

STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

JANE L. SCHOOLER

A Member of the State Bar

[No. 12-O-11554]

Filed December 6, 2016

[As Modified on January 31, 2017]

SUMMARY

Respondent was disciplined for misconduct arising from her actions as trustee and executor of her parents' multi-million-dollar estate and trusts. The hearing judge found her culpable of acts of dishonesty constituting moral turpitude for violating her fiduciary duties, making misrepresentations to the probate court, and refusing to follow court orders and pay sanctions. The hearing judge also found respondent culpable of maintaining unjust actions by filing frivolous appeals. The hearing judge found three factors in aggravation and two in mitigation. Applying standard 2.11, the hearing judge recommended discipline including a two-year actual suspension continuing until respondent demonstrates her rehabilitation. The Office of the Chief Trial Counsel requested review, seeking additional aggravation, disbarment, and an order that respondent pay outstanding sanctions. (Hon. Donald F. Miles, Hearing Judge.)

The Review Department affirmed the hearing judge's factual, culpability, and aggravation and mitigation findings as supported by the record, and declined to find additional aggravation, but found that disbarment was the appropriate discipline given respondent's egregious misconduct and the substantial harm suffered by the beneficiaries of the trust as a result of her misconduct.

COUNSEL FOR PARTIES

For State Bar: Allen Blumenthal

For Respondent: Jane L. Schooler, in Pro. Per.

HEADNOTES

- [1 a, b] **130 Procedure on Review (rules 5.150-5.160)**
Where respondent included facts that were not in the record in her brief on review, Review Department granted OCTC's motion to strike those portions of respondent's brief, under rule 5.156(A) of Rules of Procedure, providing that Review Department considers only evidence in Hearing Department record.
- [2 a, b] **130 Procedure on Review (rules 5.150-5.160)**
Where respondent requested that Review Department correct asserted factual errors by hearing judge, but did not require with rules 5.153(A) and 5.152(C) requiring her to specify disputed factual findings and support her position with record references, and where errors were merely facts or opinions from respondent's testimony that were contrary to or unsupported by the record, Review Department denied respondent's request.
- [3 a, b] **106.30 Procedural Issues—Issues re Pleadings—Duplicative charges**
213.10 State Bar Act Violations—Section 6068(a) (support Constitution and laws)
221.11 State Bar Act Violations—Section 6106 (moral turpitude, corruption, dishonesty)—Deliberate dishonesty/fraud—Found
Where respondent misused her authority and discretion as trustee of her family's trust, intentionally violated numerous fiduciary duties set forth in the Probate Code by means infused with dishonesty and/or concealment, made repeated misrepresentations to the court and third parties in documents filed which falsely represented her as trustee after she had been removed, and intentionally violated court orders, respondent was culpable of multiple intentional acts of moral turpitude. Respondent was also culpable of violating section 6068(a), but Review Department assigned these violations no additional weight because they were duplicative of section 6106 violations.
- [4] **191 Miscellaneous General Issues—Effect of/Relationship to Other Proceedings**
213.30 State Bar Act Violations—Section 6068(c) (counsel only legal actions/ defenses)
Where respondent filed multiple frivolous appeals that appellate court dismissed after finding respondent's arguments had no merit and resulted from subjective bad faith, and where appellate court's findings, which were entitled to great weight, were supported by clear and convincing evidence, respondent was culpable of violating section 6068(c).
- [5] **162.20 Standards of Proof/Standards of Review—Respondent's burden in disciplinary matters**
204.90 Substantive Issues—Culpability—Other general substantive issues re culpability
Reliance on advice of counsel is not a defense in a discipline case. Where respondent, while acting as fiduciary, disregarded advice of counsel regarding administration of trust, and committed acts of misconduct after counsel stopped representing her, respondent's misconduct was not excused by reliance on advice of counsel.

