PUBLIC MATTER

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THE STATE BAR COURT

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **SHANNON ROBERTS BOYD,** **Member No. 170169,** A Member of the State Bar.	**Case No. 01-O-03910-PEM** **DECISION**

I. INTRODUCTION

This case exemplifies an attorney's breach of his fundamental duty owed to his clients by representing multiple clients with adverse interests in a business transaction without providing disclosure to the clients. Respondent **Shannon Roberts Boyd** is charged with numerous acts of misconduct, which includes (1) failing to provide written disclosure to the client that he had a legal, business and financial relationship with a party or witness in the same matter; (2) committing acts of moral turpitude; and (3) failing to report judicial sanctions to the State Bar.

This court finds, by clear and convincing evidence, that respondent is culpable of five of the nine charged acts of misconduct. In view of respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be placed on probation for two years with conditions, including an actual suspension of one year from the practice of law.

II. PERTINENT PROCEDURAL HISTORY

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a nine-count Notice of Disciplinary Charges (NDC) on March 25, 2003. On June 9, 2003, respondent filed a response to the NDC.

A three-day trial was held January 4-6, 2005.[1] The State Bar was represented in this proceeding by Deputy Trial Counsel Anthony Garcia. Respondent co-counseled the case with attorney John Roberts Boyd.

The court took this proceeding under submission on March 17, 2005, after the State Bar had filed a closing trial brief. Respondent did not file a closing brief.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 1, 1994, and has been a member of the State Bar of California at all times since that date.

B. Findings of Fact

The following findings of fact are based on the evidence and testimony introduced at this proceeding. The court does not find respondent's testimony to be credible.

The charges against respondent arose in the context of his dual representation of the borrower and the lender in a loan transaction of $100,000.

1. Respondent Represented the Borrower– the Family Store and the Withrows

On August 12, 1998, the Family Store Entertainment (Family Store) hired respondent to perform legal services for the Family Store and to provide legal counsel to its principals, Edward Withrow and Warren Withrow (the Withrows).[2] In addition, the Family Store hired respondent to provide legal services as a member of the group whose sole purpose was to produce a video entitled "The Singer," an entertainment project based on a book by Calvin Miller about Jesus Christ as a singer and carpenter.[3] The Family Store owned the video rights to The Singer. Respondent's actual compensation for work on The Singer would be determined when the project realized a profit.[4]

In the summer of 1998, Edward Withrow informed respondent that the Family Store was

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[1]Trials were set twice (April and July 2004) but had to be continued at the parties' requests.

[2]State Bar exhibit 3, Engagement Agreement.

[3]The book sold 3 million copies.

[4]State Bar exhibit 3.

seeking a $100,000 bridge loan and that it was willing to offer The Singer and its video and media rights as collateral and to pay 40% interest for the one year loan.

2. Respondent Represented the Lender– Reiss

Thereafter, in August 1998, respondent contacted his friend of 20 years, Richard Reiss, an Idaho resident, to solicit funds on behalf of the Family Store. Reiss agreed to fund the bridge loan. Respondent and Reiss further agreed that respondent would represent Reiss' interest in the loan transaction and that respondent would prepare the loan documents on Reiss' behalf. Reiss agreed to take rights to The Singer as collateral for the loan. In addition, they agreed that respondent would receive 2.5% of the loan proceeds as payment for his legal services.

Respondent never revealed to Reiss that he was representing Reiss himself as the lender and the Withrows and the Family Store as the borrower in the same loan transaction.

3. September 25, 1998 Engagement Letter to the Family Store and the Withrows

On September 25, 1998,[5] respondent sent a letter of engagement to the Family Store and the Withrows. The letter defined the terms and scope of respondent's attorney/client relationship with the Family Store and the Withrows. Specifically, respondent's duties, among others, were to secure a $100,000 bridge loan to provide working capital for The Singer, to provide all necessary documentation to memorialize the terms of the bridge loan, including security agreements and promissory note, and to document the assignment of 2% of The Singer's net proceeds to the lender. More importantly, the September 25 engagement letter stated that the Withrows and the Family Store retained respondent to act as general counsel to the Family Store and described respondent's duties as general counsel. The September 25 engagement letter was fully executed by respondent and the Withrows.

4. October 7, 1998 Letter to Reiss and the Bridge Loan

On October 7, 1998,[6] respondent wrote to Reiss, asking him for the status of the loan transfer and telling him that the Family Store had been calling him repeatedly. Respondent offered to forward

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[5]State Bar exhibit 7.

