



**PUBLIC MATTER**

**FILED**

DEC 13 2002

**THE STATE BAR COURT STATE BAR COURT CLERK'S OFFICE  
HEARING DEPARTMENT - SAN FRANCISCO SAN FRANCISCO**

8 In the Matter of ) 9 <b>PATRICK J. MALONEY, Jr.,</b> ) 10 <b>Member No. 42963; and</b> ) 11 <b>THOMAS VIRSIK,</b> ) 12 <b>Member No. 188945,</b> ) 13 <b>Members of the State Bar.</b> )	Case Nos. <b>00-O-14000-PEM (Maloney);</b> <b>00-O-14001-PEM (Virsik)</b>  <b>DECISION</b>
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**I. INTRODUCTION**

In these two contested matters, Respondents **PATRICK J. MALONEY, Jr.,** and **THOMAS VIRSIK** are found culpable, by clear and convincing evidence, of three counts of professional misconduct, including committing acts of moral turpitude, making misrepresentations to a superior court judge and violating a court order to promptly pay sanctions.

The court recommends that Respondents be suspended from the practice of law for one year, that execution of said suspension be stayed, and that Respondents be placed on probation for two years with conditions, including an actual suspension of 45 days from the practice of law for Respondent Maloney and an actual suspension of 90 days from the practice of law for Respondent Virsik.

**II. PROCEDURAL HISTORY**

On November 20, 2001, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondents a Notice of Disciplinary Charges. Respondents filed a response. Upon the court's approval, a First Amended Notice of Disciplinary Charges (NDC) was filed and served in open court on July 23, 2002. Respondents filed a response.

1 A five-day hearing was held on August 6-9 and 13, 2002. Deputy Trial Counsel Esther  
2 Rogers represented the State Bar. Respondent Maloney was represented by attorney Jerome Fishkin  
3 in case No. 00-O-14000 and Respondent Virsik was represented by attorney Jonathan Arons in case  
4 No. 00-O-14001.

5 The court took these two matters under submission on September 19, 2002, following the  
6 filing of closing briefs.

### 7 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8 The following findings of fact are based on the parties' stipulation of facts and the evidence  
9 and testimony introduced at this proceeding. The court finds part of Respondents' testimony to be  
10 self-serving and not credible.

#### 11 **A. Jurisdiction**

12 Respondent Maloney was admitted to the practice of law in California on January 9, 1969,  
13 and has been a member of the State Bar since that time.

14 Respondent Virsik was admitted to the practice of law in California on June 10, 1997, and  
15 has been a member of the State Bar since that time.

#### 16 **B. Findings of Fact**

##### 17 **1. *Background***

18 This case arises from Respondents' overzealous advocacy on behalf of their clients. Mired  
19 in a litigious battle and oversimplifying the internal upheavals of the Indian tribes, Respondents  
20 declared victory before the dispute has been resolved. Consequently, they committed serious  
21 professional misconduct by misleading a superior court with false statements and material omissions  
22 and by disobeying the court's sanctions order.

23 There has been a long-standing dispute within Round Valley Indian Tribes (RVIT) regarding  
24 tribal constitution, tribal elections and conduct of tribal business. In April 2000, the Interim Tribal  
25 Council of the Round Valley Nation attempted to oust the existing Round Valley Tribal Council as  
26 the governing body of the RVIT by holding an election to adopt a new constitution. However, the  
27 Bureau of Indian Affairs of the United States Department of the Interior (BIA) has not recognized  
28 the election or resolved the dispute between RVIT and Round Valley Nation (RVN).

1 Respondents represented Carlino Bettega in *Round Valley Indian Tribes v. Bettega (RVIT*  
2 *v. Bettega)*, Mendocino County Superior Court, case No. SCUk CVPT-00-82669, on a pro bono  
3 basis. Ignoring that the struggle for power between RVN and RVIT has not been officially  
4 determined, Respondents represented to Judge Conrad L. Cox of the Mendocino County Superior  
5 Court that the Interim Tribal Council of the RVN had succeeded as the new governing body of the  
6 RVIT, that Respondents were now the new counsel for RVIT, substituting for attorney Stephen  
7 Quesenberry, and that they had the authority to dismiss the lawsuit against their client Bettega.  
8 Judge Cox sanctioned them for making such deliberate, false statements.

9 At this disciplinary hearing, Respondents maintained that they had done no wrong.

10 **2. Restraining Order in *RVIT v. Bettega***

11 Respondent Maloney employs Respondent Virsik as an associate in his law office and  
12 supervises Respondent Virsik's work.

13 Respondent Virsik was aware around late 1999 that there was a long-standing dispute  
14 regarding RVIT, several constitutions, and the conduct of tribal business.

15 On January 26, 2000, plaintiff RVIT filed for a restraining order against Carlino Bettega in  
16 *RVIT v. Bettega*. At the time RVIT filed the petition, attorney Stephen Quesenberry of California  
17 Indian Legal Services (CILS) represented RVIT. Respondents Maloney and Virsik represented  
18 defendant Bettega.

19 On January 31, 2000, Bettega filed a cross-petition for injunctive relief.

20 On February 17, 2000, a hearing on RVIT's restraining order application was held, in which  
21 Respondent Maloney attended.

22 At the hearing, respondent Maloney offered the superior court a document entitled "Request  
23 for Dismissal," in which Janice Freeman (Freeman) signed as the "Plaintiff/Petitioner." (State Bar  
24 exhibit 1.) But she did not represent plaintiff RVIT. She was the chairperson of the Interim Tribal  
25 Council of RVN, the group who opposes RVIT.

26 On March 2, 2000, the superior court issued an Order on Application for Restraining Order,  
27 granting RVIT a restraining order against Bettega but denying Bettega's cross-petition for an  
28 injunction.

1 On April 14, 2000, *The Round Valley News* reported a letter dated April 5, 2000, from BIA  
2 to RVIT, stating:

3 "Actions taken either by the tribe, community members or other political entities,  
4 that do not conform to or are not authorized by this constitution, are viewed by the  
Agency as improper." (State Bar exhibit 10.)

5 In an April 24, 2000 memo prepared by Respondents discussing whether the RVN was the  
6 sole legitimate government of the sovereign tribes, Respondents were aware of the BIA letter and  
7 mentioned that "[t]he only known position of the BIA is that which appeared in a local newspaper  
8 on the eve of election, dated April 5, 2000." (State Bar exhibit 17.)