- [6 a, b] **204.90 Substantive Issues—Culpability—Other general substantive issues re culpability**
430.00 Common Law/Other Statutory Violations—Breach of Fiduciary Duty
 Even where an attorney is not practicing law, she is required to conform to ethical standards required of attorneys. An attorney who breaches fiduciary duties that would justify discipline if there were an attorney-client relationship may properly be disciplined for misconduct. Respondent’s misconduct was not excused because she was acting as trustee for family estate, not as attorney.
- [7] **148 Evidentiary Issues—Witnesses**
166 Standards of Proof/Standards of Review—Independent Review of Record
615 Aggravation—Lack of candor/cooperation with Bar (1.5(l))—Declined to find
 Great weight is given to hearing judge’s findings on candor because judge who hears and sees witness testify is best positioned to make this determination. Where hearing judge heard respondent testify over multiple days and did not find lack of candor despite OCTC’s request, Review Department declined to find dishonest testimony as additional aggravating factor.
- [8] **735.50 Mitigation—Candor and cooperation with Bar (1.6(e))—Declined to find**
 Where respondent did not enter into stipulation until trial, stipulated to facts that were easy to prove, and did not admit culpability, hearing judge properly declined to assign respondent mitigation credit for cooperation.
- [9a, b] **831.20 Application of Standards—Standard 2.11 (Moral Turpitude, Fraud, etc.)—Applied-Disbarment—Magnitude of misconduct great**
 Where respondent engaged in serious misconduct for over seven years, including breach of her fiduciary duties by failing to distribute to her siblings almost any assets of estate for which she was trustee; where her conduct resulted in a substantial loss in the value of the trust corpus; and where respondent made misrepresentations and filed frivolous appeals in attempt to retain control over trust assets, respondent’s blatant disregard for her ethical duties and for court processes called for discipline at highest end of applicable range. Where record demonstrated respondent was at risk for committing future misconduct, disbarment was only discipline adequate to protect public, courts, and profession.

ADDITIONAL ANALYSIS

Culpability

Found

- 213.11 State Bar Act Violations—Section 6068(a) (support Constitution and laws)
- 213.31 State Bar Act Violations—Section 6068(c) (counsel only legal actions/defenses)

Aggravation

Found

- 521 Multiple acts of misconduct (1.5(b))
- 588.10 Harm to all of the above (or unspecified, or other) (1.5(j))
- 591 Indifference to rectification/atonement (1.5(k))

Mitigation

Found

- 710.10 Long practice with no prior discipline record (1.6(a))

Discipline

- 1010 Disbarment
- 2311 Involuntary Inactive Enrollment After Disbarment Recommendation—Imposed

OPINION

PURCELL, P.J.

This disciplinary proceeding arises from Jane L. Schooler's actions as trustee and executor of her parents' multi-million dollar estate and trusts. The Office of the Chief Trial Counsel of the State Bar (OCTC) charged her with violating her fiduciary duties, making misrepresentations to the probate court, refusing to follow court orders and pay sanctions, and maintaining an unjust action by filing frivolous appeals. The hearing judge found Schooler culpable and recommended discipline including a two-year actual suspension continuing until she demonstrates her rehabilitation.

OCTC appeals, seeking additional aggravation, disbarment, and an order that Schooler pay the outstanding sanctions. Schooler did not appeal and waived oral argument, but requests we correct mistakes she alleges the hearing judge made or remand the case for such corrections.

Upon independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's factual and culpability findings, as supported by the record. Though we do not assign additional aggravation, we recommend disbarment given Schooler's egregious misconduct and the substantial harm she caused the beneficiaries, as detailed in the Factual Background. We do not recommend Schooler be ordered to pay sanctions in light of our disbarment recommendation and because the state courts have already ordered such payments.