[6]State Bar exhibit 8.

the loan documents executed by the Withrows, after the money had been transferred. Respondent also wrote that he intended to file a document with the U.S. patent office to protect Reiss' intellectual property rights in The Singer. Furthermore, respondent told Reiss that he had entered into a separate agreement with the Withrows' attorney, agreeing that he would not release the executed originals of the loan document to Reiss until respondent had received Reiss' money. Respondent did not inform Reiss that respondent himself was the Withrows' attorney. Lastly, in the October 7, 1998 letter, respondent gave Reiss the Withrows' telephone number so that Reiss could talk to them directly. However, he cautioned Reiss: "Just tell them you are the investor but don't tell them anything about yourself unless you clear it with me first."[7]

On October 13, 1998, Edward Withrow executed the Bridge Loan Agreement on behalf of the Family Store. The funds of the loan were transferred to Respondent's client trust account. Respondent received $2,500 as his fees.

Edward Withrow testified that respondent negotiated the bridge loan on their behalf. He also stated that respondent "made us sign a waiver because he said he found himself in a weird place."[8] Therefore, the Withrows knew about a possible conflict of interest regarding respondent and had waived the conflict.

5. December 17, 1998 Letter to the Withrows

On December 17, 1998, respondent wrote to Warren Withrow, sending him deposit slips for the monthly payments on the bridge loan.[9] In that letter, respondent described Reiss as the "wingnut/investor" and suggested that Withrow make payments early because, "[t]his guy [Reiss] has no job, and a bad attitude, and he sits around and makes nasty phone calls all day."[10]

6. The Family Store Defaulted on the Loan

In September 1999, the Withrows and the Family Store defaulted on their promise to pay the

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[7]State Bar exhibit 8.

[8]State Bar exhibit 27, p. 5 (15:20-22).

[9]State Bar exhibit 9.

[10]State Bar exhibit 9.

bridge loan. Reiss contacted respondent and discussed sending a demand letter to the Withrows and the Family Store. On September 23, 1999,[11] respondent drafted and sent collection letters to the Withrows and the Family Store, demanding that they pay $124, 300 to Reiss by October 1, 1999. On October 2, 1999, respondent drafted and sent a second demand letter to the Withrows and the Family Store, demanding that they pay $125,600 to Reiss by November 1, 1999.[12]

7. Reiss Sued Respondent and the Borrower

In July 2000, Reiss hired Gery W. Edson, an Idaho attorney, to sue respondent, the Withrows, the Family Store, and the Law Offices of Boyd and Chang on his behalf. On August 1, 2000, Reiss filed a lawsuit in the Fourth Judicial District of Idaho, Ada County, case No. CV OC 0003893D ("Idaho lawsuit") naming respondent, the Withrows, the Family Store and Law Offices of Boyd and Chang as defendants.[13] On August 22, 2000, Reiss filed a First Amended Complaint in the Idaho lawsuit. The First Amended Complaint alleged, among other things, that respondent had committed legal malpractice.[14]

On October 24, 2000, respondent filed a Motion to Dismiss the Idaho lawsuit but it was denied. On December 6, 2000, Reiss filed a Notice of Intent to Take Default as to respondent only. On January 31, 2001, Reiss filed a second Notice of Intent to Take Default as to respondent only. As a result, the Idaho Court entered a default against respondent on February 23, 2001, and a default judgment against him on March 1, 2001. The Idaho Court awarded judgment in Reiss' favor in the amount of $233,137.40.

8. Respondent's False Statements to the Idaho Court and Failure to Report Sanctions

On April 18, 2001, Respondent filed a Motion to Vacate Default and Default Judgment ("Motion to Vacate") in the Idaho lawsuit.[15] In his declaration attached to the Motion to Vacate,

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[11]State Bar exhibit 10.

[12]State Bar exhibit 11.

[13]State Bar exhibit 13.

[14]State Bar exhibit 14.

[15]State Bar exhibit 21.

respondent stated that he had no interest in the bridge loan, that he had no part in arranging the bridge loan from Reiss to the Family Store, that Reiss never retained him nor did he believe he was going to be paid, that Reiss agreed and understood that he was neither his lawyer nor that of the Withrows, that he never represented Reiss in the negotiations between Reiss and the Family Store, that the Withrows proposed the terms of the loan to Reiss and that he merely typed up the documents that became the Bridge Loan Agreement, Promissory Note, Addendum to the Promissory Note and Security Agreement and Pledge of Collateral.

