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THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

<p>8 In the Matter of 9 THOMAS HALL VAN DYKE, 10 Member No. 78438, 11 <u>A Member of the State Bar.</u></p>	}	<p>Case No. 02-O-10148-JMR DECISION</p>
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I. INTRODUCTION

The court finds that respondent Thomas Hall Van Dyke failed to perform with competence by filing eight appellate briefs that failed to comply with applicable rules of appellate procedure, were incoherent and lacked proper authority. In view of respondent's misconduct, the standards and case law, as well as the aggravating and mitigating evidence, a public reproof with attached conditions is necessary to protect the public and the legal profession.

II. PROCEDURAL HISTORY

Respondent was admitted to the practice of law in the State of California on December 21, 1977, was a member of the State Bar at all times pertinent to these charges, and is currently a member of the State Bar of California.

On August 31, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a notice of disciplinary charges. After respondent's motion to dismiss was denied, respondent filed his answer on October 18, 2004.

A hearing was held on March 22, 2005. The State Bar was represented by deputy trial counsel Eric H. Hsu, and respondent represented himself. The case was submitted on April 15, 2005, following the filing of closing briefs.

1 "Trial Courts Unwarranted Conclusions Re: Road Closure." (Exhibit 11, at p. 5.) However, under
2 this point, respondent merely argued that the trial court's determination that the road closure was
3 reasonable was unwarranted based on "certain evidence," without citing to the evidence in the
4 record. Respondent's problems were exasperated by the fact that he did not include a reporter's
5 transcript in the record and therefore the appeal was treated as a judgment roll appeal in which case
6 the record is presumed to contain substantial evidence sufficient to support the judgment. (Exhibit
7 11, at p. 6.)

8 **B. Hancock Appeal**

9 The second Galt case in which respondent filed an appeal was *Hancock v. City of Galt et al.*
10 ("*Hancock*"), case number 97AS03734, Sacramento County Superior Court. Respondent
11 represented the plaintiff, Darren Hancock, in the trial court. Hancock owned an auto store on
12 Lincoln Way. In 1999, the trial court granted the summary judgment motions filed by the
13 defendants. In 1999, the plaintiff appealed.

14 Respondent filed the appellant's opening brief on December 23, 1999, and the closing brief
15 on January 31, 2000. Respondent's briefs failed to comply with applicable rules of appellate
16 procedure, lacking appropriate headings and offering unclear legal arguments that were unsupported
17 by citations to authority.

18 For example, respondent filed an opening brief in *Hancock*, with the following headings:
19 "Statement of Appealability," "Statement of Procedure," "Standard of Review," "The Court's
20 Decision," "Statement of Facts," "Road Closure," "Damages," "Civil Rights," "Evidentiary
21 Objections," "Attorney Fees and Costs for City," and "Conclusion." None of those headings are
22 descriptive of the subject matters covered and none reveals any basis for reversing the summary
23 judgment. As the appellate court had concluded, none of those headings described a cognizable
24 issue on appeal.

25 On July 20, 2000, the California Court of Appeal, Third Appellate District, affirmed the trial
26 court's decision in *Hancock*. As for respondent's briefs, the Court of Appeal stated, among other
27 things:

28

1 The lack of appropriate headings is compounded by the mystifying nature of
2 the arguments in the brief itself. Various kinds of error are asserted without either
3 identifying the procedural context of the error or citing appropriate authority in
4 support of the claimed error. Throughout the brief, there is a uniform lack of any
5 connection between the error asserted and any prejudice suffered by plaintiff, even
6 though we are legally prohibited from reversing a judgment unless the error has
7 resulted in a miscarriage of justice to the appealing party. (Cal. Const., art. VI, § 13;
8 Code Civ. Proc., § 475.)