I. PROCEDURAL BACKGROUND

A. Pretrial Filings

On August 13, 2013, OCTC filed a three-count Notice of Disciplinary Charges (NDC), alleging that

Schooler: (1) repeatedly breached her fiduciary duties as trustee and personal representative of her parents' trusts and estate, acts that involved moral turpitude, dishonesty, or corruption, in violation of section 6106 of the Business and Professions Code;¹ (2) failed to fulfill her fiduciary duties as set forth in the Probate Code, in violation of section 6068, subdivision (a);² and (3) intentionally violated multiple court orders and made misrepresentations to the courts and third parties, acts that involved moral turpitude, dishonesty, or corruption, in violation of section 6106. On December 26, 2014, OCTC filed a First Amended NDC, which added a fourth count alleging that Schooler maintained unjust actions by filing frivolous appeals, in violation of section 6068, subdivision (c).³ The parties filed stipulations to admit documents and facts, and a 10-day trial commenced in April 2015. Schooler testified for five days. The hearing judge issued his decision in October 2015, and amended it on November 4, 2015.

Since Schooler did not appeal, we focus our review on the primary issues OCTC raised in its appeal: (1) whether additional aggravation for dishonesty is merited; and (2) whether disbarment, rather than suspension, is the appropriate discipline. We decline to assign additional aggravation, but find that disbarment is the appropriate discipline.

B. Rulings on Motions in the Review Department

[1a] On June 22, 2016, OCTC filed a motion to strike portions of Schooler's brief on the grounds that she raised new issues, her statements were not admissible, and she failed to cite to the record in support of her requests. Schooler did not file a response to the motion. [2a] In her responsive brief on review, she requested that we correct factual errors by the hearing judge. On July 15, 2016, we issued an order informing the parties that we would rule on their respective requests in this opinion, after fully reviewing the case. We make those rulings below.

1. Further references to sections are to this source unless otherwise noted. Under section 6106, "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise . . . constitutes a cause for disbarment or suspension."

2. Under section 6068, subdivision (a), a member has a duty "[t]o support the Constitution and laws of the United States and of this state."

3. Under section 6068, subdivision (c), a member has a duty "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just . . ."

[1b] First, we grant OCTC's motion to strike the portions of Schooler's brief that raise facts not in the record. (Rules Proc. of State Bar, rule 5.156(A) [Review Department considers only evidence admitted as part of Hearing Department record].)

[2b] Second, we deny Schooler's request to correct factual errors, which were merely facts and opinions from her testimony that were contrary to or unsupported by the record. Further, Schooler did not comply with the Rules of Procedure that *require* her to specify the disputed factual findings and include references to the record supporting her position. (Rules Proc. of State Bar, rules 5.153(A), 5.152(C).)

II. FACTUAL BACKGROUND⁴

Schooler was admitted to the practice of law in California on December 14, 1987, and has no prior record of discipline. She has been registered as inactive since January 31, 2014, and testified that she has not acted as an attorney for many years.

A. Schooler Was Responsible for Administering the Family Estate and Trusts

Schooler's parents designated her as trustee of her family's trusts and as personal representative of her mother's estate (Rowena Estate). Rowena Schooler (Rowena), Schooler's mother, died on October 27, 2004; Rowena's husband, Eugene B. Schooler, predeceased her on August 20, 1996. At the time of Rowena's death, she left two trusts: Trust B, which was created when her husband died; and another trust she created some time after her husband's death (Rowena Trust). She also left her will (Rowena Will).

Trust B contained 100 percent of the shares of Tierra Del Mar Corporation (TDM), a Nevada corporation. TDM owned a 25 percent interest in three parcels of property in Las Vegas, Nevada, parcels of property in Reno and Primm, Nevada, and a parcel of

property in Riverside, California. Trust B also contained the remaining 75 percent interest in the three Las Vegas parcels owned by TDM, and another parcel in Reno.

The Rowena Trust contained a promissory note for just over \$10,000, a 5 percent interest in a property in Escondido, California (Escondido Parcel), and proceeds from a life insurance policy.

The Rowena Estate contained the family residence located near the beach in Del Mar (Beach House), a promissory note for over \$6,000, shares of stock (500) valued at approximately \$100, personal belongings valued at approximately \$3,000, and checking and savings accounts with a balance of approximately \$320.