9 3. *April 17, 2000 Sanctions Motion No. 1*

10 On April 17, 2000, RVIT filed a motion for sanctions against Bettega and Respondents for  
11 their action regarding the cross-petition for an injunction. A hearing was to be held on May 19,  
12 2000. This was sanctions motion No. 1.

13 During the months of April and May 2000, Freeman sent letters to various entities, such as  
14 certain banks doing business with RVIT in Mendocino County, Round Valley Indian Housing  
15 Authority and President of the Tribal Council of RVIT, announcing the Interim Tribal Council of  
16 RVN as the newly-elected governing body of the Round Valley Tribes and its replacement of the  
17 existing Tribal Council of RVIT. She also sent a letter to attorney Quesenberry, terminating his  
18 services as the attorney for RVIT. But she had no authority to do so.

19 At the same time, Respondents never contacted Quesenberry to discuss or received  
20 notification of Quesenberry's withdrawal as counsel.

21 Meanwhile, in response, on April 18, 2000, the Office of Self Governance of the Department  
22 of the Interior told Freeman that it did not recognize the Interim Tribal Council as the governing  
23 body of the Round Valley Tribes. Similarly, other recipients of Freeman's letters also wrote and  
24 reiterated that the Tribal Council of RVIT was the officially recognized governing body and not the  
25 Interim Tribal Council of RVN.

26 In an April 28, 2000, article in *The Round Valley News*, Round Valley Tribal Council  
27 denounced the RVN as an "outlaw" and its election as "fraud." (State Bar exhibit 20.) Respondent  
28 Maloney wrote to a bank, acknowledging that the article "will give you som[e] idea of where the

1 new government is headed.” (State Bar exhibit 20.)

2 Another article dated May 7, 2000, in *Ukiah Daily Journal* stated:

3 “[T]he Bureau of Indian Affairs says the election isn’t valid. It wasn’t federally  
4 supervised.... [I]nfighting is not uncommon within tribal organizations and this is not  
5 the first time a takeover has been attempted at Round Valley.” (State Bar exhibit  
6 24.)

7 **4. May 9, 2000 Dismissal Request No. 1**

8 On May 9, 2000, Respondents filed an opposition to RVIT’s sanctions motion No. 1,  
9 Respondent Maloney’s declaration and a request for dismissal (dismissal request No. 1).  
10 Respondents made several misleading and false statements on the pleadings.

11 In the opposition paper, Respondents wrote:

12 “The Interim Tribal Council, which is now the governing body of the Tribal  
13 members, has dismissed Mr. Quesenberry ...The Interim Tribal Council now stands  
14 in the shoes of the prior employer-plaintiff much as would a new governing board  
15 in a proxy fight ... the Interim Tribal Council has directed its replacement counsel to  
16 file a dismissal. The Constitutional election is a valid exercise of the sovereign  
17 rights of an Indian Tribe under federal and international law.” (State Bar exhibit 27.)

18 Respondents knew or should have known that the election had not been recognized by  
19 federal law, that the Interim Tribal Council was not the governing body, that attorney Quesenberry  
20 was still the attorney for RVIT and that the Interim Tribal Council had no authority to dismiss  
21 attorney Quesenberry.

22 In Respondent Maloney’s declaration, he wrote:

23 “No Tribal member (or anyone else) has to date challenged the election .... Shortly  
24 after the election, the Interim Tribal Council ... was then engaged in transitioning the  
25 Tribes to the new form of government.” (State Bar exhibit 28.)

26 Respondents knew or should have known that the election was challenged in that it was not  
27 recognized by federal law.

28 In the dismissal request No. 1, Respondents submitted the pleading as attorney for “Interim  
Tribal Council,” rather than for Bettega, and at the same time, Respondent Maloney signed as the  
“Attorney for Plaintiff/Petitioner.” (State Bar exhibit 29.)

Respondents knew or should have known that the Interim Tribal Council was not a party to  
the action, that the Plaintiff/Petitioner was RVIT and that they were not the attorneys for RVIT.

1           **5.     May 12, 2000 Dismissal Request No. 2**

2           On or about May 10, 2002, Respondent Virsik received a telephone call from a clerk of the  
3 Mendocino County Superior Court.

4           The following day, Respondent Virsik wrote to the clerk of the Mendocino County Superior  
5 Court, indicating that the dismissal request No. 1 was separated from the other papers and asking  
6 the clerk to disregard that request. In addition, Respondent Virsik asked the clerk to file a notice  
7 of change of name, Bettega's reply and dismissal request No. 2.

8           In the notice of change of name, Respondents stated that they were "attorneys for defendant  
9 Round Valley Nation F/k/a Round Valley Indian Tribes" and that RVIT has "pursuant to a  
10 constitutional election ... changed its form of governance and is presently known as the Round  
11 Valley Nation." (State Bar exhibit 32.)

12           In fact, Bettega was the defendant, not RVN, and RVN was never formerly known as RVIT.  
13 Furthermore, RVIT was and remains the legitimate governing body of the Round Valley Tribes. A  
14 constitutional election was not held under the federal law.

15           In the dismissal request No. 2, asking the court to dismiss *RVIT v. Bettega* with prejudice,  
16 Respondents again claimed to be the attorneys for plaintiff/petitioner RVIT and for "Round Valley  
17 Nation f/k/a Round Valley Indian Tribes." (State Bar exhibit 33.)

18           In Bettega's reply, Respondents again wrote:

19           "[T]he plaintiff Round Valley Indian Tribes has been replaced in a constitutional  
20 election by the Round Valley Nation, which has since instructed plaintiff's trial  
21 counsel to dismiss this action.... As prior counsel has not dismissed the action, newly  
retained counsel is filing the dismissal." (State Bar exhibit 38.)

22           Respondents implied that they were the "newly retained counsel" even though they were not.

23           **6.     May 12, 2000 Sanctions Motion No. 2**

24           On May 12, 2000, RVIT filed a second motion for sanctions (sanctions motion No. 2) and  
25 a Reply to Defendant's Opposition to Motion for s and Fraudulent Request for Dismissal.

