FILED March 14, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **GEORGE SANDERS GOLDBERG** **Member No. 45238,** A Member of the State Bar.	)	Case No.: **04-O-12395-DFM** **DECISION**

INTRODUCTION

In this disciplinary matter, Michael Glass appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Michael Gerner and Harland Braun represented respondent.

This action consists on one count, to wit, aiding the unauthorized practice of law in wilful violation of Rule of Professional Conduct 1-300(A). In the Notice of Disciplinary Charges it is alleged that respondent knowingly sent a paralegal (Roach) to attend 29 depositions during the period from May 21, 2003 to December 29, 2003; allowed that employee to hold himself out as an attorney and to give legal advice at those depositions; and failed to notify his clients or opposing counsel that Roach was not an attorney.

The State Bar had the burden to prove the above charge by clear and convincing evidence. Because it has done so, the court finds culpability and recommends discipline as set forth below.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed on September 29, 2005. Respondent filed a Response on October 24, 2005, and thereafter sought entry into the Alternative Discipline Program. On June 14, 2007, the case was returned to a normal adjudication track and was assigned to the undersigned as the hearing judge. Trial was conducted during the period of September 25-6, 2007, followed by a period of post-trial briefing by the parties.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on January 15, 1970. Thereafter, he was disbarred effective February 12, 1982, and then reinstated effective October 1, 1991. At all times thereafter, he was a member of the State Bar.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

The following findings of fact are based on the joint stipulation filed by the parties and on the documentary and testimonial evidence admitted at trial.

Parties' Stipulation to Undisputed Facts

The State Bar and respondent submitted the following stipulation regarding undisputed facts at the commencement of the trial, which is accepted by this court and adopted in this decision:

1. In December 2001, respondent employed Anthony Allen Roach ("Roach"), who was not an attorney at that time, to perform paralegal and law clerk services as an independent contractor.

2. From October 2002 through April 26, 2004, respondent employed Roach, who was not an attorney at that time, to perform paralegal and law clerk services on a full-time basis. At all times during Roach's full-time employment with respondent, respondent paid Roach a salary of approximately $900 to $1,000 per week.

3. In May 2003, Roach informed respondent and others in respondent's law office that he had passed the February 2003 California Bar Examination.

4. In May 2003, Roach also informed respondent that he had not been sworn in as a member of the California State Bar.

5. Respondent did not know of the reasons, if any, as to why Roach was not sworn in as a member of the California State Bar after his passage of the February 2003 California Bar Examination.

6. Roach was not admitted to the State Bar of California until May 16, 2005.

7. While he was employed by respondent, and at any time relevant to these charges, Roach did not inform respondent that he had become an active member of the California State Bar or that he was otherwise entitled to practice law in California.

8. Between December 18, 2002, and December 29, 2003, Roach attended 30 oral depositions in cases where respondent was the attorney of record for a party.

9. At each of those depositions which Roach attended between December 18, 2002, and December 29, 2003, Roach appeared on behalf of respondent's client(s) and he did so with respondent's knowledge and consent. Respondent disagrees that the December 18, 2002 deposition [of Ralph Macias in the *Macias* case] was attended by Roach with respondent's knowledge and consent. Respondent contends that he was unaware of the setting of that December 18, 2002 deposition. [bracketed material added by court]

10. Respondent did not attend any of those 30 depositions between December 18, 2002, and December 29, 2003, which Roach attended, nor did he send or otherwise arrange for any other attorney to be present with Roach at those depositions.

11. Respondent did not inform any of his clients or deponents for whom Roach had appeared for their respective depositions, nor did respondent inform any opposing counsel in those matters, that Roach was not an active member of the California State Bar or otherwise entitled to practice law in California.

12. On November 11, 2003, Roach attended the deposition of respondent's client Karen Guzman ("Guzman"), related to the lawsuit entitled *Karen Guzman et al. v. Euberto Cruz Capistrano et al.*, Los Angeles Superior Court Case Number 03E03336 (the *Guzman et al.* lawsuit). Counsel Elizabeth Quinn ("Quinn"), for the defendants, took Guzman's deposition. Roach did not inform Quinn or anyone else at that deposition that he was not an attorney. A transcript of Guzman's deposition was prepared by a certified court reporter and sent to respondent, which his office received.

13. On December 8, 2003, Roach attended the deposition of respondent's client Alfonso Alejandre ("Alejandre"), related to the *Guzman et al.* lawsuit, which was also taken by Quinn. Roach did not inform Quinn or anyone else at that deposition that he was not an attorney. A transcript of Alejandre's deposition was prepared by a certified court reporter and sent to respondent, which his office received.

14. Throughout Alejandre's deposition, Roach interposed objections as Alejandre's attorney, and he instructed Alejandre not to answer some questions on grounds of relevance. Additionally, Roach offered to stipulate as Alejandre's attorney that "we're not making a loss of

earnings claim." At the conclusion of Alejandre's deposition, Roach, as Alejandre's attorney, stipulated to relieve the court reporter of her duties under California Code of Civil Procedure.

15. At another 28 depositions conducted between December 18, 2002, and December 29, 2003, Roach performed actions similar to those as set forth in the above paragraphs 13, 14, and 15.