On July 30, 2001, the Idaho Court denied respondent's Motion to Vacate, finding that it was frivolous. The Idaho Court issued an order approving monetary sanctions against respondent in the amount of $7,924.40 and properly served respondent with the order. Respondent did not report the sanctions order to the State Bar.

9. Respondent's Complaint for Declaratory Relief in the Federal District Court

On July 27, 2001, respondent filed a Complaint for Declaratory Relief (complaint) in the Central District of the United States District Court, Santa Ana Division, case No. 01-6490. In that complaint, respondent sought a federal court order voiding the default judgment in the Idaho lawsuit. Respondent stated that Reiss and the Withrows negotiated the terms of the bridge loan agreement themselves, that respondent was not involved in the negotiation of the bridge loan, that he received nothing for his drafting of the documents, and that he was neither retained by Reiss nor did he anticipate being paid by Reiss or the Family Store.

10. Respondent's Meritless Contentions

Respondent presented several arguments to justify his misconduct in this matter. The court rejects each of those contentions as unmeritorious, frivolous and specious.

a. Not the Borrower's Attorney

Respondent denies that he was the attorney for the Family Store and the Withrows. Despite (1) the Engagement Agreement between the Family Store and respondent in which respondent agreed to represent the Family Store and to assist the Withrows in their endeavors regarding The Singer and (2) the Engagement Letter in which the Family Store hired respondent to provide services in securing a Bridge Loan of $100,000 to provide working capital for The Singer and to act as general counsel

for the Family Store, respondent argues that he never represented the Family Store or the Withrows. Respondent claims that he did not know how he learned of the Family Store's intellectual property rights on The Singer or how his signature got on the Engagement Agreement. He also claims that pages are missing from the Engagement Agreement, even though the entire document of seven pages is in evidence.

b. Not the Lender's Attorney

Respondent also denies that he was Reiss' attorney. He contends that he assisted Reiss in drafting the loan document not as an attorney but as a friend. He also claims that Reiss agreed to waive any conflict and allow him to represent both Reiss and the Family Store.

However, Reiss testified that respondent was his attorney and that respondent drafted the Bridge Loan Agreement on his behalf. He further testified that respondent proposed the term "equity kicker" to guarantee additional monies if the project was successful (the lender was to receive an interest equal to two percent of the proceeds derived from the sale of the videotape of The Singer after the costs of the actual production). Reiss also stated that he had no idea that respondent was legal counsel to the Withrows at the time he made the loan. He never saw the Acknowledgement and Waiver of Conflict of Interest and Hold Harmless Agreement dated October 17, 1998, in which respondent purported to have obtained Reiss' waiver of conflict of interest and permission to allow respondent to act as the attorney for the Family Store in the future. The agreement was labeled "Draft" and was not executed by any party. In fact, in his October 7, 1998, letter to Reiss, respondent concealed that he was the Family Store's attorney and inferred that the Withrows have a lawyer other than himself by stating: "I have entered into a separate agreement with the *borrowers attorney* that I would not release the originals . . . until the monies were received."[16]

c. Other Frivolous Claims

Furthermore, any other additional contentions of respondent not discussed here are also rejected as frivolous. For example, respondent argues that even though he received the $2,500 as fees for services in obtaining the bridge loan, he did not keep the funds. And when the Withrows

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[16]State Bar exhibit 8, emphasis added.

defaulted on the loan, respondent argues that he may have drafted the demand letters but he did not personally send them to the Withrows. He was the mere scrivener for the letters. While he denies that he was the attorney for the Withrows, the Family Store or Reiss, he argues that he had obtained written waivers from the parties to represent each of them. But if respondent was not their attorney, a waiver would not have been necessary.

C. Conclusions of Law

1. Count One: Avoiding the Representation of Adverse Interests (Rules Prof. Conduct, Rule 3-310(B)(1))[17]

Respondent is charged with a wilful violation of rule 3-310(B)(1), which provides that an attorney shall not accept or continue representation of a client without providing written disclosure to the client that he has a business and financial relationship with a party or witness in the same matter.