In 2007, the combined value of Trust B, the Rowena Trust, and the Rowena Estate was just over \$7 million. Both Trust B and the Rowena Trust provided that, when the last surviving trustor died, the trust corpuses were to be divided into five equal shares and distributed to Schooler and her siblings: Katherine Schooler Kerns (Katherine); Eugene Andrew Schooler (Andrew); John Evan Schooler (John); and Louis V. Schooler (Louis).⁵ The Rowena Will provided that any assets remaining in the Rowena Estate should be transferred to the Rowena Trust as if they had been in the trust on the date of Rowena's death.

B. Schooler Mismanaged the Beach House and Other Properties

When Schooler's parents originally created a family trust in 1989, it contained language designating the Beach House as a unique and special asset. It directed that the house should not be liquidated unless absolutely necessary, and should be made available for Schooler, Katherine, and Andrew to live in if they desired. The family trust also provided that any children living in the Beach House should pay the

4. The factual background is based on the parties' stipulations as to facts and admission of documents, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar,

rule 5.155(A) [factual findings entitled to great weight]; *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [hearing judge best suited to resolve credibility questions].)

5. Andrew, John, and Louis are collectively referred to as the Schooler Brothers.

property taxes and a monthly rent not to exceed \$2,500. When Rowena died, however, the special asset provision no longer applied because the Beach House was moved from the Rowena Trust to the Rowena Estate, which did not contain this specific provision.⁶ Nevertheless, Schooler testified that she did not plan to sell the Beach House, and thus could comply with the restriction in the original family trust.

In 2004, when Rowena died, Schooler and her brother Andrew were living in the Beach House, and the lower level of the home was rented to tenants who were paying \$2,200 per month. In early 2005, Schooler told Andrew he had to move out, and ordered the tenants to vacate the property. She told her brothers that she intended to paint and make repairs in order to sell the house by the end of 2005. But after Andrew and the tenants moved, Schooler did not put the Beach House on the market, re-rent it, or distribute it to her siblings by other means.⁷ Instead, she continued to live in it and use income from the Rowena Trust and Trust B to repair and maintain it, spending a total of \$106,779 on the Beach House from October 2005 to April 2007. She also changed the locks and installed a security gate, preventing the Schooler Brothers from accessing the property.

Schooler did not pay rent while she lived in the Beach House, although she represented in accountings that she paid \$2,000 per month. Ultimately, she defaulted on the mortgage payments on the house, and Washington Mutual Bank recorded two notices of default and an election to sell against the property.

Schooler also did not pay taxes on the real property parcels in Las Vegas. As a result, the Office of the Clark County Treasurer issued three notices of intent to sell real property in December 2010. The notices stated that overdue taxes, penalties, and interest of \$19,993, \$20,004, and \$19,900 were owed on the respective parcels, and the county had scheduled them to be sold at a public foreclosure auction.

Around April 25, 2011, Schooler filed a Chapter 11 bankruptcy petition on behalf of an entity called the “Schooler Trust” to avoid the sale of the parcels. On June 23, 2011, the petition was dismissed because the trust was ineligible to file for bankruptcy.

C. Schooler Failed to Distribute Assets of the Estate and Trusts

Between 2004 and 2011, Schooler did not distribute assets to the named beneficiaries as required by the trusts and the estate. By June 2011, the distributions Schooler made to herself and her siblings totaled \$100,000 from the proceeds of the sale of one of the Las Vegas parcels and a 20 percent undivided interest in the Escondido Parcel (which equaled a 1 percent share of the entire parcel, worth \$3,400 for each sibling). Schooler reported in an April 2006 letter that she paid herself trustee’s fees of \$25,000 to manage Trust B and \$20,000 to manage the Rowena Trust, and a salary of \$15,000 per year from TDM. Schooler did not distribute the assets despite repeated requests from the Schooler Brothers and their lawyer that she sell the Beach House and other real property and distribute the proceeds, along with the interests in TDM. Further, in 2007, Schooler declined to accept two offers to buy real estate parcels held by TDM or Trust B, one for \$250,000 for each of two properties in Reno (\$500,000 total), and a second for \$2.25 million for three of the Las Vegas parcels.