26           RVIT alleged that the dismissal request No. 2:

27           "fraudulently misrepresents to the Court that Mr. Maloney is the attorney for the  
28 'Plaintiff/Petitioner' in this action when in fact he represents the Defendant in this  
action and a group of persons, calling themselves the 'Round Valley Nation,' which

1 clearly is not the lawfully constituted governing body of the Round Valley Indian  
2 Tribes, the Plaintiff herein, and whose interests are unquestionably adverse to those  
3 of the Tribes. Mr. Maloney's actions constitute an attempt to perpetuate a fraud on  
4 the court by misrepresenting both his and his clients' capacities in this matter ...  
intended solely to gain personal advantage (dismissal of the motion for sanctions by  
obtaining dismissal of the underlying action on which the request for sanctions is  
grounded)." (Respondents exhibit J.)

5 RVIT further alleged that:

6 "Mr. Maloney fails to mention that the United States government, through its Bureau  
7 of Indian Affairs, has on two recent occasions in the last six weeks, specifically  
8 stated that the current Tribal Council is the lawfully constituted governing body of  
9 the Round Valley Indian Tribes and that the United States 'does not recognize the  
10 political faction known as the Round Valley Nation'.... Mr. Maloney in his  
11 declaration characterizes the 'election' held by the RVN ... as a 'Constitutional  
12 election' when, in fact, he knew or should have known that the election was  
13 conducted in violation of both the Tribes' constitution and federal law." (State Bar  
14 exhibit J.)

15 Respondent Virsik assisted in the preparation of the Supplemental Declaration of Patrick J.  
16 Maloney In Support of Dismissal of Action signed by Respondent Maloney on May 15, 2000.  
17 Several letters were attached to the declaration as exhibits. One was a letter dated May 10, 2000,  
18 from the BIA, addressing to Freeman:

19 "The Agency does not recognize the political faction known as the Round Valley  
20 Nation, or any actions taken by this group, as these actions and the formation [of]  
21 this group were not accomplished in accordance with tribal authorities as defined in  
22 the tribe's governing document.... We strongly encourage you and your political  
23 group to work with the duly elected and seated tribal council to resolve these issues  
24 and your political differences." (State Bar exhibit 35.)

25 Ignoring the content of this letter, Respondent Maloney insisted in his declaration that "the  
26 Tribal members of the Round Valley Indian Tribes voted in a Constitution election ... If several  
27 additional qualifications are met, the Tribes will receive federal funding directly, rather than through  
28 the BIA ... thereby effectively severing ties with and control by the BIA." (State Bar exhibit 35.)

29 **7. May 15, 2000 Order**

30 On May 15, 2000, the superior court issued an order directing the clerk not to file  
31 Respondents' May 9, 2000 dismissal request No. 1 and May 12, 2000 dismissal request No. 2. The  
32 superior court reasoned that Respondent Maloney "is not the attorney for the plaintiff named in this  
33 action. Interim Tribal Council is not a party to this action. Round Valley Nation is not a party to  
34 this action." (State Bar exhibit 34.)

1           **8.     *May 16, 2000 Bettega's Supplemental Opposition to Motion for Sanctions***

2           In response to the order, Respondents did not correct the pleadings but instead, attempted  
3 to justify their standing in seeking a dismissal. On May 16, 2000, Respondent Maloney filed a  
4 supplemental opposition to motion for sanctions. Despite the letters to Freeman from the Office of  
5 Self Governance dated April 18, 2000 and BIA dated May 10, 2000, which clearly refused to  
6 recognize the election as legitimate or the Interim Tribal Council as the new governing body,  
7 Respondents asserted in the opposition papers that the BIA lacked legitimacy in tribal affairs, that  
8 the superior court was not misled and that a new sovereign has retained "other counsel" to dismiss  
9 this action. (Respondents exhibit L.)

10           Respondents further contended that RVN did not receive BIA's April 5, 2000 letter and that  
11 BIA's May 10, 2000 letter was received untimely. Respondents argued, therefore, that they did not  
12 intend to mislead the superior court because they did not know BIA's position.

13           On the contrary, the BIA's April 5, 2000 letter was published in *The Round Valley News* and  
14 Respondents had referred to it in their April 24, 2000 memo. Respondents may have received the  
15 BIA's May 10, 2000 letter after they had filed the May 12, 2000 dismissal request No. 2. But in this  
16 May 16, 2000, opposition, Respondents had an opportunity to rectify their mistake. Instead, their  
17 position did not change at all. They still declared that the new sovereign had hired them as the  
18 "other counsel" to dismiss *RVIT v. Bettega*.

19           **9.     *June 8, 2000 Decision on Motions for Sanctions***

20           On June 8, 2000, the superior court issued a decision on plaintiff's two motions for sanctions  
21 filed April 17 and May 12, 2000. The sanctions motion No. 1 regarding Bettega's cross-petition  
22 based on frivolous claim was denied. The court stated:

23           "Based upon the circumstances presented, the plaintiff's attribution of improper  
24 motives of the defendant in this regard is understandable, however the actions may  
25 also be attributed to poor lawyering on the part of defense counsel. Poor lawyering  
does not necessarily lead to sanctions." (State Bar exhibit 36.)

26           As to sanctions motion No. 2 regarding Respondents' request for dismissal, the superior  
27 court granted the motion, stating:

28           "[T]he surreptitious attempt by counsel Maloney and Virsik[] to dismiss the action

1 and to perpetrate a fraud upon the court and opposing counsel was detected. Neither  
2 Mr. Maloney ... and Mr. Virsik ... are inexperienced practitioners. No argument has  
3 been advanced by them that their action was inadvertent or that it was the result of  
4 a failure to understand the applicable law...The plaintiff has exercised due diligence  
5 in seeking sanctions for this egregious conduct ... Sanctions are imposed on ...  
6 Bettega and his attorneys Patrick J. Maloney and Thomas S. Virsik, jointly and  
7 severally, in the sum of \$1,500.00 which they shall pay forthwith to the plaintiff. In  
8 addition, [they] ... shall pay forthwith sanctions to this court in the sum of \$500.”  
9 (State Bar exhibit 36.)

