PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **JOHN R. FUCHS,** **Member No. 82032,** A Member of the State Bar.	**Case No. 02-O-15454-JMR** **DECISION**

I. INTRODUCTION

Respondent John R. Fuchs is charged in one client matter with two counts of ethical misconduct, including failing to promptly notify client of receipt of funds and representing clients with adverse interests without obtaining their informed written consent. After considering the evidence and the law, the court finds by clear and convincing evidence that respondent is culpable of both counts. In addition, there are serious aggravating factors, including respondent's bad faith and dishonesty, and his prior record of discipline. The court recommends that respondent be suspended for two years, execution stayed, and that he be placed on three years probation with conditions including an actual suspension for six months.

II. SIGNIFICANT PROCEDURAL HISTORY

On September 17, 2004, the Office of the Chief Trial Counsel of the State Bar (State Bar) filed a five-count notice of disciplinary charges, involving one client matter. Respondent filed his response on October 28, 2004, denying each of the allegations and counts.

The parties filed a Stipulation as to Facts and Admission of Documents on April 11, 2005. The stipulation as to facts is hereby approved and the stipulated facts are incorporated in the decision.

A four-day trial was held on August 10-12, and August 30, 2005. Deputy Trial Counsel Eli Morgenstern represented the State Bar. Attorney Diane Karpman represented respondent. Prior to the start of trial, the State Bar moved to dismiss with prejudice counts one, two and five of the notice of disciplinary charges. The motion was granted and those counts were dismissed. Subsequently, during trial, the State Bar agreed to dismiss most of the allegations in the notice of disciplinary charges that supported the dismissed counts. Accordingly, the focus of the trial was on count three (Rules of Professional Conduct, rule 4-100(B)(1))[1] and count four (rule 3-310(C)(2)). Following the filing of closing briefs, the matter stood submitted for decision as of October 4, 2005.

III. MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE

On August 30, 2005, the fourth day of trial, respondent filed two motions: 1) motion to dismiss count four pursuant to rule 262 of the Rules of Procedure of the State Bar of California (Rules of Procedure); and 2) request for judicial notice. The State Bar filed its opposition to the request for judicial notice on September 8, 2005; and addressed its opposition to the motion to dismiss in its closing brief filed on September 15, 2005.

Finding no good cause, respondent's motion to dismiss is denied.

As for respondent's request for judicial notice of exhibit BBBBBB (Opinion of Court of Appeal in *Castre, et al. v. Gilfillan*, filed February 20, 2004), the court grants the request and takes judicial notice of the exhibit.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following facts are based the parties' stipulation as to facts and admission of documents filed on April 11, 2005, and the testimonial and documentary evidence admitted at trial. The court finds respondent not to be a credible witness based on, among other things, his demeanor at trial. The court finds respondent's position on various points, including that Lesley Levinson was not his client, to be implausible. Respondent's testimony on several key issues was inconsistent and contradicted by his own documents. Furthermore, as set forth below in greater detail, respondent's own letters show his aggressive, overreaching and unethical behavior. Conversely, the court found

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[1]All further references to "rule(s)" are to the Rules of Professional Conduct.

Lesley Levinson to be a credible witness, giving her best recollection of events.

A. The Bush Action

On June 30, 1990, Burt Price (Price) and Lesley Levinson (Levinson) were married.

During the marriage of Price and Levinson, Price acquired a mortgage lending company called Classic Financial Corporation (Classic Financial).

In or about 1991, respondent represented Classic Financial, Price and Levinson in a civil matter entitled *Classic Financial Corporation v. Encino Savings Bank, James D. Bush, et. al,* Los Angeles County Superior Court, case No. BC 046003 (the Bush action). On October 1, 1993, a jury awarded damages to Classic, Levinson and Price in the Bush action. However, James Bush, one of the defendants, filed bankruptcy and efforts to collect the judgment against him were delayed.

In or about 1993, Price employed respondent to collect the judgment in the Bush action on behalf of him and Levinson. While respondent dealt entirely with Price, respondent was acting to collect the money for both Price and Levinson.

On August 5, 1995, Price and Levinson separated.

In his efforts to collect, respondent filed a motion on behalf of Price and Levinson in Bush's bankruptcy proceeding, seeking a determination that the judgment from the Bush Action was nondischargeable. On October 10, 1997, the court granted, in part, respondent's motion and determined that $98,723.13 was nondischargeable (Bush judgment).

On October 23, 1997, judgment was entered in Levinson and Price's dissolution proceedings, including a property settlement between the parties that was approved by the court. Pursuant to the property settlement, Price and Levinson were to equally divide any amount recovered from the Bush judgment, after payment of the fees, expenses and costs paid to recover. The superior court retained general jurisdiction to resolve all disputes arising from judgment.

B. The Castre Matter[2]

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[2]While many of the allegations regarding the Castre matter were dismissed by the State Bar, the evidence supporting the allegations was admitted into evidence without objection. The court finds the facts and circumstances surrounding the Castre matter to be relevant because they illustrate respondent's aggressive, underhanded tactics in his dealings with Levinson. The Castre matter also illustrates the ongoing conflict between Price and Levinson, and respondent's awareness of this conflict. There also

On July 9, 1999, a Stipulation and Order (Dissolution Stipulation) was entered in Levinson and Price's dissolution matter to resolve issues raised by Levinson in several orders to show cause. Pursuant to the terms of the Dissolution Stipulation, Levinson agreed to "sign over to a third party designated by [Price] all interest in the preferred and/or common stock that she retains in Classic Financial Corporation." (Exhibit 1, at p. 2:12-14.) The Dissolution Stipulation did not require Levinson to initiate any legal action to redeem the stock.

On September 22, 1999, Price wrote respondent informing him that Levinson had agreed to allow respondent to represent her in the issuance of a demand letter to Classic Financial regarding the redemption of 500 shares of preferred stock. Price stated that respondent could contact Levinson directly to confirm the agreement, but respondent never did. In his letter, Price also instructed respondent to send Levinson a retainer agreement and told respondent that the retainer agreement should be $500 and increased later if litigation became necessary. In his letter, Price also instructed respondent to give Classic Financial 10 days to redeem the shares or litigation would be initiated. Price stated that Levinson would be assigning her interest of any collected money to an account she would designate later.