D. Schooler Removed as Executor and Sanctioned by the Superior Court

In July 2007, the Schooler Brothers filed a petition to challenge Schooler’s accounting related to the Rowena Estate and to surcharge and remove Schooler as executor, along with a related petition to ensure there had been no violation of the contest clause in the Rowena Will. Their challenges to the Rowena Estate, Trust B, and the Rowena Trust were combined and heard on June 23, 2011 in San Diego County Superior Court.

6. This occurred in 2002 when Rowena borrowed \$170,000, secured by a promissory note and deed of trust against the house.

7. During 2006, Schooler made offers to buy, or exchange real property parcels for, the Schooler Brothers’ interest in the Beach House. The Schooler Brothers rejected these offers as unfair and unequal distribution proposals, which would result in Schooler and Katherine receiving more than their respective 20 percent shares of the trust and estate distributions.

Schooler was present at the hearing when Superior Court Judge Cline made an oral order removing her as trustee of the trusts and as executor of the Rowena Estate. The judge indicated his intent to fill those positions with an independent fiduciary, and ordered Schooler to produce documents on July 5, 2011 and to appear for a deposition on July 7, 2011. The judge also ordered the immediate transfer of the Beach House from the Rowena Estate to the Rowena Trust. On July 11, 2011, the judge issued a written order memorializing his oral ruling, and further ordered \$2,280 in sanctions against Schooler.

On July 18, 2011, Judge Cline heard an ex parte motion regarding Schooler's failure to comply with his orders. The judge named Gloria Trumble as successor trustee and executor. He also found that Schooler had failed to comply with his previous order, and ordered her to pay those sanctions plus sanctions of \$3,375 for non-compliance. In addition, he ordered Schooler to provide the original trust and estate documents to Trumble by August 2, 2011. Schooler did not produce these documents and instead appealed the superior court's orders, asserting that her appeal stayed the proceedings. At a hearing on August 10, 2011, Judge Cline informed Schooler that her appeal did not stay the proceedings, made additional findings to support appointment of a successor trustee, and clarified that Trumble was an interim trustee of the two trusts and a temporary executor of the estate.

Schooler appealed the rulings removing her as trustee and executor and appointing Trumble as her interim successor. In October 2012, the Court of Appeal filed a decision affirming Schooler's removal and Trumble's appointment, specifically rejecting Schooler's contentions that her appeal stayed the proceedings. On December 16, 2011, after a trial, Judge Cline issued a judgment and order and a statement of decision authorizing Trumble to sell the Beach House and the various real estate parcels, and directing her to increase the rent to \$5,000 per month and commence eviction proceedings to remove Schooler from the Beach House.

E. Schooler Violated her Fiduciary Duties related to the Estate and Trusts

Judge Cline's statement of decision stated that Schooler "misused [her] discretion and authority" and "engaged in a course of conduct, the purpose of which was to obtain the sole and exclusive use and ownership of the [Beach House], to receive as much income from the assets of the two trusts and the estate as possible, to receive maximum distribution of the assets as possible, [and] to coerce her siblings into acceding to her demands and decisions." The decision also declared that Schooler's conduct resulted in the loss of substantial value of the various assets, that her intent was to personally enrich herself to the detriment of her siblings, and that her conduct caused harm to her siblings.

