trial. Like the hearing judge in *Scheer III,* and unlike the hearing judge in *Scheer II* who assigned this evidence substantial weight, we assign it only nominal weight in mitigation because the testimony was previously accorded mitigating weight and is now more than three years old.

3. Other Mitigation

We reject Scheer's request that we consider "the State Bar's dilatory tactics" in mitigation. She notes that the complaint in *Scheer III* could have been joined with the complaint in *Scheer II*. She argues that OCTC chose not to do so as a litigation strategy to thwart her constitutional challenge to California Rules of Court, rule 9.16, which provides the grounds for

review of State Bar Court decisions by the California Supreme Court, and was then pending in the Ninth Circuit Court of Appeals.[9] Despite her accusation, we have no basis for finding that OCTC prosecuted the case in the manner it did for the reason Scheer alleges.

B. THREE FACTORS IN AGGRAVATION

1. Prior Discipline (Std. 1.5(a))

Scheer's prior discipline is aggravating under standard 1.5(a). However, as she committed the current misconduct contemporaneously with the misconduct underlying *Scheer I*, we assign it no aggravating weight. (See *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 619 ["Since 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 [citation], it is therefore appropriate to consider the fact that the misconduct involved here was contemporaneous with the misconduct in the prior case"].)

2. Multiple Acts of Misconduct (Std. 1.5(b))

Scheer committed acts of misconduct in four client matters. (Std. 1.5(b) [multiple acts of wrongdoing constitute circumstance in aggravation].) We assign modest weight in aggravation to this factor.

3. Significant Harm (Std. 1.5(j))

Scheer caused her clients harm by failing to refund the illegal fees she collected, and we assign moderate weight in aggravation to this factor. (See *Kelly v. State Bar* (1991) 53 Cal.3d 509, 519 [loss of $2,000 for approximately six weeks is monetary loss albeit not grievous, and $750 loss for approximately two years is genuine monetary injury although not severe]; std. 1.5(m) [failure to make restitution is aggravating factor].)

[9] We take judicial notice that on April 4, 2016, the Ninth Circuit Court of Appeals rejected Scheer's facial challenge to California Rules of Court, rule 9.16 in *Scheer v. Kelly* (9th Cir. 2016) 817 F.3d 1183. (Rules Proc. of State Bar, rule 5.156; Evid. Code, § 452, subd. (d).)

4. Indifference (Std. 1.5(k))

Scheer's ongoing insistence that she has not committed misconduct is troubling, particularly as it has persisted even after the Supreme Court rendered *Scheer I* final and imposed discipline. Under these circumstances, her failure to acknowledge her misconduct "is properly considered as an aggravating factor in deciding the appropriate discipline for an attorney. [Citations.]" (*Weber v. State Bar* (1988) 47 Cal.3d 492, 506.) Unlike the hearing judge in *Scheer II*, we are concerned that Scheer will commit future misconduct because she has neither repaid her former clients nor acknowledged her wrongdoing. Thus, we assign significant weight to this factor.

V. DISCIPLINE

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. (Std. 1.1.) Our discipline analysis begins with the standards, which promote the consistent application of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91.) Several standards apply to Scheer's misconduct.[10]

We agree with the hearing judges that no additional minimum period of actual suspension is called for under *In the Matter of Sklar*, *supra*, 2 Cal. State Bar Ct. Rptr. 602 because the misconduct in the three cases was contemporaneous and took place before she was served with the NDC in *Scheer I*. (Compare with *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 283.)

[10] Standard 2.3(b) provides that the presumptive sanction for charging or collecting an illegal fee is suspension or reproval. Standard 2.19 provides for suspension not to exceed three years or reproval for a rule violation not specified in the standards. Standard 1.8(b) provides that "[i]f a member has two or more prior records of discipline, disbarment is appropriate" in certain circumstances. However, it provides an exception where "the misconduct underlying the prior discipline occurred during the same time period as the current misconduct."

To be clear, we do not discount that we now have proof that Scheer's misconduct involved more clients than we realized when determining the discipline in *Scheer I*. But we note that the discipline we recommended then, which was imposed by the Supreme Court, was very serious and imposed a heavy burden on Scheer—a two-year actual suspension coupled with requirements that she pay approximately $120,000 in restitution and prove her fitness to practice law. That Scheer committed identical misconduct with four additional clients would not have caused us to recommend a more severe sanction in *Scheer I*.

Our primary concern now is that Scheer refuses to acknowledge her misconduct and has failed to refund the illegal fees she collected. Therefore, we find that the most appropriate discipline is that Scheer receive a new period of stayed suspension and probation, and that she be actually suspended until she makes restitution to her four former clients.

VI. RECOMMENDATION

We recommend that Marilyn Sue Scheer be suspended from the practice of law for two years, that execution of that suspension be stayed, and that she be placed on probation for three years on the following conditions:

1. She is suspended from the practice of law until the following requirements are satisfied:

   (a) She makes restitution to the following payees (or reimburses the Client Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

   (1) Aderito Pereira in the amount of $4,000 plus 10 percent interest per year from March 20, 2010;

   (2) Bom-Singh and Sushila Ranabhat in the amount of $3,500 plus 10 percent interest per year from January 15, 2010;

   (3) Maynard and Karen Osborne in the amount of $4,500 plus 10 percent interest per year from May 7, 2010; and

(4) Lisa Hairston-Jones and Winston M. Jones in the amount of $6,000 plus 10 percent interest per year from March 17, 2010.

(b) In the event that the period of Scheer's resulting actual suspension lasts for two years or longer, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law before her suspension will be terminated. (Std. 1.2(c)(1).)

2. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.

3. Within 30 days after the effective date of the Supreme Court order in this proceeding, she must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, Scheer must meet with the probation deputy either in-person or by telephone. Thereafter, Scheer must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

4. 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.

5. She must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

6. 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.

7. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAM AND ETHICS SCHOOL

We do not recommend that Scheer be ordered to take and pass the Multistate Professional Responsibility Examination or to attend the State Bar's Ethics School, as she was recently required to do so. On July 16, 2014, in case number S218357, the Supreme Court ordered Scheer to: (1) take and pass the Multistate Professional Responsibility Examination; and (2) provide the Office of Probation with satisfactory proof of her attendance at a session of the State Bar's Ethics School and passage of the test given at the end of that session.

VIII. RULE 9.20

We further recommend that if Scheer remains actually suspended for 90 days or more, that Scheer be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

IX. 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.

HONN, J.

WE CONCUR:

PURCELL, P. J.

STOVITZ, J.*

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*Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.