On September 27, 1999, respondent sent Levinson a fee agreement to sign and return. The fee agreement required an initial $500 advance for costs and expenses. The fee agreement also provided that respondent would represent Levinson "in connection with her demand for mandatory redemption of her preferred shares in Classic Financial Corporation, and any arbitration or litigation that arises from such demand." (Exhibit M, at p. 1.)

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are several references during the Castre matter to respondent's ongoing efforts to collect the Bush judgment on behalf of Price and Levinson. Finally, the facts show that although Levinson signed a fee agreement with respondent, she did not authorize or understand that respondent was going to file a lawsuit on her behalf in the Castre matter. This is, in part, because respondent never talked with Levinson about the Castre matter *at anytime* prior to filing the lawsuit. There is a difference between signing a fee agreement that states a lawsuit may be pursued and filing a lawsuit. Respondent was taking all direction on the lawsuit in the Castre matter from Price; a fact that Price subsequently denies under penalty of perjury in a declaration prepared by respondent, which further calls into question both Price's and respondent's credibility. (Exhibit JJJJJ.) Based on all the evidence, including the demeanor of the witnesses at trial, the court rejects respondent's argument that Levinson lacks credibility because she allegedly "lied" in the Castre matter.

Around October 12, 1999, Levinson sent respondent a check for $500. On November 3, 1999, Levinson signed the fee agreement sent by respondent. Levinson agreed to sign the fee agreement because she and Price had entered into an indemnity agreement on November 2, 1999, wherein Price agreed to hold her harmless from any and all attorney fees, costs and expenses that may be incurred in collecting or redeeming the Classic Financial stock. Consistent with this agreement, the $500 Levinson used to pay the retainer was from a joint account she had with Price and the $500 was Price's share of money from that account.

On November 18, 1999, respondent filed a complaint against Classic Financial and its individual new owners entitled *Lesley Levinson v. Michael Grant Castre (Castre), Gale Mitchell Castro (Castro) et al.*, Orange County Superior Court, case No. 817276 (the Castre matter). At no time prior to filing the lawsuit had respondent talked with Levinson regarding the Castre matter or the filing of a lawsuit. Respondent did not discuss the allegations in the lawsuit with Levinson or receive her authorization to file the lawsuit.

On December 30, 1999, Levinson wrote respondent saying that she had reviewed the complaint and directed him to stop the Castre matter litigation immediately. Levinson stated:

> "I feel that I am being used and manipulated by Burt through his direction to your firm to engage in a lawsuit against Classic Financial Corporation. I did not agree to my personal involvement in the filing of a lawsuit, since this was not explained to me by you or Burt – I only agreed to sign over to a third party all interest in the preferred and/or common stock I retain in Classic, although I am not sure what, if any, interest in Classic remains." (Exhibit 2.)

Levinson instructed respondent to provide documentation showing that he had withdrawn the lawsuit. Respondent did not respond to the December 30, 1999 letter and failed to withdraw the complaint in the Castre matter.

On January 20, 2000, Levinson wrote to respondent again demanding that he provide proof within 72 hours that he had withdrawn the complaint in the Castre matter.

On February 8, 2000, respondent wrote to Levinson instructing her to think carefully before withdrawing the lawsuit in the Castre matter. Respondent told Levinson that she could be liable for costs if she withdrew it and may be liable for malicious prosecution. Respondent also stated, "As you know, we have discussed this situation with Burt, and we believe you would be improperly

giving up a substantial right that he may have, to collect this money. We certainly hope you are not instructing us to withdraw the action, out of anger or retribution against Burt, because that is not a proper motive." (Exhibit U.)

On February 10, 2000, Levinson sent a third letter to respondent demanding that he withdraw the complaint. Levinson again reiterated that she only agreed to sign over all interest in the Classic Financial stock, and that she did not agree to be personally involved in a lawsuit. As for the lawsuit, Levinson stated:

> "I was under duress at the time of my signing your agreement and the retainer I sent to you was Burt's money from a previously held joint account, all of which you know. You are representing Burt in this action - your conversations have been with him, I have never spoken to you regarding this. He has agreed to pay your bills as this action is solely for his financial benefit, per his letter to me. My actions were based on this letter and agreement from Burt." (Exhibit 4.)

On March 31, 2000, Levinson wrote respondent regarding his failure to withdraw the complaint in the Castre matter and again demanded that the complaint be withdrawn.

On March 31, 2000, respondent wrote Levinson a letter regarding her demand that respondent withdraw the complaint. Respondent told Levinson that he understood the funds being sought in the Castre matter were for Price's son, Daniel. Respondent wrote:

> "As you know, Burt has provided assistance in this matter by providing documents and explaining the situation to me. While we cannot provide legal advice to you in your dealings with your ex-husband and his son, *because we have an obvious conflict*, we suggest to you that you should determine if the withdrawal or dismissal of your lawsuit will expose you to legal liability from Burt and/or Daniel, for refusing to follow through on an agreement to recover these monies.
>
> We would think that you would want to avoid further litigation, and in that regard, we have been making efforts since your first letter to seek a method for extricating you as a Plaintiff from this lawsuit, while preserving the ability to collect this money. After reviewing the documents, it is our belief that you can either assign the preferred shares or assign the right to redeem the monies owed for the redemption of these shares. We think this is the appropriate way to go and that Daniel would be the appropriate assignee. . .
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> . . . Please advise me if the foregoing is acceptable, otherwise, if we are required to simply dismiss this case, we cannot predict, nor can we advise, that such conduct will be without consequences. Among other potential consequences, the Defendants may very well sue you for malicious prosecution, and they could conceivably name me and my firm as well. Please consider the foregoing very carefully and consider that this proposal represents, in our view, the best way to continue with the claim for money without your direct involvement." (Exhibit Y, at pp. 2-3; emphasis added.)

In response to another demand by Levinson to dismiss the complaint in the Castre matter, respondent wrote to Levinson on April 10, 2000. Respondent stated that he recognized his obligation to comply with Levinson's instructions to dismiss the complaint, but stated that he would not do so until Levinson communicated the "real reasons" for her decision. In the letter, respondent stated that he suspected that Levinson wanted to withdraw the lawsuit because either the defendants in the lawsuit had threatened her, or she now wished to deny Price or Daniel the benefit of the lawsuit that she agreed to pursue for them. Respondent warned Levinson that dismissal of the lawsuit could expose her to having to pay the defendant's costs; a malicious prosecution action by Castre and Castro, including a possible cross-action for indemnity by respondent's law firm if it were named; and to liability to Price for her failure to pursue the matter. Respondent concluded by stating: "Please understand that our ethical responsibilities to you require us to follow your instructions except when your instructions may result in more damage than not following the instructions." (Exhibit Z, at p. 3; emphasis in the original.)