9 Plaintiff's arguments on appeal are incoherent and unsupported by legal or
10 factual analysis. He gives wrong citations to the record for sketchy factual assertions,
11 the purported significance of which he fails to explain, he cites authority for some
12 basic legal principles, e.g., that evidence is admissible, but does not develop any legal
13 arguments or cite any authority that would support disturbing the judgments...

14 Considered as a whole, plaintiff's brief fails to identify and articulate
15 cognizable arguments why the judgment should be reversed. Plaintiff's defective
16 briefing mandates affirmance of the judgment. (Exhibit 7, at pp. 3-4.)

17 Despite finding serious defects in respondent's briefs, the court declined to sanction
18 respondent and stated "that in order 'to avoid a serious chilling effect on the assertion of litigants'
19 rights on appeal,' sanctions 'should be used most sparingly to deter only the most egregious
20 conduct.'" (Exhibit 7, at p. 5, citing *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

21 **C. Gobourne Appeal**

22 Respondent also filed an appeal in the Galt case of *Gobourne v. City of Galt et al.*
23 ("*Gobourne*"), case number 97AS04325, Sacramento County Superior Court. Respondent
24 represented the plaintiff, Lloyd Gobourne, in the trial court. In or about 1999, the trial court granted
25 the defendants' motion to dismiss for lack of prosecution. In or about 1999, the plaintiff appealed.

26 Respondent filed the appellant's opening brief on March 17, 2000, and the closing brief on
27 April 24, 2000. Respondent's briefs again failed to comply with applicable rules of appellate
28 procedure, lacking appropriate headings and offering unclear legal arguments that were unsupported
by citations to authority.

 For example, respondent continued to use headings which are not generally descriptive of
the subject matters covered in violation of the applicable rules of appellate practice. (Exhibit 6.)
In addition, although respondent suggested under his heading "The City's Joinder" that the superior
court erred in allowing an improper joinder in the case, that could not have been a valid ground for
appeal because the plaintiff had failed to object in the trial court to the form of the joinder. That

1 failure to object in a timely manner constituted a waiver of any right to raise the issue on appeal.
2 Respondent should have known that the joinder issue was procedurally barred.

3 On June 28, 2001, the California Court of Appeal, Third Appellate District, affirmed the trial
4 court's decision in *Gobourne*. As for respondent's briefs, the Court of Appeal stated, among other
5 things:

6 Plaintiff's briefs lack appropriate headings and offer unclear arguments largely
7 unsupported by legal analysis and citations to authority. The deficiencies in
8 plaintiff's briefs make it exceedingly difficult for this court to determine the exact
9 issues plaintiff seeks to raise on appeal. (Exhibit 4, at p. 10.)

9 Despite the obvious defects in respondent's briefs, the Court of Appeal attempted to address
10 any cognizable arguments asserted by the plaintiff. The court's difficulty in discerning "any
11 cognizable argument" from respondent's briefs is apparent by the way in which the court begins each
12 discussion section with "plaintiff *appears* to assert." (Exhibit 4, italics added.) However, "despite
13 plaintiff's failure to articulate a meritorious argument," the Court of Appeal denied the defendants'
14 motion for sanctions. (*Id.* at p. 17.)

15 **D. Baker Appeal**

16 The fourth Galt case respondent took up on appeal was *Baker v. City of Galt et al.* ("Baker"),
17 case number 97AS03734, Sacramento County Superior Court. Respondent represented the plaintiff,
18 Ryan Baker, in the trial court.² Baker operated the Galt Martial Arts Center on Lincoln Way. The
19 trial court granted summary judgment for the defendants. The trial court also awarded the
20 defendants \$15,666.17 in costs and attorney fees. In or about 1999, the plaintiff appealed.

21 On or about January 3, 2000, respondent filed his opening brief in *Baker*. The opening brief
22 was defective in several ways, including, but not limited to, respondent's failure to use
23 argumentative headings; respondent asserted the rule that the failure to provide just compensation
24 is tortious, but did not apply this rule to the facts in *Baker*; and respondent claimed nuisance and
25 interference with economic advantage by the defendants, but did not connect the errors asserted with

26
27 ²Chronologically, this was the third Galt case in which respondent filed an appeal.
28 However, it was the fourth decision from the Court of Appeal and the decision that ultimately
issued sanctions against respondent.