10 Respondents had knowledge of the sanctions order soon after it was served on June 8, 2000.

11 **10. Further Litigation and Correspondence Re Sanctions Motion No. 2**

12 Respondents appeared to be somewhat confused by the superior court’s June 8, 2000,  
13 decision granting sanctions motion No. 2 regarding their egregious conduct in filing a request for  
14 dismissal. Rather than exercising their various legal avenues, such as seeking the court to clarify,  
15 reconsider or vacate the order, Respondents simply filed an opposition to the sanctions motion on  
16 June 13, 2000, with the hearing date set for June 23, 2000. Further ignoring the court’s order to pay  
17 the sanctions forthwith, Respondents decided on their own to “treat the germane portion of the June  
18 [8], 2000 order as a tentative ruling as no hearing has taken place.” (State Bar exhibit 37.)

19 In response, attorney Quesenberry immediately wrote to the clerk on June 15, 2000, asking  
20 the hearing for the sanctions motion No. 2 be removed from the motion calendar. At the same time,  
21 RVIT filed a Withdrawal of Inadvertently Filed Notice of Motion and Motion for Sanctions.  
22 Attorney Quesenberry considered that the order to be:

23 “a final disposition of all pending sanctions issues ... [and] that there is nothing  
24 further for the court to consider unless the defendant affirmatively seeks relief by  
25 motion from the court’s order of June 8, 2000.” (State Bar exhibit 39.)

26 He also noted that because the superior court, on its own initiative, had imposed sanctions  
27 against Respondents for their “‘egregious conduct’ in attempting to file the Request for Dismissal,”  
28 there was no basis for RVIT to proceed with its sanctions motion No. 2.

29 Again, rather than seeking relief from the court, Respondents wrote to the superior court on  
30 June 21, 2000, putting forth their own reading of the June 8, 2000 order that it was “moot”:

31 “Mr. Bettega ... has no objection to dropping the motion and its request for relief  
32 filed on or about May 12, 2000, rendering the latter portion of the June 8, 2000 order  
33 moot.” (Respondents exhibit R.)

34 Again, completely ignoring that the dispute between RVN and RVIT was still in controversy,

1 Respondents pretended that "the recent elective change in leadership of the Tribal members" was  
2 imminent and further asserted:

3 "Once the BIA effects formal recognition of the change in leadership, the motion for  
4 sanctions for filing a dismissal would become, in effect, moot and the present action  
would stand dismissed." (Respondents exhibit R.)

5 Respondents were fully aware that the hearing for sanctions motion No. 2 was removed from  
6 the motion calendar on June 23, 2000,

7 On or about August 3, 2000, an Assistant Secretary-Indian Affairs with the U.S. Department  
8 of the Interior sent a letter to Freeman, hoping that the members of the Round Valley Reservation  
9 would be able to negotiate and reconcile their differences.

10 On January 3, 2001, CILS sent a letter to Respondents requesting payment of the \$1,500,  
11 pursuant to the sanctions order of June 8, 2000.

12 On January 10, 2001, the superior court issued an Order to Show Cause Re Failure to Pay  
13 Sanctions.

14 On January 23, 2001, Respondents filed Bettega's Response to Order to Show Cause of  
15 January 10, 2001, and a Declaration of Patrick J. Maloney. Seven months after the order,  
16 Respondents persisted and put forth the argument again that the June 8, 2000 order had been  
17 "dropped," the sanctions motion hearing was removed from the motion calendar and the June 8 order  
18 was therefore void.

19 **11. February 5, 2001 Order Re Failure to Pay Sanctions**

20 On February 5, 2001, the superior court issued an order regarding the January 10, 2001 order  
21 to show cause, affirming that the sanctions imposed on June 8, 2000, were final. Respondents paid  
22 the sanctions.

23 **12. June 27, 2001 Court of Appeal Opinion**

24 The Court of Appeal issued an opinion in *RVIT v. Bettega*, affirming the superior court's  
25 rulings in all respects. In particular, the appellate court noted:

26 "[N]o substitution of attorney appears in the record that would have enabled  
27 Bettega's counsel to act on behalf of the petitioner. Clearly, the trial court could not  
28 consider a request for dismissal filed without such authorization ... Bettega  
acknowledges that he has not appealed from the sanctions order ... Plainly it was  
misconduct for counsel to purport to represent both sides in seeking a dismissal,

1 without having secured a proper substitution as counsel for the petitioner. In any  
2 event, the court properly refused to entertain the request because it was unauthorized  
by the Tribe, which was the petitioner of record.” (State Bar exhibit 69.)

3 Despite the rulings by the Court of Appeal and the superior court, Respondents continue to  
4 argue before this court that the sanctions order was invalid.

5 **C. Conclusions of Law**

6 ***1. Count 1 - Business and Professions Code Section 6106 (Moral Turpitude)***

7 Business and Professions Code section 6106<sup>1</sup> prohibits an attorney from engaging in conduct  
8 involving moral turpitude, dishonesty or corruption. Although an evil intent is not necessary for  
9 moral turpitude, some level of guilty knowledge or at least gross negligence is required. (See *In the*  
10 *Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363.)

11 Here, Respondents committed acts of moral turpitude in wilful violation of section 6106 by  
12 knowingly making repeated misrepresentations to the Mendocino County Superior Court in *RVIT*  
13 *v. Bettega*, as clearly and convincingly evidenced in the findings of fact. The misrepresentations  
14 include:

- 15 a. On the dismissal request No. 1, by omitting to state that Bettega was their  
16 client and by falsely claiming that they were the attorneys for  
17 Plaintiff/Petitioner RVIT as well as for Interim Tribal Council, Respondents  
18 deceptively implied that Interim Tribal Council and RVIT were one and the  
19 same and that Respondents’ clients had the authority to dismiss the matter.
- 20 b. In their opposition to RVIT’s sanctions motion No. 1, Respondents  
21 misrepresented that the Interim Tribal Council was the governing body of the  
22 Tribal members and that they had dismissed attorney Quesenberry. They  
23 also falsely claimed that there was no challenge to the April election.  
24 Respondents knew that these were false material facts.
- 25 c. Similarly, on the dismissal request No. 2, by omitting to state that Bettega

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27 <sup>1</sup>References to section are to the Business and Professions Code, unless otherwise  
28 indicated.