On May 5, 2000, respondent again wrote to Levinson, stating that he still had not heard from her on whether she wanted him to pursue the Castre matter or prepare papers to assign her rights to Daniel. Respondent also stated that Levinson owed him in excess of $2,500 for attorney fees due on the Castre matter.

In his May 5th letter, respondent also addressed his ongoing efforts to collect on the Bush action. Respondent stated that he and Price wanted to pursue execution of the judgment by directing the sheriff to sell Bush's house. Respondent told Levinson that her share of the expenses would be about $750 and that she should pay it as soon as possible. Although respondent was representing both Levinson and Price in the collection of the Bush action, respondent also conveyed the following offer on behalf of Price to Levinson:

> "If you are not interested in paying your share of the expenses to pursue this judgment, Burt has indicated that he will pay all of the expenses in return for an assignment of your right to receive half of any proceeds recovered from Bush." (Exhibit 8.)

On May 12, 2000, attorney Michael L. Michel wrote respondent on behalf of Levinson, demanding that respondent dismiss the Castre matter.

On June 20, 2000, respondent responded to Michel's letter. Although respondent contends that he is representing Levinson and "her right" to recover an amount in excess of $70,000, respondent continues to suggest that Levinson assign her rights to Daniel Price, "or to some other person who is willing to prosecute this matter on her behalf." (Exhibit CC, at p. 2.) Rather than dismiss the complaint, respondent offers to waive his outstanding attorney fees bill if Levinson assigns her rights to someone else:

> "If she is willing to do so, we will release her from any obligation to pay future fees, and we will agree to look to the recovery or to the assignee for the present balance, such that if there is a sufficient recovery to pay our fees or the assignee agrees to pay them, Ms. Levinson will not be liable for the existing amounts due. We would look to her for the $4,289.34 presently owed only in the event that there is no recovery or no payment by the assignee." (Exhibit CC, at p. 2.)

In his June 20th letter, respondent again warned about a possible legal action brought by Price against Levinson regarding the Classic Financial stock if Levinson dismisses the Castre matter. Respondent states:

> "Obviously, we cannot make any such demand on behalf of Mr. Price, nor can we represent him in any such lawsuit. However, we understand that he is prepared to seek recovery of the $70,000 or so owed on these preferred shares if Ms. Levinson has somehow disposed of or denigrated her rights in that stock, and we feel that you and she should be reminded of those provisions and of the potential threat before you demand that the lawsuit be dismissed, so that she does not expose herself to another lawsuit while attempting to rid herself of this one." (Exhibit CC, at p. 2.)

Thus, respondent asks that Michel "immediately advise us of any action Ms. Levinson may have taken with respect to the preferred shares that may have compromised our efforts to recover the amounts due to her." (Exhibit CC, at p. 2.)

Levinson ultimately agreed to assign her rights to the Classic Financial stock to Daniel Price. On August 9, 2000, the court issued an order allowing Daniel Price to substitute in as plaintiff in the Castre matter.

On August 11, 2000, respondent wrote to Michael Michel, thanking him for his cooperation in obtaining Levinson's assignment to Daniel. Respondent also stated that he may need a declaration from Levinson to support a summary judgment motion in the Castre matter. Respondent also stated Levinson still owed his firm over $4,000 in attorney fees from the Castre matter that she need to pay. Finally, respondent stated that he was still waiting for Levinson's share of the expenses, $750, to

proceed with the execution of the Bush judgment.

On August 14, 2000, Michel replied to respondent's letter, stating that Price was solely responsible for the legal fees in the Castre matter and that respondent should seek recovery from Price.

Pursuant to respondent's request, on October 4, 2000, Levinson signed a declaration to support Daniel Price's summary judgment in the Castre matter.

On or about June 18, 2001, the court in the Castre matter granted the defendants Castre and Castro's motion for summary judgment in the Castre matter, and ordered that the defendants recover their costs of suit from the plaintiff.[3]

C. Collection on the Bush Judgment

On March 7, 2001, respondent wrote to Levinson regarding his efforts to collect on the Bush judgment. Respondent stated that he had been representing Levinson and Price for the past nine years in an effort to collect on the judgment. Respondent stated that although the judgment exceeded $120,000, that amount was subject to respondent's 40% contingency fee[4] and Price's reimbursement for any costs he paid over the years. Respondent also stated that Price wanted to buy out Levinson's share of the settlement and that Price had authorized respondent to make Levinson an offer.

In particular, respondent stated that Price was willing to pay Levinson $5,000 and assume responsibility for the legal fees that respondent claimed Levinson owed respondent for the Castre matter. Respondent stated that he had not reviewed his bills to determine the exact amount of attorney fees Levinson owed prior to her assignment of rights to Daniel, but respondent thought the amount due was "in excess of $20,000."[5] (Exhibit 9.) Thus, respondent represented that Price was

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[3]Respondent and Price testified that the summary judgment motion was granted based on a declaration Levinson provided to defendants Castre and Castro that contained misrepresentations. Accordingly, prior to June 18, 2001, respondent was aware of a conflict of interests between Price and Levinson.

[4]This was incorrect. Respondent's contingency fee was only one-third.