1 the harm suffered by the business owners.

2 On or about March 15, 2000, respondent filed his closing brief in *Baker*. The closing brief
3 was defective in several ways, including, but not limited to, respondent did not use argumentative
4 headings; respondent made cursory claims about collateral estoppel, nuisance, and alleged violation
5 of civil rights, but did not apply these claims clearly to the facts in *Baker*; and respondent failed to
6 raise any cognizable issue for appeal.

7 On October 10, 2001, pursuant to a request for sanctions by the defendants, the California
8 Court of Appeal, Third Appellate District, issued an order to show cause why sanctions should not
9 be imposed on respondent for bringing a frivolous appeal pursuant to Code of Civil Procedure
10 section 907 and rule 26(a) of the California Rules of Court. The order to show cause was
11 consolidated with the appeal for purposes of oral argument. Both matters were heard at the same
12 time on November 19, 2001.

13 On November 30, 2001, the Court of Appeal affirmed the trial court's decision and granted
14 the defendants' motion for sanctions. The appellate court ordered respondent personally to pay a
15 \$20,000 sanctions award (\$10,000 to defendants and \$10,000 to the court). According to the
16 appellate court, respondent's briefs were incoherent, lacked proper authority, and failed to provide
17 appropriate argumentative headings. The Court of Appeal again emphasized:

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19 [T]he lack of appropriate headings is compounded by the mystifying nature of the
20 arguments. Various kinds of error are asserted without either identifying the
21 procedural context of the error or citing appropriate authority in support of the
22 claimed error. Throughout the brief, there is a uniform lack of any connection
23 between the error asserted and any prejudice suffered by plaintiff, even though we are
24 legally prohibited from reversing a judgment unless the error has resulted in a
25 miscarriage of justice to the appealing party. (Cal. Const., art. VI, § 13; Code Civ.
26 Proc., § 475.) [¶] Considered as a whole, plaintiff's brief fails to identify and
27 articulate cognizable arguments why the judgment should be reversed. Plaintiff's
28 defective briefing mandates affirmance of the judgment. (Exhibit 1, at pp. 4-5.)

29 In issuing a \$20,000 sanction order against respondent based on findings that the appeal was
30 frivolous and brought in bad faith, the Court of Appeal stated:

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32 This appeal merits an award of sanctions based on both the objective and
33 subjective standards. As presented, the briefing in this appeal presents no cognizable
34 issue. Any reasonable attorney would agree that an appeal raising no cognizable
35 issue is frivolous. Furthermore, the frivolousness of the briefing, as noted in part I,
36 above, and the history of similar cases prosecuted by plaintiff's attorney, Thomas H.

1 Van Dyke, support the conclusion that the appeal is brought and maintained in bad
2 faith.

3 The tactics Van Dyke employs to argue in this court show disdain for rational
4 and reasoned discourse and have no place in a court of law. For example, in his reply
5 brief Van Dyke twice refers to the normal use of construction barricades as an "act
6 of war." He complains: "To commit *acts of war* by barricading, obstructing and
7 urging citizens to stay from the area in the City's newspaper is unlawful and unjust
8 when compensation is denied." (Italics added.) Later, counsel poses a question
9 which is as bizarre as it is incomprehensible, even when read in context: "Does the
10 *act of war*, barricading, blockading the business district apply?" (Italics added.)
11 Beyond acceptable rhetoric, this language is offensive to any reasonable court,
12 attorney, or litigant and stands as evidence of Van Dyke's motive to harass and
13 harangue without raising cognizable issues. Legal merit, at least in our society, is
14 established by reasoning, not by rant. (Exhibit 1, at pp. 6-7.)

