

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 19-35 & 19-36  
)  
NICOLE E. SCHAEFER, )  
)  
Respondent. )

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: Amber Bevacqua-Lynott

Disciplinary Board: Mark A. Turner, Adjudicator  
Christopher H. Kent  
JoAnn Jackson, Public Member

Disposition: Order revoking probation and imposing stayed suspension.  
60-day suspension.

Effective Date of Opinion: August 13, 2021

**TRIAL PANEL OPINION AND ORDER**

Respondent Nicole E. Schaefer stipulated to discipline in December 2019. She agreed to a 90-day suspension with all but 30 days stayed pending successful completion of a three-year probation. The stipulated discipline arose from misconduct that included, among other things, false or misleading statements about her services on websites she operated.

One of the stipulated conditions of her probation is that she not be subject to new charges approved by the State Professional Responsibility Board (SPRB) based on new misconduct that occurred or continued while she was on probation. It is undisputed that the SPRB approved the filing of new charges against her on March 6, 2021, based again on allegedly false and misleading statements she made on one of the same websites.

The Oregon State Bar (Bar) has filed a petition to revoke Respondent's probation under BR 6.2(d). Pursuant to that same rule, Respondent was ordered to appear and show cause why her probation should not be revoked. A trial panel was appointed consisting of the Adjudicator, Mark A. Turner, attorney member Christopher H. Kent, and public member JoAnn Jackson.

A videoconference hearing was held on May 28, 2021. The Bar appeared through counsel, Rebecca Salwin. Respondent personally appeared, and was represented by attorney Amber Bevacqua-Lynott. The parties presented evidence and argument. After considering the parties' submissions and presentations, and as explained in more detail below, the trial panel unanimously concludes that the Bar has sustained its burden of proving by clear and convincing evidence that Respondent has violated a material term of her probation. Accordingly, her probation is revoked, and she is suspended for the remaining 60 days of her stipulated suspension effective 30 days from the date of this order.

### **FACTS AND ANALYSIS**

On May 16, 2019, Respondent was charged with violating four Oregon Rules of Professional Conduct in two matters. Ex. 1. On December 4, 2019, Respondent and Disciplinary Counsel's Office (DCO) entered into a Stipulation for Discipline pursuant to BR 3.6(c) for violation of RPC 7.1 (communication concerning a lawyer's services) and RPC 8.1(a)(1) (knowingly making a false statement of material fact to a disciplinary authority) in one matter, and RPC 1.1 (failure to provide competent representation) and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice) in another.

The stipulation recited that Respondent made multiple misrepresentations on websites and social media, including a site she operated called LetsUntieTheKnot.com. Ex. 1 at 5-7. She falsely claimed she had handled over 19,000 divorces, when she had only been in practice for approximately four years. She also made up client testimonials on her websites from non-existent clients. The stipulation suspended Respondent for 90 days, with 60 days stayed pending successful completion of a three-year probation.

Respondent's period of probation began on December 9, 2019, and was scheduled to end on December 8, 2022.

In the stipulation, Respondent agreed to a number of conditions, including, "The SPRB's decision to bring a formal complaint against her for ethical misconduct that occurred or continued during the period of her probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension...."

New charges relating to statements on the LetsUntieTheKnot.com website were approved by the SPRB on March 6, 2021. Exs. 13, 14. The SPRB may authorize the filing of a formal complaint only after a finding that probable cause exists to believe the violations occurred. BR 2.6.

At a hearing to revoke probation, BR 6.2(d) provides that Disciplinary Counsel has the burden of proving by clear and convincing evidence that the attorney has violated a material term of probation. The evidence is undisputed that the SPRB has authorized the filing of a formal complaint against Respondent for ethical misconduct that occurred or continued during the period of her probation. Respondent has violated a term of her probation.