Judge Cline found that Schooler violated the following fiduciary duties, without limitation: (1) to carry out the terms of the trust, as found in Probate Code section 16000, by failing to make timely distributions; (2) to avoid a conflict of interest, as found in Probate Code section 16004, by taking a position contrary to those of other beneficiaries regarding assets; (3) of loyalty, as found in Probate Code section 16002, by taking steps to personally benefit herself to the detriment of other beneficiaries; (4) of impartiality, as found in Probate Code section 16003, by placing her interests ahead of all other beneficiaries; (5) to keep beneficiaries reasonably informed of the affairs of the trust, as found in Probate Code section 16060, by refusing to provide and concealing material information; (6) of care, as found in Probate Code section 16040, by acting in bad faith, making misrepresentations, and exercising discretionary power unreasonably; (7) of due care, by failing to list and sell property without justification and failing to accept cash offers for sale; (8) to preserve the trust property by failing to sell various properties, failing to pay taxes on the Las Vegas parcels, and failing to pay the mortgage on the Beach House; (9) acting in bad faith, as found in Probate Code section 16081; and (10) unlawfully misappropriating trust and estate assets for her own use and purposes.

The hearing judge in this disciplinary proceeding assigned great weight to Judge Cline’s findings and adopted them as proof of the charges alleged in the First Amended NDC because they were supported by overwhelming, clear and convincing evidence.⁸

Pursuant to Judge Cline’s December 2011 order, Trumble filed an unlawful detainer action against Schooler to evict her from the Beach House. Schooler responded on January 27, 2012, by filing a demurrer in which she falsely represented to the court that she was the personal representative of the Rowena Estate and the trustee of Trust B and the Rowena Trust. She made the same misrepresentations when Trumble sought a loan secured by the Beach House that the probate court authorized her to obtain. On February 29, 2012, Schooler executed and recorded a grant deed, conveying ownership of the Beach House to Katherine and herself. She executed the deed as “Executor” of the “Estate of Rowena L. Schooler” even though she had been removed by Judge Cline. On March 12, 2012, Schooler filed a motion to strike the unlawful detainer action, again falsely representing to the court that she was still the personal representative of the Rowena Estate and the trustee of Trust B and the Rowena Trust. Trumble testified that these actions impeded her ability to sell the Beach House, as ordered by the probate court. In May 2013, following trial on Trumble’s petition for ownership and damages, Judge Julia Kelety ruled that Schooler wrongfully and in bad faith took property belonging to the Rowena Trust and that she was liable for \$3.71 million in damages—twice the value of the Beach House at the time that Schooler conveyed ownership to herself and Katherine. Schooler has not paid this judgment.

F. Court of Appeal Sanctioned Schooler for Filing Frivolous Appeals

Schooler filed a series of appeals challenging the probate court’s rulings and Trumble’s actions, including Judge Cline’s July 2011 order removing her as trustee and executor. She also appealed the judge’s December 2011 order and judgment, which was dismissed when she failed to file an opening brief. In June 2012, she filed another appeal, raising many of the same issues contained in the dismissed appeal. In November 2013, the Court of Appeal dismissed this appeal as frivolous and taken for improper purposes, holding that Schooler and her counsel “made an unmistakable and bad faith effort to avoid the impact of [the court’s] prior orders.” The court ordered Schooler to pay sanctions of \$10,725 to the Schooler Brothers and \$8,760 to Trumble. Shortly thereafter, Schooler filed two additional appeals, later consolidated, challenging the probate court orders. Again, in October 2014, the Court of Appeal dismissed both appeals as meritless, finding that the “record more than amply supports a finding of subjective bad faith,” and ordered additional sanctions of \$10,260 to Trumble, and \$8,500 to the court. Schooler has not paid any of the sanctions.

III. SCHOOLER IS CULPABLE OF ALL CHARGED MISCONDUCT

The hearing judge found Schooler culpable of each count of misconduct charged in the First Amended NDC. Neither party challenges these findings on review, and we adopt them as they are fully supported by the record.⁹

[3a] To begin, Schooler committed multiple acts of moral turpitude, in violation of section 6106, and failed to comply with the law, in violation of section 6068, subdivision (a), as follows. She misused her authority and discretion, and violated numerous fiduciary duties set forth in the Probate Code by intentional means that were frequently infused with dishonesty and/or concealment. She made repeated misrepres-

⁸ 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.)