15 Respondent received and reviewed the court's November 30, 2001 order by December 9,
16 2001. Respondent testified that he sought reconsideration of the court's order, which he learned was
17 denied on December 27, 2001. On January 24, 2002, respondent sent to the State Bar a letter
18 reporting the \$20,000 sanctions award in *Baker*. Respondent paid the sanctions award.

19 **Count One - Failure to Perform Legal Services with Competence**

20 Rule 3-110(A) of the Rules of Professional Conduct provides that an attorney shall not
21 intentionally, recklessly, or repeatedly fail to perform legal services with competence. For purposes
22 of the rule, "competence" means to apply the 1) diligence, 2) learning and skill, and 3) mental,
23 emotional, and physical ability reasonably necessary for the performance of such service. (Rules
24 Prof. Conduct, rule 3-110(B).) If an attorney does not have sufficient learning and skill when the
25 legal service is undertaken, the rule requires the attorney to either associate or consult with another
26 attorney reasonably believed to be competent, or to acquire sufficient learning and skill before
27 performance is required. (Rules Prof. Conduct, rule 3-110(C).)

28 It is a basic rule of appellate practice that the appellant bears the burden of presenting
arguments which identify error and demonstrate prejudice. (*Rossiter v. Benoit* (1979) 88 Cal.
App.3d 706, 712.) The appellant must present legal analysis and supporting authority for each point
asserted and must support each argument with appropriate citations to the record on appeal. (*Duarte*
v. Chino Community Hospital (1999) 72 Cal.App.4th 849, 856; Cal. Rules of Court, former rules 13

1 and 15.³) In order to meet this burden, California courts require that the headings in the briefs take
2 the form of propositions, which, if sustained, would lend substantive support to appellant's request
3 for a reversal of judgment of the lower court. (*Lady v. Worthingham* (1942) 55 Cal.App.2d 396,
4 397.) These rules are more than mere technical requirements. The rules of appellate procedure are
5 "designed to lighten the labors of the appellate tribunals by requiring the litigants to present their
6 cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule
7 of law to apply may be advised, as they read, of the exact question under consideration, instead of
8 being compelled to extricate it from the mass." (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325.)

9 Respondent testified that he read former rules 13, 15 and 18 of the California Rules of Court
10 prior to filing his first brief in *Arlin*. However, despite respondent's contention that he read these
11 rules, his briefs are evidence of a lack of understanding of the basic legal requirements for appellate
12 briefs and appropriate legal arguments for review.

13 The court also rejects respondent's contentions that his briefs were not defective and the
14 appeals were meritorious because: (1) he filed a brief on appeal in another matter, *Arlin v. Reed*,
15 which he claims was not defective and which he claims he incorporated by reference in these four
16 appeals;⁴ and (2) the Court of Appeal granted the appeal from a summary judgment against a
17 different plaintiff in another case regarding Lincoln Way, *Cook, et al. v. Reed, et al.*, - a case in
18 which respondent was not the attorney on appeal. Respondent's arguments miss the point. The issue
19 is not whether respondent has ever submitted an appropriate appellate brief or whether the plaintiffs
20 had valid arguments for appeal. Rather, the question is whether respondent competently performed
21 legal services in preparing, arguing and submitting *these eight briefs* on appeal. The answer is no.

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23 ³All reference to "former" rule is to the California Rules of Court in effect in 1999-2000.

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25 ⁴Respondent appears to argue that the appeal in *Arlin v. Reed* was not frivolous because
26 the Court of Appeal wrote a 27-page decision *denying* it (Exhibit G), and if it were frivolous,
27 they would not have spent so much time addressing the arguments. Even if the appeal was not
28 frivolous, the brief in *Arlin v. Reed* is not without defects. Nonetheless, respondent did not
properly incorporate or adopt by reference the brief (Cal. Rules of Court, former rules 13 and 14),
nor would it have been appropriate since the *Arlin v. Reed* case was not the "same or companion
case."