[5]As set forth above, on August 11, 2000, after Levinson assigned her rights to Daniel, respondent wrote a letter to Michel asking when Levinson would be paying respondent's bill for attorney fees in the Castre matter, which bill "exceeds $4,000." (Exhibit HH.)

offering in excess of $25,000. Respondent stated that this amount was "nearly as much as [Levinson] would be paid on the judgment, if it were satisfied in full by Mr. Bush now." (Exhibit 9.) As for Price's offer, respondent went on to state:

> "On the other hand, if Mr. Bush agrees to pay a discounted amount, or if it takes months or years to recover on that judgment, which is possible, the effective amount you might receive in the future may actually be less than what Burt Price is now offering you.
>
> Please understand that because I have represented you both in the Bush case for the past nine years or so, I have a conflict and therefore cannot make a recommendation one way or the other to you regarding this matter. I therefore suggest that if you wish to obtain legal advice regarding this offer, you should consult another lawyer. If you have any questions, you are certainly free to call Burt and discuss it with him. However, as an observer of your and Burt's relationship over the years, it appears that you two are not exactly on the best of terms at this point, and perhaps it would be better for both of you if some resolution of this matter is reached, so that both of you can move on and will no longer have to communicate with each other in the future." (Exhibit 9.)[6]

On April 12, 2001, respondent wrote Levinson again and said that since he had not heard from her in response to Price's offer, Price had withdrawn the offer. Respondent further stated that Levinson owed his firm $6,495.01 for attorney fees in the Castre matter. Respondent stated that if there was any recovery on the Bush judgment, of which Levinson was entitled to one-third, respondent would deduct his bill in the Castre matter from that recovery. Respondent stated that if Levinson disagreed with respondent's right to recover on his bill, she should advise him of her objection immediately.

On April 17, 2001, Levinson wrote to respondent, objecting to respondent's claim to recover attorney fees from the Castre matter out of any recovery from the Bush judgment. Levinson reiterated her position that she did not owe respondent any attorney fees from the Castre matter and that Price had agreed to pay all the fees in that proceeding.

Between March 30, 2001, and June 13, 2001, respondent wrote at least four letters on behalf of Price and Levinson, seeking to recover on the Bush judgment based on proceeds from the sale of

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[6]It appears that at the time respondent wrote this letter to Levinson, respondent and Price may have been aware of the pending sale of Bush's home and the likelihood of recovering at least $120,000 on the Bush judgment. (See, Exhibits 12, 13 and 27.) However, the State Bar did not sufficiently pursue this issue at trial.

Bush's home. On behalf of Price and Levinson, respondent made three demands for payment and at least one settlement offer to recover on the Bush judgment.

On June 15, 2001, respondent received $126,000 from the escrow of the sale of Bush's home, and respondent deposited the funds into his client trust account.

On or about June 18, 2001, respondent disbursed to Price his undisputed portion of the funds received in the Bush action, which was $42,000. On or about June 25, 2001, respondent disbursed to himself his undisputed portion of the funds, which was $42,000.

At trial in this proceeding, respondent produced a letter purportedly prepared by Price to respondent dated June 18, 2001. The letter states that Price was "filing a claim against any and all funds held" by respondent for Levinson. (Exhibit KKK.) Price stated that his "claim" was based on fraud charges he intended to file against Levinson for misrepresentations she allegedly made in her declarations filed in the Castre matter. Price had not yet filed any such lawsuit. Price asked respondent to contact him if respondent was "UNABLE to freeze and/or hold these funds until my action is started." (Exhibit KKK; emphasis in original.)

D. Respondent Refusal to Pay Levinson Her Share of the Judgment

On October 8, 2001, respondent wrote Levinson to notify her that his firm had collected $126,000 on the Bush judgment. This was the first time that Levinson learned of the funds. Respondent told Levinson that her portion was $42,000. However, respondent stated that he would not be disbursing the $42,000 to Levinson because Price intended to file an action against Levinson. At the time of respondent's letter, Price still did not have a valid lien or a pending action against Levinson.

In addition to Price's "claim," respondent also stated that his firm had a lien and claim against the money respondent was holding in trust for Levinson based on: 1) the attorney fees respondent claimed Levinson owed him for the Castre matter; and 2) respondent's belief that Levinson committed fraud and perjury in her declaration that was filed in support of the defendants' summary judgment motion in the Castre matter, wherein she allegedly claimed she did not retain respondent's firm and never authorized the lawsuit. (Exhibit 15.)

Levinson hired attorney Annee Della Donna to try and recover Levinson's share of the Bush

judgment from respondent. On November 2, 2001, Della Donna wrote respondent regarding the $42,000 he was holding in trust. Della Donna stated that Price did not have a valid lien based on his allegations of fraud in an unrelated matter. As for respondent's fee dispute and allegations of fraud, Della Donna stated that those claims should be resolved in fee arbitration and that respondent was required to immediately disburse the funds not in dispute.

In February 2002, based on respondent's contentions that Levinson owed him $6,495.01 in attorney fees stemming from the Castre matter, Levinson filed for fee arbitration with the Beverly Hills Bar Association.

On May 29, 2002, respondent wrote Levinson's attorney, Della Donna, regarding Price's intention to file an action against Levinson based on his allegation that he was defrauded in the marital dissolution action in regards to the Classic Financial stock.[7] Respondent stated that because of his knowledge of the facts regarding the Classic Financial stock, Price asked respondent to represent Price in his action against Levinson. In his letter, respondent asked that Levinson waive the conflict of interest so that respondent could represent Price. As for respondent's request that Levinson waive the conflict, respondent states:

> "We suggest that you should approach this issue with care, because an assertion that we cannot represent Mr. Price because we previously represented Ms. Levinson in a related matter, will not only require you to disclose the confidential information you allege that we received, but it will be an admission that we are in fact owed $6,495.01 by Ms. Levinson for our services. If you contend to the contrary, in order to avoid liability for the fees and costs due to us, you may actually be exposing her to liability to Mr. Price for $50,000 or more, because there is little question, based upon Ms. Levinson's deposition and second declaration [in the Castre matter], that she defrauded her ex-husband by agreeing to transfer stock that she later claimed she never owned." (Exhibit 17, at p. 2.)

Respondent concluded by suggesting that to resolve all outstanding issues, Levinson "simply waive her claim to any portion of the $42,000, thereby allowing us to cancel the mediation, cancel

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[7]Respondent described Price's claim as follows: "Burt Price, who is a client of this firm, has asserted a claim against the same $42,000, alleging that he was defrauded by Ms. Levinson in their Martial Settlement Agreement, as a result of paying her $50,000 in return for her agreement to transfer the Preferred Stock in Classic Financial Corporation, to Mr. Price's son, Daniel Price, which Preferred Stock was at issue in the *Levinson v. Castre et al.* lawsuit in which we provided the services that led to our claim for legal fees and costs against Ms. Levinson." (Exhibit 17, at p. 1.)

all efforts to have the Marital Settlement Agreement set aside, and enter into mutual reciprocal releases among all of the parties, so that each of us can put these matters behind us." (Exhibit 17, at p. 2.) Levinson never agreed to waive any conflict.