1 was their client and by claiming that they were the attorneys for  
2 Plaintiff/Petitioner RVIT as well as for Round Valley Nation f/k/a Round  
3 Valley Indian Tribes, Respondents attempted to deceive the court.  
4 Respondents did not represent RVIT, RVN was not formerly known as RVIT  
5 and neither RVN nor Bettega had the authority to dismiss the lawsuit.

6 d. On a notice of change of name filed May 12, 2000, Respondents declared  
7 that RVIT had changed its form of governance and that RVIT was presently  
8 known as the RVN when they knew at the time that a dispute still existed as  
9 to who was the governing body of RVIT.

10 e. On Bettega's reply, Respondents misrepresented to the court that the  
11 successor of RVIT was RVN, that attorney Quesenberry was RVIT's former  
12 counsel and that they were the new counsel. Respondents knew or should  
13 have known that attorney Quesenberry was never substituted out and that  
14 RVN had not succeeded RVIT.

15 Respondents argue that they "could legitimately take the position that their client had  
16 supplanted the opposing party....The fact that the dispute is still before the Department of Interior  
17 indicates that the novel approach designed by [Respondents] is a reasonable one, one that could  
18 shake up the entire approach to Indian rights." (Respondents' Closing Trial Brief, p. 10.)

19 On the contrary, the fact that the determination of the governing body is still before  
20 Department of the Interior does not mean that Respondents' representation to the court is reasonable.  
21 It simply means that the dispute has not been resolved. Knowing that the issue is still in  
22 controversy, Respondents' misrepresentations that RVN was the new governing body and that they  
23 represented RVIT were clear acts of deception and moral turpitude. The victor of the infighting has  
24 not been declared and yet, Respondents claim that declaring his client had won is a reasonable  
25 approach.

26 Respondents' further argument of simple negligence is without merit. They repeatedly and  
27 deliberately made the same misrepresentations in their dismissal requests, declarations, memoranda  
28 and correspondence. The superior court and the appellate court did not find Respondents'

1 misconduct to be simple negligence. And neither does this court. An attorney has a duty never to  
2 seek to mislead a judge and “[a]cting otherwise constitutes moral turpitude and warrants discipline.”  
3 (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855.)

4           2.       ***Count 2 - Section 6068(d) (Misleading the Court)***

5           Section 6068(d) provides that an attorney shall never seek to mislead the judge by an artifice  
6 or false statement of fact or law.

7           Respondents contend that because “[e]veryone knew that there was a factional fight among  
8 the Indians in Round Valley,” they could not have deceived the court with their false statements.  
9 (Respondents’ Closing Trial Brief.) The Supreme Court has held that “[t]he presentation to a court  
10 of a statement of fact known to be false presumes an intent to secure a determination based upon it  
11 and is clear violation of [section 6068(d)].” (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.)  
12 “Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the  
13 attorney knowingly presents a false statement which tends to mislead the court. [Citation.]” (*Davis*  
14 *v. State Bar* (1983) 33 Cal.3d 231, 240.)

15           Here, there is clear and convincing evidence that Respondents deliberately sought to mislead  
16 Judge Conrad L. Cox of the Mendocino County Superior Court. They pled (1) that they represented  
17 plaintiff RVIT when they actually represented defendant Bettega and (2) that RVIT had changed its  
18 form of governance and was presently known as the RVN when they knew at the time that a dispute  
19 still existed as to who was the governing body of RVIT. Respondents have clearly violated their  
20 duty under section 6068(d).

21           As a result, Judge Cox sanctioned Respondents in his June 8, 2000 order because of “the  
22 surreptitious attempt by counsel Maloney and Virsik to dismiss the action and to perpetuate a fraud  
23 upon the court and opposing counsel.”

24           While it is true, as Respondents contend, that attorneys “make decisions daily about how  
25 much to load into court filings” and that “[n]ot every known fact ... has to show up,” however, it is  
26 not within their professional discretion to include false statements or make material omissions. One  
27 cannot claim to be an attorney for a party when he is not. There is fundamental truth and there are  
28 arguments. And it is fundamentally true that Respondents did not represent RVIT, that the Interim

1 Tribal Council was not the governing body of RVIT and attorney Quesenberry was not dismissed  
2 as attorney for RVIT. Respondents' statements to the court were made with an intent to secure an  
3 advantage, which was to dismiss the lawsuit against their client Bettega.

4 Because the misconduct underlying the section 6068(d) charge is the misconduct covered  
5 by the section 6106 charge, which supports identical or greater discipline, the court gives no  
6 additional weight to the section 6106 charge in determining the appropriate discipline. (See *Bates*  
7 *v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose served by duplicative allegations  
8 of misconduct] and *In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166,  
9 175.)

10 **3. Count 3 - Section 6103 (Failure to Obey Court Order)**

11 Section 6103 requires attorneys to obey court orders and provides that the wilful  
12 disobedience or violation of such orders constitutes cause for disbarment or suspension. The State  
13 Bar alleges that Respondents violated section 6103 by failing to comply with the court's order of  
14 June 2000 to pay the sanctions forthwith. They waited more than seven months to pay the sanctions.

15 Despite attorney Quesenberry's opposition and without any ruling from the court,  
16 Respondents unilaterally concluded that the June 8 order was a tentative ruling, that the sanctions  
17 order was "dropped," and that, therefore, the order was invalid. The sanctions motion No. 2 was  
18 "dropped," not the court order of June 8, 2000.

19 Such a mistaken belief that the sanctions order was "dropped" is no excuse. Any confusion  
20 on Respondents' part did not obviate a wilful failure to comply with the court order. "[I]gnorance  
21 is not a defense." (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 404.)  
22 "In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a  
23 formal explanation by motion or appeal as to why the order cannot be obeyed." (*Id.* at p. 403.)

24 The June 8 court order clearly instructed Respondents to pay sanctions forthwith. If  
25 Respondents disagreed with the order, Respondents should have sought relief from the order. Even  
26 attorney Quesenberry's letter of June 15 alerted that "unless the defendant affirmatively seeks  
27 relief," the order was final. But Respondents chose to disregard the order, ignored opposing  
28 counsel's position that the order was valid, did not take any action to seek relief from the order and

1 accepted their own interpretation that the order was unenforceable without any verification from the  
2 court.