1 It is well settled that due to the difference in applicable standards of proof, a civil court
2 finding is not binding on the State Bar Court for purposes of discipline. (*Maltaman v. State Bar*
3 (1987) 43 Cal.3d 924, 947.) “While the civil findings bear a strong presumption of validity if
4 supported by substantial evidence, we must nonetheless assess them independently under the more
5 stringent standard of proof applicable to the disciplinary proceedings.” (*Ibid.*)

6 Respondent recklessly and repeatedly failed to perform legal services with competence by
7 filing a total of eight defective appellate briefs in *Arlin, Hancock, Gbourne* and *Baker*.
8 Respondent’s incompetence is based on several factors, including his lack of learning and skill in
9 the rules of appellate practice and his failure to raise cognizable issues on appeal. The clear and
10 convincing evidence supports the Court of Appeal’s finding that, among other things, respondent
11 “maintains a practice of submitting briefs that are incoherent, lack proper authority, fail to provide
12 appropriate headings, and fail to include proper citations to the record.” (Exhibit 1, at p. 9.) Thus,
13 there is clear and convincing evidence that respondent wilfully violated rule 3-110(A) of the Rules
14 of Professional Conduct based on his incompetent legal services before the California Court of
15 Appeal in the Galt cases.

16 **Count Two - Failure to Report Judicial Sanctions**

17 Business and Professions Code section 6068(o)(3) requires an attorney to report to the State
18 Bar, in writing, within 30 days of the time the attorney has knowledge of the imposition of any
19 judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary
20 sanctions of less than \$1,000.

21 The court of appeal’s sanctions order was filed November 30, 2001, and respondent knew
22 about the order by December 9, 2001. Respondent waited until January 24, 2002, to report the
23 sanctions to the State Bar. Respondent’s duty to report runs from the time he knows the sanctions
24 were ordered, regardless of pendency of any appeal or request for reconsideration. (*In the Matter*
25 *of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866.) Therefore, respondent’s
26 report was 16 days late. By not timely reporting the \$20,000 sanctions to the State Bar, respondent
27 wilfully violated Business and Profession Code section 6068(o)(3).

28 ///

1 **VI. MITIGATION AND AGGRAVATION**

2 **A. Mitigation**

3 Respondent was admitted to the practice of law in California in 1977 and has no prior record
4 of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std.
5 1.2(e)(v).)⁵ This lengthy period of discipline-free practice is entitled to significant mitigating weight.

6 No other mitigation was shown by clear and convincing evidence.

7 **B. Aggravation**

8 Respondent filed at least eight defective briefs in the Galt cases. However, the court does
9 not find the mere number of briefs to be an aggravating factor of "multiple acts of misconduct"
10 because the court relies on the fact that numerous briefs were filed in order to find that respondent
11 violated rule 3-110 of the Rules of Professional Conduct as a result of "repeated" failure to perform.
12 (Standard 1.2(b)(ii).)

13 In filing his appellate briefs, respondent acted in bad faith. (Standard 1.2(b)(iii).) Bad faith
14 is established if: (1) no plausible ground for the motion or the appeal existed, or (2) Respondent did
15 not believe he had plausible grounds for the actions, even if such grounds arguably existed.
16 (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951.) Respondent filed an appeal without any
17 cognizable issues. As the court of appeal stated: "Any reasonable attorney would agree that an
18 appeal raising no cognizable issue is frivolous. Furthermore, the frivolousness of the briefing,
19 and the history of similar cases prosecuted by plaintiff's attorney, Thomas H. Van Dyke, support the
20 conclusion that the appeal is brought and maintained in bad faith." (Exhibit 1, at pp. 6-7.) The clear
21 and convincing evidence supports this finding of bad faith.

22 Respondent harmed his clients by his incompetence, and the administration of justice and the
23 public by wasting judicial resources. (Standard 1.2(b)(iv).)