On July 12, 2002, respondent wrote Della Donna regarding Levinson's funds. Respondent told Della Donna that no funds would be disbursed to Levinson until Price's marital settlement issues were resolved. Respondent stated that the amount of any fee arbitration award would remain in his trust account if Levinson refused to let him collect from the Bush judgment, and that the balance would be interpleaded into the Orange County Superior Court.

On July 27, 2002, the Beverly Hills Bar Association awarded respondent $3,075.72 in attorney's fees, which respondent disbursed to himself from Levinson's funds that he was holding in trust. However, respondent continued to refuse to distribute the remaining funds to Levinson.

Between July and August of 2002, respondent and Della Donna exchanged several letters in an attempt to resolve the outstanding issues, all without success.[8]

On August 13, 2002, respondent attempted to file a "notice of interpleader of funds subject to conflicting claims by petitioner and respondent," regarding the remaining $38,924.28. Price was named as the petitioner and Levinson as the respondent. Respondent was contending that he did not know who to disburse the funds to because Price had a claim on the funds. On August 26, 2002, the court returned the check and stated that respondent would need a signed court order to deposit the interpleader funds.

On August 29, 2002, in response to a settlement offer made by Levinson, respondent wrote to Levinson directly and rejected the offer. In addition, respondent stated that he learned that Castre and Castro had sued his associate, him and his law firm for malicious prosecution in the Castre matter. Respondent stated that he would have to file a cross-complaint against Levinson, and that her attorney fees to defend it and the motion to vacate her Dissolution Stipulation with Price "could

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[8]On July 16, 2002, in response to an offer by Levinson, respondent wrote: "It has been communicated to Mr. Price, and the answer is 'NO!' Frankly, that is what I wanted to hear from Mr. Price, and it makes me happy, because I am anxious to pursue your client on Mr. Price's behalf and on my personal behalf for my law firm." (Exhibit RRRR.)

easily approach $150,000, before considering the fact that you will be liable to us and to Mr. Price for damages and will likely have to pay a portion of our attorneys fees." (Exhibit 20, at p. 1; emphasis in original.) As for the funds remaining in his trust account, respondent told Levinson that he would interplead the money unless Levinson agreed to accept $10,000 as full settlement of any claims she may have against Price, respondent and his firm "for holding the money in my Trust Account pending resolution of the fee dispute." (Exhibit 20, at p. 2.) Respondent told Levinson that if she refused the offer, he doubted she would ever see any of the money.

On September 25, 2002, respondent filed a Complaint in Interpleader, contending that he did not know who to disburse the remaining $38,924.28 to because Price made a claim on the funds. Other than for costs and fees associated with the interpleader proceeding, respondent claimed he had no interest in the funds. (Exhibit HHHHH, at p. 2:22.) The complaint was filed more than 15 months after respondent obtained the funds.

On October 25, 2002, respondent filed a Motion to Vacate and Set Aside the Dissolution Stipulation entered into on July 9, 1999 in the Levinson and Price dissolution. Respondent filed the motion on behalf of Price and against Levinson. The motion was based on, among other things, allegations that Levinson committed fraud in the Castre matter by conspiring with the defendants. In support of the motion, respondent filed his declaration, wherein he asserts allegations of what Levinson did and did not tell him during his representation of her. (Exhibit 21, at pp. 6-7.)

On December 6, 2002, the court denied the Motion to Vacate the July 9, 1999 Dissolution Stipulation.

On December 9, 2002, Della Donna filed a motion to dismiss the Complaint in Interpleader on the grounds that Price had no legitimate claim or lien on Levinson's share of the funds. On January 2, 2003, respondent filed on behalf of Price an Opposition to the Motion to Dismiss the Complaint in Interpleader.

On April 21, 2003, in response to Della Donna's assertion that respondent's representation of Price on the motion to dismiss the interpleader was a conflict, respondent stated that there was no conflict because: (1) respondent already represented Price against Levinson in the motion to vacate the Dissolution Stipulation, and (2) respondent previously asserted a fee claim against Levinson.

(Exhibit EEEEEE.) Respondent appears to have argued that since the "conflict" was not raised in either of those matters, it no longer existed. Finally, respondent stated that he would be filing a cross-complaint against Levinson based on a malicious prosecution brought by Castre and Castro against him, and that Levinson would not be able to raise any conflict in that matter.

On or about May 13, 2003, the court granted Levinson's motion to dismiss the Interpleader, finding that Price had no right, title or interest in the funds, and ordered the funds to be disbursed to Levinson. Pursuant to the court's order, $38,924 was disbursed to Levinson, minus $246.50 that was paid to respondent as costs and fees for the interpleader proceeding.

Count Three - Failure to Notify of Receipt of Client Funds: Rule 4-100(B)(1)

Rule 4-100(B)(1) provides that an attorney shall promptly notify a client of the receipt of the client's funds, securities or other properties.

There is clear and convincing evidence that respondent represented Price and Levinson on the collection of the Bush judgment. Price hired respondent to pursue the judgment on behalf of both he and Levinson. Respondent took action on behalf of both Price and Levinson, including filing papers in court that clearly stated he was acting on behalf of Price and Levinson. Respondent repeatedly represented to others, *including Levinson*, that he was representing both Price and Levinson for purposes of collecting the Bush judgment. As Levinson's attorney, once the funds were collected on behalf of Levinson, respondent's fiduciary obligations to Levinson did not terminate until her share of the funds was disbursed in May 2003. Respondent's assertion that he was not representing Levinson in his efforts to collect the Bush judgment, despite the overwhelming evidence to the contrary, further calls into question respondent's credibility.[9]

The court also rejects respondent's argument that, assuming he was Levinson's attorney, respondent satisfied his obligation to notify Levinson of the receipt of the funds by notifying Price. By the time respondent received the funds on June 15, 2001, respondent was aware that Price

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[9]Likewise, the court rejects respondent's argument that while he may have been *collecting* for both Price and Levinson, he was not representing both in *distributing* the funds. Apparently, under respondent's theory, after an attorney collects money for a client, the client has to hire the same attorney again or hire another attorney to actually have the money distributed. Despite respondent's improbable position, his collection services in this case clearly encompassed distribution of any funds collected.

thought Levinson lied in her declaration in the Castre matter. Furthermore, respondent claims he received notice of Price's claim to all of the funds, including Levinson's share, around June 18, 2001. (Exhibit KKK.) Under the circumstances, it would be unreasonable for respondent to assume that notification to Price of receipt of the funds would be sufficient notice to Levinson. Finally, respondent's own letter of October 8, 2001, is consistent with the more believable testimony of Levinson, that she did not learn of the funds until after receipt of this letter.