The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: "By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that he intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; see *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

Edward Withrow testified that respondent made them sign a waiver. While respondent may have given written disclosure to the Withrows informing them that he represented Reiss, respondent did not tell Reiss who was also his client that he represented the Withrows and that he had entered into a business and financial relationship with them in the same matter. Respondent should not have

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[17]References to rules are to the current Rules of Professional Conduct.

represented Reiss without first obtaining his informed written consent.

"The relationship between an attorney and client is a fiduciary relationship of the very highest character." (*Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) In light of respondent's fiduciary obligations to Reiss and of the conflicting loyalties respondent faced between Reiss and the Withrows, respondent did not safeguard Reiss' interest in the loan or protect Reiss' intellectual property rights as collateral to the loan. Instead, in his October 7, 1998, letter to Reiss, he wrote, as if he was doing his client a favor: "[Y]ou owe me. The things I do for my buddy Rich."[18]

By failing to disclose to Reiss that he represented the Withrows in the same loan transaction in writing, respondent wilfully violated rule 3-310(B)(1).

2. Count Two: Actual Conflict – Representing Multiple Clients (Rule 3-310(C)(2))

Rule 3-310(C)(2) provides that an attorney shall not, without the informed written consent of each client accept or continue representation of more than one client in a manner in which the interests of the clients actually conflict. Clearly respondent violated rule 3-310(C)(2) when he represented the borrower and the lender in the same loan transaction and actual conflicts resulted when the borrower defaulted in the $100,000 loan. However, because the violations in counts one and two arise out of the same misconduct, they are duplicative. Therefore, while respondent had numerous conflicts of interest, these violations are not considered as a separate and independent basis of aggravation. The appropriate level of discipline does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. 576, 594.)

3. Count Three: Moral Turpitude (Bus. & Prof. Code, § 6106)

Business and Professions Code section 6106[19] provides that the member's commission of an act involving moral turpitude, dishonesty or corruption constitutes grounds for suspension or disbarment.

The State Bar charges that respondent, by actively concealing from Reiss that he represented

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[18]State Bar exhibit 8.

[19]References to sections are to sections of the Business and Professions Code.

the Family Store and the Withrows, committed an act or acts of moral turpitude, dishonesty or corruption. Respondent argues that he never represented either party in a legal capacity so there is no active concealment. He professes not to have any idea of how the his signature got on the Engagement Agreement.

An attorney-client relationship conclusively exists where the attorney tells a person he will accept the person's case and has the person sign a retainer agreement. (*Farnham v. State Bar* (1976) 17 Cal.3d 605, 612.) Thus, in light of the Engagement Agreement and the engagement letter, executed by the Withrows, respondent was undoubtedly their attorney.

Respondent also contends that he does not have any idea where Reiss got the impression that he was his attorney since he was only assisting Reiss as a friend and not as an attorney. The fact that Reiss and respondent were friends does not preclude the creation of an attorney-client relationship. "When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established *prima facie*." (*In the Matter of Peavey* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 483, 489.)

The court rejects Respondent's arguments and finds, by clear and convincing evidence, that respondent has wilfully violated section 6106 by failing to disclose to Reiss that he represented the borrower.

4. Count Four: Moral Turpitude (§ 6106)

Based on Edward Withrow's deposition that he was aware of the potential conflict of respondent representing Reiss and the Family Store and that he had signed a waiver, there is no clear and convincing evidence that respondent actively concealed from the Withrows and the Family Store that he had agreed to represent Reiss. Therefore, respondent did not wilfully violate section 6106.

5. Count Five: Moral Turpitude (§ 6106)

Here, Respondent committed acts of moral turpitude in wilful violation of section 6106 by knowingly making repeated misrepresentations to the court in the Idaho lawsuit, as clearly and convincingly evidenced in the findings of fact. Under penalty of perjury, respondent declared these misrepresentations:

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- that he had no interest in the loan or its proceeds,
- that he had no part in arranging the bridge loan,
- that the Withrows proposed the terms of the bridge loan to Reiss,
- that Reiss never retained respondent,
- that respondent was never employed by the Family Store or the Withrows as an attorney,
- that Reiss was responsible for all substantive portions of the loan, and
- that respondent merely typed the bridge loan documents.

An attorney has a duty never to seek to mislead a judge and "[a]cting otherwise constitutes moral turpitude and warrants discipline." (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855.)

6. Count Six: Misleading the Court (§6068(d))

Section 6068(d) provides that an attorney shall never seek to mislead the judge by an artifice or false statement of fact or law. "Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney knowingly presents a false statement which tends to mislead the court. [Citation.]" (*Davis v. State Bar* (1983) 33 Cal.3d 231, 240.)