The Bar also presented testimony substantiating the fact that this term of probation is material. Angela Bennett, Assistant Disciplinary Counsel, testified that avoiding new charges from the SPRB is a standard condition of probation. Tr. at 27. She confirmed that the condition is a material one, explaining, “[I]f somebody is on probation and then agrees to, you know, a remedial program and then engages in misconduct thereafter or if the misconduct has been occurring, continues that misconduct, it looks like the probation program isn’t working for whatever reason.” Tr. at 27-28. Incurring new charges of ethical misconduct is clearly antithetical to successful completion of a term of probation.

Respondent correctly notes that revocation of probation is not automatic upon a showing that a condition of probation was violated. *In re Cohen*, 330 Or 489, 509, 8 P3d 953 (2000). In *Cohen* the court stated that if revocation of the respondent’s probation was not mooted by the expiration of the probationary term, the respondent’s failure “to stay current on a single case out of about 130 cases” did not merit imposition of the previously stayed 120-day suspension when the lawyer had “complied with the terms and conditions in every [other] respect.” *Id.* The court did not consider this single instance to be a material breach of the terms of probation.

We find the current case to be markedly different from *Cohen*. Here, Respondent has been newly charged with ethical misconduct of the same type for which she was sanctioned under the terms of the stipulation. Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992). That goal has not been accomplished here. Respondent violated a material term of her probation involving probable cause that she has continued to engage in the same type of deceptive practices that resulted in the stipulated discipline. We find that this is a violation of a material condition of her probation that merits imposition of the remaining 60-day term of suspension.

Respondent argues that fundamental fairness dictates that her probation should not be revoked. She first contends that the Bar should have notified her of the current problems with her website when it was prosecuting the charges that resulted in the stipulation. Respondent essentially argues that it was the Bar’s duty to discover the alleged misconduct during its investigation, not hers to make sure her websites were free of further false statements that may violate RPC 7.1. Respondent cites no authority for the proposition and we reject it.

Respondent also argues that her alleged misconduct resulting in the new charges, if proved, would not justify the imposition of a 60-day suspension using a sanctions analysis under the ABA Standards for Imposition of Lawyer Discipline and Oregon case law. That is not the question before us. What sanction, if any, would be appropriate for the newly alleged misconduct is a matter for a future trial panel that is able to assess the charges under a clear and convincing evidentiary standard and conduct the sanctions analysis on a full record.

The question before us is whether to revoke Respondent’s current stipulated probation, thereby resulting in her serving the remainder of her 90-day suspension. We must begin with the premise that, by stipulating to the 90-day suspension for her prior misconduct, Respondent has admitted that a 90-day suspension was appropriate for her prior actions, regardless of any

future misconduct that might be alleged or proved. It is not unfair to impose the remaining term of a suspension that Respondent freely agreed to.

The Bar was willing to stay a substantial portion of the original suspension on the conditions set forth in the stipulation. Respondent accepted the risk of having to serve the full 90-day suspension if she was unable to fulfill those conditions.

As noted, BR 6.1 requires that the condition breached must be “material” in order to justify a revocation. There are many conditions in the stipulation that could be considered less than material, as in *Cohen*. But the condition regarding avoiding future formal charges from the SPRB is decidedly material.

The Bar also presented evidence at the hearing regarding Respondent’s newly-alleged misconduct. Respondent, in turn, sought to show the allegations were without merit. We will not analyze those presentations here. It is not our role to pass on the merits of the SPRB’s decision to charge Respondent or the ultimate outcome of those charges. The fact that new charges have been authorized is in and of itself the condition of probation that has been breached. Since we find the condition to be material, our inquiry is completed. Accordingly,

#### **ORDER**

IT IS HEREBY ORDERED that the Bar’s BR 6.2 petition to revoke Respondent’s probation is granted and Respondent is suspended for the remaining 60 days of her stipulated term of suspension, the suspension being effective 30 days from the date of this order.

Respectfully submitted this 14th day of July 2021.

/s/ Mark A Turner  
Mark A. Turner, Adjudicator

/s/ Christopher H. Kent  
Christopher H. Kent, Trial Panel Member

/s/ JoAnn Jackson  
JoAnn Jackson, Trial Panel Public Member