The court finds that respondent wilfully violated rule 4-100(B)(1) by clear and convincing evidence by failing to notify Levinson of the funds until October 8, 2001, almost four months after receipt.

Count Four - Representation of Adverse Interests: 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 matter in which the interests of the clients actually conflict. In order to obtain the informed written consent of the each client, the attorney must provide written disclosure, meaning informing the client of the relevant circumstances of the actual and reasonably foreseeable adverse consequences of his representation of more than one client.

As set forth above, respondent represented both Price and Levinson in the collection of the Bush judgment. No later than May 5, 2000, respondent knew that Levinson was entitled to half of the proceeds recovered. However, an actual conflict between Price and Levinson's interest in the Bush judgment arose as early as May 5, 2000, when Price offered to pay all the expenses to pursue the judgment in return for Levinson's assignment to receive half of any of the proceeds recovered. (Exhibit 8.) In his May 5, 2000 letter, respondent was representing Price's interests in receiving the funds collected and those interests were in conflict with Levinson's right to half of the proceeds.

Likewise, the interests of the clients in the Bush judgment continued to actually conflict when Price offered to buy out Levinson's share of the Bush judgment for $5,000 plus the price of respondent's fees in the Castre Matter. (Exhibit 9.) In respondent's March 7, 2001 letter, respondent did more than merely convey Price's offer to Levinson, he placed an inflated value on the offer. Respondent falsely claimed that his firm was entitled to a 40% contingency fee, when in fact, he was

entitled to only one-third. Furthermore, respondent claimed his fees in the Castre matter were in "excess of $20,000," when they were only $6,495.01. As is evident throughout the March 7, 2001 letter, respondent was representing Price's interests in any funds to be collected and those interests were in direct conflict with Levinson's right to half of the proceeds.

Interestingly, in his March 7, 2001 letter, respondent admits that he is representing both Price and Levinson and that their interests conflict as of that date. As respondent states:

> "Please understand that because I have represented you both in the Bush case for the past nine years or so, I have a conflict and therefore cannot make a recommendation one way or the other to you regarding this matter. I therefore suggest that is you wish to obtain legal advice regarding this offer, you should consult another lawyer. " (Exhibit 9, at p. 1.)

Although respondent suggested that Levinson seek the advice of another lawyer, that suggestion does not satisfy respondent's ethical responsibility to his clients where their interests actually conflict.[10] In order to continue representing both Price and Levinson in the collection of the Bush judgment, respondent was required to obtain the informed written consent of each client. Respondent never provided Levinson with a written disclosure of the relevant circumstances of the actual and reasonably foreseeable adverse consequences of his ongoing representation of her and Price. Thus, respondent never obtained the informed written consent of Levinson to continue to pursue collection of the Bush judgment on her and Price's behalf, despite the obvious conflict in their interests in the funds.

As set forth above, respondent continued his collection efforts on behalf of Price and Levinson and ultimately obtained the funds on June 15, 2001. At that point, the conflict between Price and Levinson's interests in the funds intensified. By June 18, 2001, Price claimed he was entitled to all the funds from the Bush judgment. However, despite representing both Price and Levinson, respondent failed to notify Levinson of receipt of the funds, of Price's claimed interest in the funds, of respondent's claimed interest in the recovery as a result of attorney fees from the Castre

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[10]This suggestion may have been respondent's attempt to comply with rule 3-300. However, since the transaction would not have been fair or reasonable to Levinson based on the false representations of the value of the offer, respondent still would not have satisfied that rule had the offer been accepted.

matter, or of respondent's refusal to release any funds to her. Respondent knew or should have known that Price did not have a valid lien on Levinson's share of the recovery. Respondent knew or should have known that he did not have a valid lien on the recovery based on his fee agreement from the Castre matter. Nevertheless, at Price's direction, respondent disbursed Price's and his own share of the funds, but refused to disburse any funds to Levinson. Thus, respondent was acting on behalf of Price's interests, which interests were in direct conflict with Levinson, for almost four months without providing Levinson notice and clearly without obtaining her informed written consent to continue his representation of both parties during that four month period.

Arguably, respondent's October 8, 2001 letter is notice to Levinson of his termination of his representation of her interests.[11] However, even though there may no longer have been an attorney-client relationship, respondent had an ongoing fiduciary obligation to Levinson since he was holding her funds in trust. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9.) Respondent breached that obligation. As set forth below, respondent's battle to deprive Levinson of her funds was a breach of his fiduciary duty and a serious factor in aggravation.

By representing both Price and Levinson in the collection of the Bush judgment where the clients had conflicting interests as early as May 5, 2000, and by failing to obtain the informed written consent of each of his clients to continue his representation after disclosing the actual and reasonably foreseeable adverse consequences, the court finds that there is clear and convincing evidence that respondent wilfully violated rule 3-310(C)(2).

V. LEVEL OF DISCIPLINE

Factors in mitigation or aggravation must be established by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)[12]

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[11]Although respondent never expressly states "I no longer represent you," the letter does set forth the competing claims to Levinson's funds and the fact that she should obtain other counsel to represent her interests.

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

A. Factors in Mitigation

Respondent presented mitigation evidence in the form of character testimony from Burt Price, Gail Gilfillan, Rochelee Tesoriero, William A. White, Carol Gindi, Gerald Rubin and himself.

Gail Gilfillan has been a lawyer since 1993 and is respondent's current associate in his law firm. Gilfillan stated that based on what she has heard from clients and opposing counsel, she believes that respondent has a very high reputation for honesty and integrity. However, Gilfillan was unable to remember the name of even one such opposing counsel, which diminishes the strength of her testimony. Gilfillan also testified about respondent's efforts to help others.

Gilfillan was the only attorney who testified on respondent's behalf. The remaining witnesses are respondent's clients. All of the clients testified that respondent was a good attorney and advocate for them. All of the witnesses feel that respondent is honest and has integrity. White also owns an apartment building with respondent. Respondent handles the finances and White feels that respondent has been honest with him in their financial dealings.