The State Bar contends that respondent wilfully violated section 6068(d) based on the same facts as alleged in count five above. Here, there is clear and convincing evidence that respondent deliberately sought to mislead the Idaho Court and thereby respondent had clearly violated his duty under section 6068(d).

However, because the misconduct underlying the section 6068(d) charge is the misconduct covered by the section 6106 charge, which supports identical or greater discipline, the court gives no additional weight to the section 6106 charge in determining the appropriate discipline. (See *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [little, if any, purpose served by duplicative allegations of misconduct] and *In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430.) Therefore, count six is dismissed as duplicative of count five. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. ___ [opinion filed January 14, 2005, p. 21].)

Respondent's assertion that he was justified in lying to the Idaho Court because he had "litigation privilege" is baffling. There is no legal privilege to protect any form of dishonesty and

misrepresentation. Evidence Code section 911 explicitly prohibits creating a privilege except as authorized by a statute or the state Constitution. Thus, respondent is not empowered to create new privileges. Respondent's self-created defense is hereby rejected.

7. Count Seven: Failure to Report Court Sanctions (§ 6068(o)(3))

Section 6068(o)(3) requires an attorney to report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of the imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than $1,000.

Respondent admits that he did not report the imposition of the judicial sanctions against him for filing a frivolous motion in July 2001. However, he argues that he had no obligation to report the sanctions because the matter was not final, that he was not subject to the jurisdiction of the Idaho Court and that the sanctions order was not valid in California.

The time for reporting judicial sanctions runs from the time the attorney knows the sanctions were ordered, regardless of the pendency of any appeal. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862.) The wilful violation of section 6068(o)(3)'s reporting requirement does not require a bad purpose or an evil intent. All that is required is a general purpose of willingness to commit the act or omission. (*Ibid.*) Here, respondent clearly failed to report the sanctions order to the State Bar, regardless that the sanctions order was issued in Idaho.

Therefore, by not reporting the $7,924.40 sanctions to the State Bar, respondent wilfully violated section 6068(o)(3).

8. Count Eight: Moral Turpitude (§ 6106)

Respondent wilfully violated section 6106 by misrepresenting to the Federal District Court in his complaint for declaratory relief that Reiss and the Withrows negotiated the terms of the bridge loan agreement themselves and that respondent was not involved in the negotiation of the bridge loan agreement.

Respondent contends that his statements were not false and that even if the statements were false, he is protected by a litigation privilege. As discussed in count five, the court finds his argument frivolous.

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9. Count Nine: Misleading the Court (§6068(d))

The State Bar contends that respondent wilfully violated section 6068(d) based on the same facts as alleged in count eight above. There is clear and convincing evidence that respondent deliberately sought to mislead the U. S. Central District Court and thereby respondent had clearly violated his duty under section 6068(d). As discussed in count six, since the facts underlying both violations of sections 6106 and 6068(d) were the same, the court gives no additional weight to the duplication in determining discipline and therefore, dismisses count nine as duplicative.

IV. LEVEL OF DISCIPLINE

A. Factors in Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[20] There is no compelling mitigating evidence. Although the court offered respondent adequate opportunity to introduce mitigating factors, he did not do so.

Respondent's four years of trouble-free law practice at the time of his misconduct is far too short to constitute mitigation. Where an attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; Std. 1.2(e)(i).)

B. Factors in Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing, including committing acts of moral turpitude, failing to avoid adverse interests, and failing to report court sanctions to the State Bar. (Std. 1.2(b)(ii).)

Respondent's misconduct was clearly followed by uncharged violations. (Std. 1.2(b)(iii).) Specifically, there is clear and convincing evidence that Respondent failed to promptly return client file to Reiss (a violation of rule 3-700(D)(1)) and to render an accounting for the $100,000 (a violation of rule and 4-100(B)(3)). Uncharged misconduct may not be used as an independent ground

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[20]All further references to standards are to this source.

of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

Respondent's motions burdened the courts and Reiss, causing substantial harm to the administration of justice and the public. (Std. 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Without question, he owed a duty of undivided loyalty to his clients. He refuses to admit to any wrongdoing, despite the clear and convincing evidence that he did not avoid representing adverse interests in the same matter and that the Idaho Court found his motion to be frivolous. His meritless defenses show lack of insight in the wrongfulness of his actions. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 958.) "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent's conduct at trial "reflects a seeming unwillingness even to consider the appropriateness of his [legal analysis] or to acknowledge that at some point his position was meritless or even wrong to any extent. Put simply, [respondent] went beyond tenacity to truculence." (*In re Morse* (1995) 11 Cal.4th 184, 209.)