3 The Supreme Court in *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951-952, rejected the  
4 argument that an attorney was relieved of the duty to comply with court orders because he believed  
5 them to be technically invalid. The Court found, "Such technical arguments are waived to the extent  
6 the orders became final without appropriate challenge. There can be no plausible belief in the right  
7 to ignore final, unchallengeable orders one personally considers invalid."

8 Respondents' persistent belief as to the validity of the order is irrelevant to the section 6103  
9 charge. "Regardless of Respondent[s'] belief that the order was issued in error, [they were]  
10 obligated to obey unless [they] took steps to have it modified or vacated, which [they] did not do."  
11 (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9.)

12 Therefore, Respondents' wilful failure to comply with the June 8, 2000 sanctions order  
13 clearly and convincingly violated section 6103.

14 **4. Count 4 - Section 6068(o)(3) (Report Sanctions to the State Bar)**

15 The State Bar requests that count 4 (section 6068(o)(3)) be dismissed. The court hereby  
16 grants the request and dismisses count 4.

17 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

18 **A. Mitigation**

19 Respondents bear the burden of proving mitigating circumstances by clear and convincing  
20 evidence. (Standard 1.2(e) of the Standards for Attorney Sanctions for Professional Misconduct  
21 (Standard).)

22 Respondent Maloney has no prior record of discipline in 31 years of practice at the time of  
23 his misconduct in 2000, which is a significant mitigating factor. (*In the Matter of Lane* (Review  
24 Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735 [over 25 years of practice without misconduct is entitled  
25 to considerable weight in mitigation]; Standard 1.2(e)(i).) "Absence of a prior disciplinary record  
26 is an important mitigating circumstance when an attorney has practiced for a significant period of  
27 time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

28 However, Respondent Virsik's three years of trouble-free law practice at the time of his

1 misconduct is far too short to constitute mitigation. Where an attorney had practiced for only four  
2 years prior to his misconduct, his lack of prior discipline was not mitigating. (*In the Matter of Hertz*  
3 (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; Standard 1.2(e)(i).)

4 Respondent Maloney presented 10 character witnesses who testified to Respondent's honesty  
5 and integrity and his long record of community work; five of the witnesses were attorneys and one  
6 was a former mayor. (Standard 1.2(e)(vi).) The confidence in Respondent expressed by fellow  
7 attorneys may be considered in mitigation. (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State  
8 Bar Ct. Rptr. 502.) Irrespective of the misconduct, they held Respondent in high esteem. They  
9 attested to his demonstration of diligence and caring on behalf of clients, particularly the  
10 underrepresented. Evidence of substantial community service and pro bono activities were also  
11 introduced, including participation in a homeless shelter program (Friendly Manor), Lawyers'  
12 Committee for Civil Rights, Bar Association of San Francisco, Alameda County Bar Association,  
13 Kiwanis Club, Sisters of St. Joseph's and Special Olympic projects. He also assisted AIDS victims  
14 and sailors. Respondent Maloney's character evidence and community work merit significant  
15 weight.

16 Respondent Virsik offered several character witnesses who testified to his honesty and  
17 integrity. (Standard 1.2(e)(vi).) Respondent's character evidence is somewhat mitigating but does  
18 not amount to a showing of extraordinary demonstration of good character and therefore, does not  
19 merit significant weight. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.  
20 153 [testimony of three character witnesses was not entitled to significant weight in mitigation since  
21 it was not an extraordinary demonstration of good character attested to by a wide range of  
22 references].) As to community work, Respondent Virsik has been raising funds for the Leukemia  
23 Society since 1995.

24 Although Respondents entered into stipulations of facts, they made them less than one week  
25 before the start of the trial and acknowledge that they wrote, signed, sent or filed many of the  
26 documents admitted in evidence as exhibits. (Standard 1.2(e)(v).) Belated stipulations to facts  
27 which mainly concern easily provable facts merit limited weight in mitigation. (*In the Matter of*  
28 *Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547.)

1     **B.     Aggravation**

2             There are many aggravating factors. (Standard 1.2(b).)

3             Respondents' misconduct was clearly surrounded by dishonesty, concealment and  
4     overreaching. (Standard 1.2(b)(iii).)

5             "While an attorney is expected to be a forceful advocate for a client's legitimate causes  
6     [citations] ... the role played by attorneys in the honest administration of justice is more critical than  
7     ever ... Attorneys, by adherence to their high fiduciary duties and the truth, can sharply reduce or  
8     eliminate clashes and ease the way to dispute settlement." (*In the Matter of Hertz, supra*, 1 Cal.  
9     State Bar Ct. Rptr. 473.) Instead, Respondents' misconduct burdened the courts, RVIT and attorney  
10    Quesenberry, causing substantial harm to the administration of justice and the public. (Standard  
11    1.2(b)(iv).)

12            Respondents demonstrated indifference toward rectification of or atonement for the  
13    consequences of their misconduct. (Standard 1.2(b)(v).) They fail to recognize their wrongdoing  
14    despite the superior court's finding of fraud and sanctions. Even in their closing brief, Respondents  
15    insist that because "everyone knew" there was no misrepresentation, that the June 8, 2000 order was  
16    invalid and defective and thus, there is no evidence to support any wrongdoing. Having strong  
17    principles is laudable. But holding on to obtuse reasoning and refusing to acknowledge their  
18    professional and ethical obligations, Respondents have become blindly self-righteous. Their lack  
19    of remorsefulness is of great concern to this court.

20            Respondents displayed a lack of candor and cooperation to the State Bar during disciplinary  
21    investigation and trial. (Standard 1.2(b)(vi).) In their assertion of privilege during discovery,  
22    Respondents claimed that they had seven linear feet of privileged materials. This court received  
23    only six inches of documents. Respondents also redacted documents that were not privileged.  
24    Furthermore, their continued assertion that they were justified in their failure to be truthful to the  
25    superior court and obey the court sanctions order is not believable. Respondents' testimony was  
26    evasive and lacks candor. "Under certain circumstances, false testimony before the State Bar may  
27    constitute an even greater offense than misappropriation of clients' funds." (*Doyle v. State Bar*  
28    (1982) 32 Cal.3d 12, 23.)

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## V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; Standard 1.3.)