Respondent also testified about various clients he has helped free of charge over the years.

The court finds that respondent's character witnesses do not evidence an extraordinary demonstration of good character, are not representative of a wide range of references in the legal and general communities, and were not aware of the full extent of the respondent's misconduct. (Standard 1.2(e)(vi.) Accordingly, the court provides only minimal mitigating weight to this character evidence. (*In the Matter of Mydall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, [three clients and three attorneys provide limited mitigating weight].)

The court finds that no other mitigating factors exist.

B. Factors in Aggravation

There are several serious factors in aggravation.

1. Prior record of discipline

In Supreme Court case number S098180 (State Bar Court Case No. 95-O-10315), effective September 21, 2001, respondent was suspended from the practice of law for one year, execution stayed, and placed on probation for three years with no actual suspension. On July 18, 2003, the Supreme Court filed an order reducing respondent's probation period to two years and terminating

the restitution obligation. Respondent stipulated to violating Business and Professions code section 6068(e) for having maintained an unjust cause of action against a former client in an attempt to collect attorney fees. Respondent's misconduct occurred between January 1995 and September 1997. Respondent signed the stipulation on March 16, 2001. Respondent's prior record of discipline is a serious aggravating factor. (Standard 1.2(b)(i).)

2. Multiple acts of wrongdoing

The State Bar alleges that respondent committed multiple acts of wrongdoing by failing to promptly notify Levinson of the receipt of her funds and by continuing to represent Price and Levinson, without their informed written consent, after their interests actually conflicted. (Standard 1.2(b)(ii).) However, this misconduct involved only two counts and the court does not find aggravation on account of multiple acts of misconduct. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 839.)

3. Misconduct surrounded by or followed by bad faith, dishonesty, concealment and overreaching or other violations of the State Bar Act

Respondent's misconduct was surrounded by bad faith and dishonesty. (Standard 1.2(b)(iii).) As set forth above, in his March 7, 2001 letter, respondent misrepresented the value of Price's offer to buy Levinson's share of the judgment. Respondent misrepresented both his contingency agreement with Price and his outstanding fee bill in the Castre matter. Respondent knew or should have confirmed this basic information before he represented the value of the offer to Levinson.

In addition, while an attorney can be disciplined only for misconduct charged in the notice of disciplinary charges or in an amendment to the notice, this does not preclude consideration of other misconduct for other purposes, including aggravation. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 775; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 398.) As set forth above, respondent's October 8, 2001 letter may be construed as notice to Levinson of respondent's termination of his representation of her. However, even though there may no longer have been an attorney-client relationship, respondent had an ongoing fiduciary obligation to Levinson since he was holding her funds in trust. Respondent breached that obligation in wilful violation of Business and Professions Code section 6106.

From October 2001 to May 2003, respondent used aggressive and unethical tactics, including threats of a lawsuit, to persuade Levinson to accept less than what she was entitled to from the Bush judgment. In addition, respondent filed an action on behalf of Price and against Levinson to obtain the disputed funds, wherein respondent disclosed attorney-client communications he had with Levinson to gain an advantage for Price. In sum, in respondent's fervor to obtain a victory for Price, he crossed the line from zealous advocacy to unethical conduct. Respondent's 15-month quest to deprive Levinson of her funds was a breach of his fiduciary duty and a serious factor in aggravation.

4. Harm to his client, the public or the administration of justice

As a result of respondent's misconduct, Levinson experienced a great deal of stress. She lost sleep and had trouble eating. In addition, Levinson had to pay Della Donna approximately $6,800 to collect the money respondent refused to turn over to her. The significant harm respondent caused Levinson is another serious aggravating factor. (Standard 1.2(b)(iv).)

5. Indifference toward rectification of or atonement for his misconduct

Respondent refused to acknowledge any wrongdoing and instead focused his efforts on attempting to attack Levinson's character. Despite the overwhelming evidence to the contrary, respondent claimed he did not represent Levinson. Respondent's refusal to accept responsibility for his misconduct is an aggravating factor. (Standard 1.2(b)(v).)

6. Lack of candor at trial

Respondent displayed a lack of candor during the disciplinary proceedings by insisting that Levinson was not his client and that he was only collecting the judgment but was not responsible for distributing the funds. (Standard 1.2(b)(vi).)

C. Discussion

The purpose of 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.)

The State Bar argues that respondent should be actually suspended for six months, while respondent continues to contend that he has done nothing wrong.

This case involves failure to promptly notify a client of receipt of funds and representing adverse clients without obtaining their informed written consent. The applicable standards in this matter are standards 1.6, 1.7(b), 2.2(b), and 2.10. The standards for respondent's misconduct provide a range of sanctions ranging from reproval to actual suspension, depending upon the gravity of the offenses and the harm to the client. While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Standard 1.7 provides that based on respondent's prior record of discipline, the recommendation in this proceeding should be greater than that imposed in his prior proceeding unless the prior discipline imposed was so remote in time and the offense for which it was imposed was so minimal in severity that imposing a greater discipline in the current proceeding would be manifestly unjust. The court finds that neither exception to the standard applies in this case. Respondent received one-year stayed suspension in his prior discipline, and therefore, the court finds that an actual period of suspension is appropriate in this proceeding.

In addition, as to the failure to promptly notify Levinson regarding the receipt of funds, the court notes that standard 2.2(b) provides that culpability of a member of a violation of rule 4-100 shall result in at least a three month actual suspension, irrespective of mitigating circumstances. The court finds no reason to deviate from this standard.

As to the charge regarding respondent's representation of adverse interests without the informed written consent of his clients, the court looks to the cases cited by the State Bar, including *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576 and *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41.

In *In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. 576, the attorney became involved in a dispute over the control of a joint venture corporation. There were four directors and three had decided to dissolve the corporation. The fourth director, the president, hired the attorney to prevent the corporation's dissolution. The attorney's authorization came only from the corporation's president, who did not have the authority to hire or pay the attorney. Although the attorney was aware of the president's limited authority to act on behalf of the corporation, he filed a bankruptcy

petition on behalf of the corporation and accepted $29,875 in fees from the president without the corporation's knowledge or authorization.[13] At the time that the attorney accepted his fees, he had been told repeatedly to cease his activities on behalf of the corporation. (*Id.* at 586.) Thereafter, the attorney refused to account for the funds even after the bankruptcy petition was dismissed and the attorney was sanctioned for bringing a frivolous action.