24 The State Bar argues that in aggravation the court should find that respondent made a
25 misrepresentation in a letter dated August 9, 2002 to the State Bar, when he asserted he was working
26 pro bono in the Galt cases even though he actually worked on a contingency fee basis. (Standard
27

28 ⁵All further references to standards are to this source.

1 1.2(b)(vi.) In addition to respondent's letter that was offered into evidence by the State Bar (Exhibit
2 15), respondent testified several times during the State Bar's direct examination of respondent that
3 he was working "pro bono." By pro bono, respondent testified that he meant his clients "weren't
4 paying and couldn't afford to pay" him; in other words, respondent had received no money for his
5 work. However, respondent acknowledged that if his clients recovered anything in the cases, he
6 would have been paid based on his contingency fee agreements.

7 While respondent's statement that he was working pro bono was incorrect, the court finds
8 that the statement represents neither an intentional misrepresentation nor a lack of candor.
9 Respondent, like many attorneys, incorrectly called or considered his work "pro bono" because he
10 was not getting paid. However, as respondent readily admitted that he was working on a contingency
11 fee basis, the court does not find respondent's misuse of the term to be clear and convincing evidence
12 of lack of candor.⁶

13 V. DISCUSSION

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

18 Respondent's misconduct involved incompetent performance of services and failure to report
19 to the State Bar within 30 days from the time he knew the court sanctions were ordered. The
20 standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon
21 the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.4, and 2.6.)

22 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
23 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach
24 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at

25
26 ⁶Furthermore, the court does not consider the State Bar's allegation of a
27 "misrepresentation" (i.e., additional misconduct) to be an appropriate factor in aggravation
28 because this evidence was *not* elicited at trial by respondent's own testimony for the relevant
purpose of inquiring into the cause of the charged misconduct. (*Edwards v. State Bar* (1990) 52
Cal.3d 28, 36.)

1 p. 251.) As in this case, where the standards provide for a broad range of discipline, the court will
2 look to applicable case law for guidance.

3 The State Bar recommends a one-year stayed suspension and two years probation, citing *In*
4 *the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, *Sorensen v. State*
5 *Bar* (1991) 52 Cal.3d 1036 and *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct.
6 Rptr. 179 in support of its recommended discipline.⁷

7 Respondent continues to dispute any wrongdoing.

8 The court looks to the following cases for guidance in determining the level of discipline.

9 In *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. 862, an attorney was
10 privately reprovved with conditions for failing to report to the State Bar and to pay the court-ordered
11 sanctions of \$1,000. In mitigation, he had no prior record of discipline. Similarly, respondent was
12 late in reporting the \$20,000 court sanctions to the State Bar, albeit by 16 days.

13 In *Sorensen v. State Bar, supra*, 52 Cal.3d 1036, the Supreme Court actually suspended an
14 attorney for 30 days, with a one-year stayed suspension and a two-year probation, for serving a
15 complaint for fraud and deceit (\$14,000) against a court reporter following her small claims
16 judgment (\$123) against him for nonpayment of a deposition transcript. The court found that he was
17 motivated by spite and vindictiveness and that he had abused and misused the process of the court
18 in bringing an unmeritorious action in violation of sections 6068, subdivisions (c) and (g).
19 Respondent's action was not as offensive as that of *Sorensen*.

20 In *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, the attorney
21 who had practiced law for about 23 years was publicly reprovved for his one client abandonment. The
22 Review Department discounted his prior record of discipline since the misconduct occurred some
23 17 years before his current misconduct and it was minimal in nature. The attorney did not default
24 in the matter. Similarly, respondent had been in practice for 22 years at the time of his misconduct
25 in 2000.

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28 ⁷The State Bar filed a 39-page closing brief. The brief is excessive in light of the nature
and scope of the misconduct. (State Bar Ct. Rules of Prac., rule 1110(g).)