Respondent displayed a lack of candor during trial. (Standard 1.2(b)(vi).) His continued assertion that he was not the attorney for Reiss, the Withrows or the Family Store was not believable. Respondent's testimony was evasive and lacks candor. "Under certain circumstances, false testimony before the State Bar may constitute an even greater offense than misappropriation of clients' funds." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 23.)

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; Std. 1.3.)

This case involves making misrepresentations to the court, committing acts of moral turpitude,

concealing representations of conflicting interests in a business transaction, and failing to obtain the informed written consent of the lender. The standards for Respondent's misconduct provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the client. (Standards 1.6, 2.3, 2.6 and 2.10.) 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.

In this matter, the gravamen of respondent's misconduct is his representation of adverse interests, concealment of that conflicting relationship from his client, and multiple misrepresentations to the court.

Respondent should not have represented the borrower and the lender in the same loan transaction without first obtaining their informed written consent. Instead, contrary to evidence, he argues that he represented neither party. Then he claims that he did obtain a waiver of conflict from both sides. As a consequence of his multiple conflicts, respondent compromised his duty of loyalty to his clients when actual conflict materialized – the borrower defaulted on the loan.

Furthermore, respondent's misrepresentations to the Idaho Court and federal court were acts of moral turpitude and his incredulous justification for his action to this court is frivolous. While the court may not have been actually misled and denied respondent's motion, the administration of justice was harmed in that judicial resources were wasted, finding sanctions of almost $8,000, a significant amount. Respondent insisted that he had done no wrong, even in hindsight.

Respondent denies any culpability for misconduct, minimizes his legal involvement with his clients and argues that the charges against him should be dismissed.

The State Bar urges two years of actual suspension with a three-year stayed suspension and three years probation, citing *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr.

490[21] and *Levin v. State Bar* (1989) 47 Cal.3d 1140 in support of its recommendation. Both imposed an actual suspension of six months.

In *In the Matter of Farrell,* discipline was imposed consisting of two years stayed suspension with three years probation and six months actual suspension. Respondent Farrell had been found culpable of falsely stating to a judge that he had a witness under subpoena and of failing to cooperate with the State Bar in its investigation of the misconduct. The court considered in mitigation the attorney's belief that his staff had prepared the subpoena and sent it out for service, but that he had no basis for believing that the subpoena had in fact been served. Respondent Farrell had a record of prior discipline for improper business transactions with a client and for abandonment of a client, which resulted in two years stayed suspension and two years probation on conditions, including 90 days actual suspension.

In *Levin*, an attorney misrepresented to opposing counsel that he had the authority to settle the case as an officer of his incorporated client. But in fact, he was not an officer. He also settled a matter without the client's consent, failed to inform her of the settlement and failed to provide an accounting. In mitigation, he had no prior record of discipline in 18 years of practice.

Here, while respondent's misconduct is more egregious than that of the attorneys in *Farrell* and *Levin*, imposing an actual suspension of two years would be excessive in view of the following case law. The level of discipline ranges from a stayed suspension to a two-year actual suspension, depending on the mitigating and aggravating factors, in similar cases involving fraud on the court and conflicts of interests.

In *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, the attorney was given a one-year stayed suspension and two-year probation for misleading the settlement conference judge regarding his client's death and failing to appear as ordered at a mandatory settlement conference. His over 30 years of practice prior to an out-of-state discipline and many civic and professional pro bono activities constituted important mitigating circumstances. No aggravating

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[21]The Supreme Court dismissed *In the Matter of Farrell* (Min. Order filed July 31, 1991 (S021952)) because Farrell was disbarred in a different case. (Min. Order filed June 26, 1991 (S012372).)

factors were present.

In *In the Matter of Maloney and Virsik, supra,* the attorneys were given a 90 days and 60 days actual suspension, respectively, for their multiple misrepresentations to the court in a single client matter. They had no prior record of discipline and strong mitigating factors, including character evidence and community work. In aggravation, the court found overreaching, lack of candor in the State Bar Court, harm to the administration of justice, lack of insight into the seriousness of their misconduct, and conflicts of interest in representing three parties in the same lawsuit.