The attorney in *Davis* was found culpable of failing to maintain client funds in trust; failing to properly account for trust funds; misappropriating the $50,000 by his gross negligence; and misappropriating $29,875 knowingly and intentionally. In aggravation, the Review Department considered the harm to his clients; additional uncharged misconduct regarding the multiple conflicts of interest; overreaching and indifference towards atonement. In mitigation, the attorney's absence of a prior discipline record for 12 years, good character testimony and his community service were considered. The Review Department recommended that the attorney be suspended for four years, execution stayed, on the condition of four years on probation including an actual suspension of two years and until he makes full restitution of the $29,875 he improperly withdrew and until he satisfied standard 1.4(c)(ii). (*In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. at p. 598.)

The misconduct in *Davis* is more serious than the misconduct in the present case. In addition to the misappropriation of a substantial amount ($79,875), the Review Department also found that the attorney's misconduct was surrounded by acts of deceit and concealment in misleading the corporation's chairman about the existence of the settlement funds and in refusing to provide his records regarding the funds to the State Bar investigator. (*In the Matter of Davis, supra,* 4 Cal. State Bar Ct. Rptr. at p. 589.) However, there are certain significant factual similarities in the two cases, including respondent's refusal to acknowledge any wrongdoing.

In *In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. 41, the attorney was actually suspended for 90 days for several acts of misconduct, including representing two clients with an

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[13]The $29,875 in fees came from a settlement check in an unrelated matter for $79,875 made out to the corporation, which check the president intercepted and gave to the attorney. With full knowledge that the president was not entitled to the corporation's assets, the attorney deposited the check in his client trust account, gave the president $50,000 and kept the rest as his fees.

actual conflict of interest without seeking required written client consent to the continued representation, failing to competently perform which resulted in his client's case dismissal, improperly withdrew from employment and failing to promptly notify client's heirs of receipt of trust funds. There was no evidence in mitigation, but in aggravation there was a prior record of stayed suspension; indifference toward atoning for his misconduct; and a clear lack of insight into the wrongfulness of his conduct. (*Id.* at p. 50.)

The court finds that the misconduct in the current case is more serious than in *Aguiluz*. Not only did respondent fail to obtain the necessary informed written consent of his clients, respondent took it a step further by aggressively representing Price in an attempt to defeat Levinson. As discussed above, for 15 months respondent used strong-armed tactics to deprive Levinson of her funds. Furthermore, respondent lacked candor at trial. As cited by the Review Department, such dishonesty by an attorney is in violation of "'the fundamental rules of ethics - that of common honesty -without which the profession is worse than valueless in the place it holds in the administration of justice.'" *(In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 285, citations omitted; based on serious aggravating factors, period of actual suspension increased from 150 days to one year.) Respondent's breach of his fiduciary duty and his lack of candor during this proceeding are serious factors in aggravation, distinguishing this case from *Aguiluz*.

The level of seriousness of respondent's misconduct falls somewhere in the middle spectrum of *Davis* and *Aguiluz*. As stated by the State Bar, one of the reasons for the rule regarding conflicts is to avoid situations like in this case, where the attorney's assertion of the interest of one client may render his representation of another client less effective. (*In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. at p. 49, citing *Anderson v. Eaton* (1930) 211 Cal. 113, 116.) Respondent placed himself in the position where he was required to choose between conflicting duties to his clients, and in fact, he ultimately chose the interests of one client over another. Despite respondent's fiduciary obligations to both Price and Levinson, respondent used his position to pursue Price's interests to the detriment of Levinson.

Respondent's refusal and continuous failure to comprehend his obligation to avoid

representation of adverse interests of multiple parties warrants the highest level of public protection. Instead of contrition, respondent went to great lengths during his testimony to excuse his misconduct and to deny that Levinson was his client. As the Supreme Court has repeatedly noted, "deception of the State Bar may constitute an even *more serious offense* than the conduct being investigated." (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 (dis. opn. of Lucas, J.).) Respondent's lack of candor before this court is misconduct of a serious nature, perhaps even more serious than the violations in the notice of disciplinary charges, calling into question his fitness to practice law. (*Ibid.*) Therefore, in light of comparable case law and the standards and in consideration of the egregious misconduct, the serious aggravating circumstances and the lack of significant mitigating factors, a six-month actual suspension for respondent is necessary and appropriate to protect the public and the integrity of the profession.

VI. RECOMMENDED LEVEL OF DISCIPLINE

IT IS HEREBY RECOMMENDED that respondent John R. Fuchs be suspended from the practice of law in the State of California for a period of two years, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years on the following conditions:

1. Respondent is actually suspended from the practice of law for the first six months of the period of probation;
2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within ten (10) days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office of the State Bar and to the State Bar's Office of Probation;
4. Respondent must submit written quarterly reports to the State Bar's 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 he 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 reporting due date for the next calendar quarter and shall cover the extended period. In addition to all quarterly reports, Respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted 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;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the State Bar's Office of Probation that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;

6. Within one (1) year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the State Bar's Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session;

7. The period of probation will commence on the effective date of the Order of the Supreme Court imposing discipline in this proceeding; and

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

It is recommended that respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) of the rule within 40 days of the effective date of the order showing respondent's compliance with said order.

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

and provide proof of passage of the MPRE to the State Bar's Office of Probation within one (1) year of the effective date of the Supreme Court's final disciplinary order in this proceeding. Failure to pass the MPRE, and to provide proof of such passage, within the specified time will result in actual suspension by the State Bar Court Review Department, without further hearing, until respondent provides the required proof of passage of the MPRE.

VII. COSTS

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: January 10, 2006

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 January 10, 2006, I deposited a true copy of the following document(s):

DECISION

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:

DIANE LYNNE KARPMAN	**JOHN ROBERT FUCHS**
KARPMAN & ASSOCIATES	**FUCHS & ASSOCIATES**
9200 SUNSET BLVD PH #7	**12100 WILSHIRE BLVD M-50**
LOS ANGELES CA 90069	**LOS ANGELES CA 90025 7120**

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

ELI MORGENSTERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 10, 2006.**

Laine Silber

Laine Silber
Case Administrator
State Bar Court