1 In *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175, the
2 attorney was privately reproved with conditions for failing to perform services competently in a
3 probate case, which resulted in the client suffering three years accumulated interest and penalties on
4 unpaid inheritance taxes. Here, respondent's failure to perform services competently caused
5 significant harm to not only the clients but also to the court of appeal.

6 The gravamen of respondent's misconduct is his incompetence in appellate practice, which
7 compromised his ethical obligations to clients, the courts and the legal system. Given that
8 respondent had been in practice for 22 years at the time of his misconduct, the court would expect
9 more from him. His "lengthy practice and professional achievements did not aid respondent in
10 avoiding basic violations of the Rules of Professional Conduct." (*In the Matter of Fonte* (Review
11 Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 765 [25 years of practice without prior discipline].)
12 However, the court takes into consideration respondent's limited appellate experience; all eight
13 briefs were filed within four months; respondent's desire to help his clients; and the fact that the last
14 brief was filed before the first court of appeal decision, thereby precluding respondent from learning
15 from his mistakes.

16 Nevertheless, respondent's misconduct caused the opposing party and the court to expend
17 resources on his frivolous appeals. "While an attorney is expected to be a forceful advocate for a
18 client's legitimate causes [citations] ... the role played by attorneys in the honest administration of
19 justice is more critical than ever ... Attorneys, by adherence to their high fiduciary duties and the
20 truth, can sharply reduce or eliminate clashes and ease the way to dispute settlement." (*In the Matter*
21 *of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473.) Instead, respondent's frivolous
22 appeals burdened the court, opposing party and counsel, causing substantial harm to the
23 administration of justice and the public.

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

28 Moreover, respondent's continuous failure to comprehend his obligation to maintain only just

1 actions, no matter how righteous he believed he was, and his duty to competently represent his
2 clients, warrant the highest level of public protection. Instead of contrition, respondent went to great
3 length excusing his misconduct and at times, presented incomprehensible arguments in his closing
4 brief before this court.

5 Therefore, in view of respondent's misconduct, the case law and the aggravating and
6 mitigating evidence, a public reproof with attached conditions is necessary to protect the public and
7 the legal profession. In light of his deficient understanding of his duties and obligations as an
8 attorney, requiring respondent to attend 16 hours of courses in legal ethics, legal writing, and civil
9 litigation and appellate practice, hopefully, will aid respondent in his rehabilitation.

10 VI. DISPOSITION

11 Accordingly, the court orders that respondent **THOMAS HALL VAN DYKE** be and is
12 hereby publicly reproofed with the following attached conditions:

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

22 2. Within one year of the effective date of this reproof, respondent must submit to the Office
23 of Probation satisfactory evidence of completion of no less than 16 hours of MCLE approved
24 courses in legal ethics, legal writing, and civil litigation and appellate practice. This
25 requirement is separate from any Minimum Continuing Legal Education Requirement
26 (MCLE) requirement, and respondent will not receive MCLE credit for attending the courses.

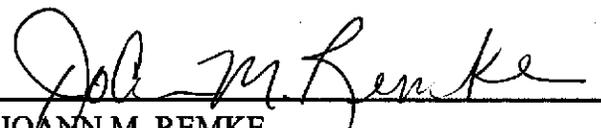
27 It is further recommended that respondent take and pass the Multistate Professional
28 Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners,

1 MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287)
2 and provide proof of passage to the Office of Probation, within one year of the effective date of the
3 discipline herein. Failure to pass the MPRE within the specified time results in actual suspension
4 by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule
5 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

6 **VII. COSTS**

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

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14 Dated: July 14, 2005


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JOANN M. REMKE
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 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 July 14, 2005, 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:

THOMAS HALL VANDYKE
LAW OFC THOMAS H VAN DYKE
333 N SAN JOAQUIN ST
STOCKTON CA 95202

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

ERIC HSU, Enforcement, Los Angeles

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



Bernadette C. O. Molina
Case Administrator
State Bar Court