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

In *In the Matter of Chestnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, the attorney was actually suspended for six months, with two years' stayed suspension and three years' probation for falsely representing to two judges that he had personally served papers on an opposing party. Similarly to the case here, the attorney did not admit to any wrongdoing and the testimony in the State Bar Court lacked candor. The attorney had a prior record of discipline and was in practice less than five years at the time of his second instance of misconduct.

In *Davis v. State Bar, supra,* 33 Cal.3d 231, discipline consisting of three years stayed suspension, three years probation and one year actual suspension was imposed for failing to perform and making misrepresentations in pleadings. In one client matter, the attorney did not file suit or settle his client's case before the statute of limitations expired. Moreover, in the client's malpractice action against him, he filed a verified answer containing false statements, namely that he had not been her attorney and that he had only represented her as to her property damage claims. No mitigating factors were noted. In aggravation, the court considered two prior instances of discipline for similar misconduct - recurring failures to perform and deception. The court found that respondent habitually disregarded his clients' interests. His two prior instances of discipline for similar misconduct demonstrate "ongoing, substantial disregard for his clients, for the rules of professional behavior, as

well as a recurring lack of candor." (Id. at p. 241.) One prior discipline resulted in two years stayed suspension and probation and the other in one year stayed suspension and probation. The attorney participated in the proceedings.

In *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, the attorney was actually suspended for two years with a four-year stayed suspension and a four-year probation for failure to maintain trust funds in his client trust account, failure to render an accounting, and misappropriation of almost $30,000. In mitigation, he practiced law for 12 years with no prior record of discipline, had a showing of good character and presented evidence of extensive community service. In aggravation, respondent's misconduct caused significant client harm and was surrounded by overreaching, indifference towards atonement for misconduct, numerous conflicts of interest, and multiple acts of uncharged but proved misconduct.

Finally, in *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, the attorney was actually suspended for 60 days with a one-year stayed suspension and a two-year probation for representing adverse parties without obtaining an informed consent and for failing to provide an accounting. In mitigation, he had 25 years of practice with a prior record of discipline and extensive public service.

Therefore, the level of seriousness of Respondent's misconduct falls somewhere in the middle spectrum of these cases.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) A most significant factor is respondent's complete lack of insight, recognition or remorse for any of his wrongdoing. The court is seriously concerned about the possibility of similar misconduct recurring.

Moreover, respondent's refusal and continuous failure to comprehend his obligation to employ those means only as are consistent with truth and to avoid representation of adverse interests of multiple parties warrant the highest level of public protection. Instead of contrition, respondent went to great length during his testimony to excuse his misconduct. Therefore, in light of comparable case law and in consideration of the egregious misconduct, the serious aggravating circumstances and the lack of significant mitigating factors, a one-year actual suspension for respondent is necessary and

appropriate to protect the public and the integrity of the profession. Given his deficient and unreasonable understanding of his duties and obligations as an attorney, requiring respondent to attend 12 hours of legal ethics courses, hopefully, would aid respondent in his rehabilitation and enable him to examine and understand the serious ethical responsibilities he owes to his clients.

VI. RECOMMENDED DISCIPLINE

Accordingly, it is recommended that respondent **SHANNON ROBERTS BOYD** be suspended from the practice of law for two years, that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must 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 must 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 must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, 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 must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the Office of Probation, 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 must provide to the Office of Probation 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 will not receive MCLE credit for attending Ethics School. (Rule 3201, Rules Proc. of State Bar);

6. Within one year of the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of no less than 12 hours of MCLE approved courses in attorney client relations and legal ethics. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE) requirement, and respondent will not receive MCLE credit for attending the courses;

7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent from the practice of law for two years that is stayed, will be satisfied and that suspension will be terminated.

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

It is also recommended that the Supreme Court order respondent to comply with rule 955,

paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.**[22]

VII. COSTS

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

Dated: June 14, 2005

PAT McELROY
Judge of the State Bar Court

[22]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on June 14, 2005, I deposited a true copy of the following document(s):

DECISION, filed JUNE 14, 2005

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

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

SHANNON R. BOYD
24892 GOLDEN VISTA
LAGUNA NIGUEL CA 92677

JOHN R BOYD
19900 MACARTHUR BLVD
SUITE 60
IRVINE CA 92612

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

ANTHONY GARCIA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **June 14, 2005**.

Lauretta Cramer
Case Administrator
State Bar Court