⁹ The First Amended NDC charged violations of: (1) section 6106 (moral turpitude—for breach of fiduciary duties as trustee and personal representative); (2) section 6068, subdivision (a) (failure to comply with laws—breach of fiduciary duties); (3) section 6106 (moral turpitude—intentional bad faith violation of court orders and misrepresentations); and (4) section 6068, subdivision (c) (maintaining unjust actions—filing frivolous appeals).

sentations to the court and third parties by filing documents falsely stating that she was a trustee and personal representative in an attempt to circumvent court orders. And she misrepresented her status when she executed a grant deed giving the Beach House to herself and Katherine, even though she knew that the court had ordered Trumble to evict her and sell the property. Finally, she intentionally violated court orders by failing to pay sanctions.¹⁰

[4] Schooler also maintained unjust actions, in violation of section 6068, subdivision (c), by filing several frivolous appeals that the appellate court dismissed after finding the arguments had no merit and were the result of subjective bad faith. These findings are entitled to great weight and are supported by clear and convincing evidence. (*In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 365 [may rely on court of appeal opinion to which attorney was party as conclusive legal determination of civil matters bearing strong similarity to charged disciplinary conduct]; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 117-118 [court adopted frivolous appeal findings by court of appeal where respondent failed to produce any competing evidence].)

[5], [6a] Schooler claims that her misconduct should be excused because she was acting as a trustee for the family estate, not as an attorney, and because she relied on advice of counsel for her actions. First, relying on such advice from other counsel is not a defense in a discipline case. (*Sheffield v. State Bar* (1943) 22 Cal.2d 627, 632.) Second, Schooler disregarded her attorney's advice—he advised her by letter that the Beach House was not subject to the original trust provision designating it a special asset, and he told her she was free to distribute the assets after the Internal Revenue Service issued tax rulings in 2006. Moreover, it was *after* counsel represented Schooler that she executed the grant deed transferring the Beach House to her sister and herself, and falsely represented that she was still a trustee. [6b] The law is clear that even if Schooler

was not practicing law, she was required to conform to the ethical standards required of attorneys. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 668 [“Attorneys must conform to professional standards in whatever capacity they are acting in a particular matter. [Citations.]”].) An attorney who breaches fiduciary duties that would justify discipline if there was an attorney-client relationship may be properly disciplined for the misconduct. (*In the Matter of McCarthy* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 364, 373.)

IV. SUBSTANTIAL AGGRAVATION OUTWEIGHS MINIMAL MITIGATION¹¹

A. Aggravation

The hearing judge found three factors in aggravation, which neither party challenges: multiple acts of misconduct over a period of years, including breach of fiduciary duties, misrepresentations to courts, and filing of frivolous appeals (std. 1.5(b)); significant harm to the beneficiaries of the trusts and estate for money spent on legal fees and substantial loss of the corpuses of the trusts (std. 1.5(j)); and indifference toward rectification or atonement for the consequences of her misconduct (std. 1.5(k)). Schooler blames others, including the courts, her brothers, and attorneys she claims advised her, for the problems caused by her misconduct. We agree with the hearing judge's findings and assign substantial weight to the overall aggravating evidence.

[7] We decline to assign the additional aggravation OCTC requested for dishonest testimony. (Std. 1.5(l).) The hearing judge heard Schooler testify over multiple days and did not make this finding, despite OCTC's request at trial. We give great weight to a judge's findings on candor because the judge who hears and sees the witness testify is best positioned to make this determination. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [hearing judge's findings on candor entitled to great weight].)

10. [3b] We do not assign additional weight to Schooler's violations of section 6068, subdivision (a), because they are duplicative of the section 6106 violations. (*In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403 [no additional weight given to duplicative charges].)

11. Standard 1.5 of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct requires OCTC to establish aggravating circumstances by clear and convincing evidence. Standard 1.6 requires Schooler to meet the same burden to prove mitigation. All further references to standards are to this source.