This case involves making misrepresentations to the court, committing acts of moral turpitude and violating a court order. The standards for Respondent's misconduct provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. (Standards 1.6, 2.3 and 2.6.) The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client shall result in actual suspension or disbarment, depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Here, Respondents' misrepresentations and concealment of material facts to the superior court were acts of moral turpitude and their incredulous justification for their action to this court is dishonest. While the superior court may not have been actually misled since it knew that Respondents did not represent RVIT and rejected the filing of the pleadings, the administration of justice was harmed in that judicial resources were wasted. The magnitude of their misconduct is very troubling. Respondents not only insisted that the power struggle had been resolved in their clients' favor when they filed the pleadings in May 2000, but also they continued to this day believe that they have done no wrong, even in hindsight.

Respondents argue that the charges against them should be dismissed.

The State Bar urges six months of actual suspension with a one-year stayed suspension and two years probation for Respondents' acts of moral turpitude and disobeying a court order, citing

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1 *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490<sup>2</sup> and *In the Matter of*  
2 *Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166 in support of its recommendation.

3 The court agrees that Respondents should be actually suspended for their egregious  
4 misconduct, in view of the aggravating circumstances. Respondents clearly have shown no insight  
5 into their wrongdoing and demonstrated no remorse for their actions. They fail to distinguish  
6 between their client's mission to oust the existing governing body of RVIT and the reality that the  
7 power struggle is on-going. They also fail to acknowledge an attorney's duty to obey court orders.

8 The superior court and the Court of Appeal demonstrate clearly and convincingly that  
9 Respondents committed misconduct when they purported to represent both sides in seeking a  
10 dismissal when in fact they represented only one party – the defendant. Prior civil findings made  
11 under the preponderance-of-the-evidence standard of proof are entitled to a strong presumption of  
12 validity in State Bar proceedings if they are supported by substantial evidence. (See, e.g., *Bernstein*  
13 *v. Committee of Bar Examiners* (1968) 69 Cal.2d 90, 101.) Still refusing to accept responsibility  
14 for making misrepresentations to the court and the validity of the sanctions order, Respondents want  
15 to relitigate the merit of the order before this court.

16 This court rejects Respondents' frivolous attempt and their hyper-technical arguments. "The  
17 sanctions imposed on June 8, 2000, are final and that order is neither amended nor modified." (State  
18 Bar exhibit 71.) Any confusion on Respondents' part is without merit. They had an opportunity to  
19 seek clarification but chose not to.

20 Respondents' argument that the court was not misled because "everyone knew" is  
21 disingenuous. Attorneys have been disciplined for misrepresenting material matters of public  
22 record. (*Bach v. State Bar, supra*, 43 Cal.3d 848 [misrepresentation regarding the existence of a  
23 court order]; *Franklin v. State Bar* (1986) 41 Cal.3d 700 [misrepresentation regarding the dismissal  
24 of a court order]; and *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159 [failure to disclose prior  
25 motions].) Therefore, whether "everyone knew" is irrelevant to Respondents' culpability.

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27 <sup>2</sup>The Supreme Court dismissed *In the Matter of Farrell* (Min. Order filed July 31, 1991  
28 (S021952)) because Farrell was disbarred in a different case. (Min. Order filed June 26, 1991  
(S012372).)

1 Respondents should have known better, particularly in light of Respondent Maloney's 31 years of  
2 practice.

3 The court finds guidance from the following cases which involved circumstances similar to  
4 the circumstances found in the current matter. The level of discipline ranges from a stayed  
5 suspension to a six-month actual suspension, depending on the mitigating and aggravating factors.

6 In *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, the attorney  
7 was given a one-year stayed suspension and two-year probation for misleading the settlement  
8 conference judge regarding his client's death and failing to appear as ordered at a mandatory  
9 settlement conference. His over 30 years of practice prior to an out-of-state discipline and many  
10 civic and professional pro bono activities constituted important mitigating circumstances. No  
11 aggravating factors were present. In this instant matter, however, there were many aggravating  
12 circumstances and a culpability finding of failure to obey a court order.

13 In *Drociak v. State Bar* (1991) 52 Cal.3d 1085, the attorney who had been in practice for 25  
14 years with no prior discipline was disciplined with a one-year stayed suspension, two years'  
15 probation and 30 days' actual suspension. He was found culpable of answering interrogatories on  
16 behalf of his client and attaching the client's presigned verifications without first consulting with  
17 the client to assure that any assertions of fact are true. Although he had no prior record of discipline,  
18 the Court found that "deceit by an attorney is reprehensible misconduct whether or not harm results  
19 and without regard to any motive or personal gain." (*Id.* at p. 1090-1091.) Here, Respondents'  
20 misconduct was more egregious than that of *Drociak* in that they not only failed to assure their  
21 representations were true, but also knew that they were not true.

22 In *Bach v. State Bar, supra*, 43 Cal.3d 848, the attorney was actually suspended for 60 days  
23 with a one-year stayed suspension and three years' probation for misleading a judge by falsely  
24 stating that he had not been ordered to have his client appear for a family law mediation. He was  
25 in practice for 13 years at the time of his misconduct and had a prior record of discipline. No  
26 evidence in mitigation appeared. In the current matter, Respondents did not have any prior  
27 discipline.

28 In *In the Matter of Chestnut, supra*, 4 Cal. State Bar Ct. Rptr. 166, the attorney was actually

1 suspended for six months, with two years' stayed suspension and three years' probation for falsely  
2 representing to two judges that he had personally served papers on opposing party. Similarly to the  
3 case here, the attorney did not admit to any wrongdoing. But that attorney had a prior record of  
4 discipline and was in practice less than five years at the time of his second instance of misconduct.

5 In recommending discipline, the "paramount concern is protection of the public, the courts  
6 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) A most  
7 significant factor is Respondents' complete lack of insight, recognition or remorse for any of their  
8 wrongdoing. The court is seriously concerned about the possibility of similar misconduct recurring.  
9 Respondents have offered no indication that this will not happen again.