Mitigation

The hearing judge correctly found that Schooler was entitled to mitigation for a 17-year period of discipline-free practice, moderated by the fact that she practiced law for only a short time. (Std. 1.6(a).)

[8] The judge also properly declined to assign mitigation credit for cooperation because Schooler's stipulation was to facts that were easy to prove, was entered into during the trial, and did not include any admission of culpability. (Std. 1.6(e); *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more mitigating weight accorded when culpability as well as facts admitted].)

V. DISBARMENT IS THE APPROPRIATE 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 standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Standard 2.11 is most applicable and provides that "[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, . . . intentional or grossly negligent misrepresentation, or concealment of a material fact."¹² The standard also provides that "[t]he degree of sanction depends on the magnitude of the misconduct," including the extent of harm to the victim, the impact on the administration of justice, and the extent to which the misconduct related to the member's practice of law.

The hearing judge recognized that Schooler's misconduct was serious and deserved substantial discipline, but found that disbarment was neither necessary nor appropriate in view of case law. We disagree. As analyzed below, we find that Schooler's long-running, extremely harmful, and serious misconduct, along with the aggravating factors, supports disbarment.

[9a] Schooler had a fiduciary duty under the terms of the trusts to equitably distribute the Rowena Estate to the named beneficiaries. Unfortunately for them, she failed in performing these duties for seven years after her mother's death. In particular, she distributed almost none of the assets of the sizeable estate, and continued living in a major asset, the Beach House, after evicting her brother and rent-paying tenants. During the same time, she allowed the mortgage on the Beach House to go into default, failed to pay taxes on the Nevada properties, refused to accept offers to buy certain properties, and did not collect or pay any rent on the Beach House while she lived there. Her conduct contributed to a substantial loss in the value of the trust corpus, which financially harmed her siblings who still have not received their full distribution of the estate. Moreover, after Schooler was removed as trustee, she filed a series of frivolous appeals and made misrepresentations to courts and others to try to retain control of the assets.

[9b] In sum, we find that Schooler's blatant disregard for her ethical duties and for the court's processes calls for discipline at the highest end of the range provided in standard 2.11—disbarment. This record well demonstrates that she is at risk for committing future misconduct given her varied wrongdoing and the aggravating factors, including her indifference. We conclude that our recommendation is supported by case law, and that the public, the courts, and the profession are best protected if Schooler is disbarred under standard 2.11.¹³

12. Standard 1.7(a) provides that "[i]f a member commits two or more acts of misconduct and the [s]tandards specify different sanctions for each act, the most severe sanction must be imposed."

13. *Lebbos v. State Bar* (1991) 53 Cal.3d 37 (disbarment for multiple acts of moral turpitude and dishonesty, including pattern of abuse of judicial officers and court system); *Weber v. State Bar* (1988) 47 Cal.3d 492 (disbarment for violating court order to distribute estate assets, commingling and misappropriating estate funds, and engaging in moral turpitude and dishonesty); and *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179 (disbarment for 30-year attorney sanctioned for filing frivolous motions and appeals over 12 years who lacked insight and refused to change).

VI. RECOMMENDATION

We recommend that Jane L. Schooler be disbarred from the practice of law and that her name be stricken from the roll of attorneys admitted to practice in California.

We further recommend that Schooler must comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10, and that such costs be enforceable both as provided in section 6140.7 and as a money judgment.

VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Pursuant to section 6007, subdivision (c)(4), and rule 5.111(D)(1) of the Rules of Procedure of the State Bar, Schooler is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion. (Rules Proc. of State Bar, rule 5.111(D)(1).)

WE CONCUR:

McGILL, J.*
STOVITZ, J.**

* Appointed to serve on the panel for this matter as a Hearing Judge of the State Bar Court, assigned by the Presiding Judge pursuant to rule 5.155(F) of the Rules of Procedure; as of November 1, 2016, serving as a Review Judge by appointment of the California Supreme Court.

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