10 Moreover, their refusal and continuous failure to comprehend their obligation to employ  
11 those means only as are consistent with truth, no matter how righteous they believe they are, warrant  
12 the highest level of public protection. Instead of contrition, Respondents mounted an elaborate  
13 defense in this proceeding and went to great length during their testimony to excuse their  
14 misconduct. They did not fully cooperate with the State Bar during discovery and their testimony  
15 was evasive. Nevertheless, Respondents' dedication to community work is commendable and  
16 Respondent Maloney's 31 years of practice without any disciplinary record is significant.  
17 Therefore, in light of case law involving comparable offenses and in consideration of the egregious  
18 misconduct, the serious aggravating circumstances and the significant mitigating factors, a 45-day  
19 actual suspension for Respondent Maloney and a 90-day actual suspension for Respondent Virsik  
20 are necessary and appropriate to protect the public and to deter future misconduct.

## 21 **VI. RECOMMENDED DISCIPLINE**

### 22 **A. Respondent Maloney**

23 Accordingly, it is recommended that Respondent **PATRICK J. MALONEY, Jr.**, be  
24 suspended from the practice of law for one year, that execution of that suspension be stayed, and that  
25 Respondent be placed on probation for two years, with the following conditions:

- 26 1. Respondent shall be actually suspended from the practice of law for the first 45 days of  
27 probation;
- 28 2. During the period of probation, Respondent shall comply with the State Bar Act and the

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Rules of Professional Conduct;

3. Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly, and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial Counsel, which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein;

4. Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Probation Unit, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

5. Within one year of the effective date of the discipline herein, Respondent shall provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and Respondent shall not receive MCLE credit for attending Ethics School. (Rule 3201, Rules Proc. of State Bar);

1 6. The period of probation shall commence on the effective date of the order of the Supreme  
2 Court imposing discipline in this matter; and

3 7. At the expiration of the period of this probation, if Respondent has complied with all the  
4 terms of probation, the order of the Supreme Court suspending Respondent from the practice  
5 of law for one year that is stayed, shall be satisfied and that suspension shall be terminated.

6 It is further recommended that Respondent Maloney take and pass the Multistate  
7 Professional Responsibility Examination (MPRE) administered by the National Conference of Bar  
8 Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone  
9 319-337-1287) and provide proof of passage to the Probation Unit, within one year of the effective  
10 date of the discipline herein. Failure to pass the MPRE within the specified time results in actual  
11 suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules  
12 of Court, rule 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

13 **B. Respondent Virsik**

14 As to Respondent **THOMAS VIRSIK**, it is recommended that he be suspended from the  
15 practice of law for one year, that execution of that suspension be stayed, and that Respondent be  
16 placed on probation for two years, with the following conditions:

- 17 1. Respondent shall be actually suspended from the practice of law for the first 90 days of  
18 probation;
- 19 2. During the period of probation, Respondent shall comply with the State Bar Act and the  
20 Rules of Professional Conduct;
- 21 3. Respondent shall submit written quarterly reports to the Probation Unit on each January 10,  
22 April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,  
23 Respondent shall state whether Respondent has complied with the State Bar Act, the Rules  
24 of Professional Conduct, and all conditions of probation during the preceding calendar  
25 quarter. If the first report will cover less than thirty (30) days, that report shall be submitted  
26 on the next following quarter date, and cover the extended period.

27 In addition to all quarterly reports, a final report, containing the same information, is due no  
28 earlier than twenty (20) days before the last day of the probation period and no later than the

1 last day of the probation period;

2 Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly,  
3 and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial Counsel,  
4 which are directed to Respondent personally or in writing, relating to whether Respondent  
5 is complying or has complied with the conditions contained herein;

6 4. Within ten (10) days of any change, Respondent shall report to the Membership Records  
7 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to  
8 the Probation Unit, all changes of information, including current office address and  
9 telephone number, or if no office is maintained, the address to be used for State Bar  
10 purposes, as prescribed by section 6002.1 of the Business and Professions Code;

11 5. Within one year of the effective date of the discipline herein, Respondent shall provide to  
12 the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given  
13 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-  
14 1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the  
15 test given at the end of that session. Arrangements to attend Ethics School must be made in  
16 advance by calling (213) 765-1287, and paying the required fee. This requirement is  
17 separate from any Minimum Continuing Legal Education Requirement (MCLE), and  
18 Respondent shall not receive MCLE credit for attending Ethics School. (Rule 3201, Rules  
19 Proc. of State Bar);

20 6. The period of probation shall commence on the effective date of the order of the Supreme  
21 Court imposing discipline in this matter; and

22 7. At the expiration of the period of this probation, if Respondent has complied with all the  
23 terms of probation, the order of the Supreme Court suspending Respondent from the practice  
24 of law for one year that is stayed, shall be satisfied and that suspension shall be terminated.

25 It is further recommended that Respondent Virsik take and pass the Multistate Professional  
26 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,  
27 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)  
28 and provide proof of passage to the Probation Unit, within one year of the effective date of the

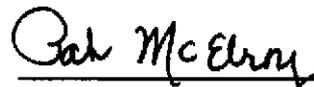
1 discipline herein. Failure to pass the MPRE within the specified time results in actual suspension  
2 by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule  
3 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

4 It is also recommended that the Supreme Court order Respondent Virsik to comply with rule  
5 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively,  
6 of the effective date of its order imposing discipline in this matter. **Wilful failure to comply with**  
7 **the provisions of rule 955 may result in revocation of probation, suspension, disbarment,**  
8 **denial of reinstatement, conviction of contempt, or criminal conviction.**

9 **VII. COSTS**

10 The court recommends that costs be awarded to the State Bar pursuant to Business and  
11 Professions Code section 6086.10 and payable in accordance with Business and Professions Code  
12 section 6140.7.

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17 Dated: December 13, 2002

  
\_\_\_\_\_  
PAT McELROY  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court. 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 San Francisco, on December 13, 2002, I deposited a true copy of the following document(s):

**DECISION**

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

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

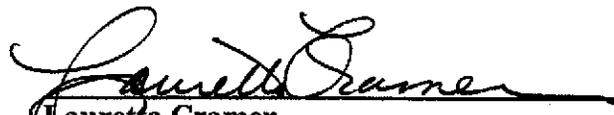
**JEROME FISHKIN**  
**369 PINE ST #627**  
**SAN FRANCISCO CA 94104**

**JONATHAN IRWIN ARONS**  
**236 W PORTAL AVE #453**  
**SAN FRANCISCO CA 94127**

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

**ESTHER ROGERS, Enforcement, San Francisco**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on December 13, 2002.

  
**Laretta Cramer**  
Case Administrator  
State Bar Court