16. By attending 30 depositions between December 18, 2002, and December 29, 2003, and acting as the attorney for respondent's clients, Roach held himself out as entitled to practice law in California when he was not an active member of the California State Bar.

17. Between December 18, 2002, and December 29, 2003, respondent's office received the transcripts of those 30 depositions which Roach had attended, the face pages of which identified Roach as an attorney associated with respondent's law office. Despite his office's receiving those transcripts, respondent took no action to correct the court reporters or inform opposing counsel as to Roach's true status.

18. Even after respondent's office received the transcripts of those earlier depositions at which Roach was incorrectly identified as an attorney, respondent allowed Roach to continue appearing at depositions.

19. Respondent knew that Roach was not an active member of the California State Bar while he was employed by respondent and when he attended those 30 depositions between December 18, 2002, and December 29, 2003.

20. In late 2003, respondent submitted an article for publication in the Advocate, a magazine published by the Consumer Attorneys' Association of Los Angeles, in which he identified Roach as "an associate with Mr. Goldberg's law office" and a co-author of that article. That article was published in the December 2003 issue of the Advocate.

21. In that article published in December 2003, respondent and Roach discussed case law regarding California's two-year limitation period to civil actions accruing in 2002, and opined that the rule as set forth in *Mudd v. McColgan* (1947) 30 Cal.2d 463, 468 applied in construing California's then-new statute of limitations.

22. Respondent knew that Roach was not an active member of the California State Bar, at the time when respondent submitted the article for publication in the Advocate.

23. On February 2, 2004, respondent and Roach called the State Bar Ethics Hotline and requested guidance concerning the propriety of having a law clerk defend a deposition.

24. On February 3, 2004, the next day, respondent received a return call from Ricardo Patino from the Hotline, who explained that attendance at a deposition was considered the practice of law, citing *In re McCue* (1930) 22 Cal. App. 57, 67. Respondent inquired to Mr. Patino if he had a duty to report the matter to the State Bar. Mr. Patino advised he did not, citing *Birbauer* [sic] *v. Superior Court* (1998) 17 Cal.4th 119.

25. Respondent immediately met with Roach and informed him that it was not proper for him to attend depositions prior to his being admitted to the State Bar of California. Roach did not attend any further depositions.

26. On January 13, 1982, in Bar Misc. No. 4151 (State Bar Court Case No. 80-C-4LA), the Supreme Court of California entered its order disbarring respondent effective February 12, 1982, based on respondent's conviction for violating Penal Code section 487.

27. On November 1, 1978, respondent was convicted, upon his plea of nolo contendere, to a count of violating Penal Code section 487, (Grand Theft) which alleged that respondent wilfully and unlawfully and feloniously took the personal property of the Hartford Insurance Company in excess of $200. Respondent admitted to capping.

28. Respondent was subsequently reinstated to practice law, with conditions, by the Supreme Court of California in it's order dated September 11, 1991, in Supreme Court Case No. S021811 (State Bar Court Case No. 90-R-10018). Respondent became active on October 1, 1991.

Additional Findings of Fact and Conclusions of Law by the Court:

Factual Background and Underlying Events

Roach graduated in May 2001 from law school but did not take the bar examination until February of 2003. When respondent hired Roach in 2002 as a law clerk/paralegal, he was aware that Roach was not an attorney.

Within respondent's law office, respondent divided responsibility for his cases between four paralegals, dividing his cases on an alphabetical basis. Roach was not one of the paralegals having responsibility for individual cases. The assigned paralegals had responsibility for reviewing all mail and pleadings coming in on a case, calendaring dates, and keeping respondent apprised of the cases' status. Respondent, in turn, would review all cases at least once a month and provide written notes back to the responsible paralegal regarding future handling. When a deposition was scheduled in a case, the paralegal had responsibility for making certain that the deposition was noted in the file and was entered in the personal calendar for respondent. When there was a calendar conflict such that respondent could not cover a scheduled event (such as a court appearance or a deposition), only respondent had the authority to decide that someone else would cover an event, although he would routinely look to the paralegals to implement his directives to secure coverage with another person.

The earliest deposition attended by Roach for which a transcript was produced in this action was that of Ralph Macias, respondent's client/plaintiff in the *Macias* action. The *Macias*

action was a complex personal injury action brought against Long's Drugs. Rather than being an action filed in a Los Angeles court, *Macias* was venued many miles away in Fresno. Respondent recalled that Roach had even participated in the initial client conference with Ralph Macias as part of respondent being substituted into the case.

Toward the end of November 2002, the deposition of Mr. Macias, respondent's client, was noticed by defense counsel to be taken in San Bernardino on December 18, 2002. After the deposition notice was served, respondent approached Roach and asked if Roach knew whether he could defend depositions. Roach did some research and reported back to respondent that he could not find any reason why he could not go, although he also could not find any authority stating that he could. In fact, there has been reported case law in California since 1930 holding that an appearance by a non-admitted person at a deposition constitutes the unauthorized practice of the law. (See *In re McCue v. State Bar, supra,* 211 Cal. 57.) Respondent did no research on the issue and did not request Roach to prepare a memorandum of his own research. Neither individual contacted the State Bar Ethics Hotline at the time. Nonetheless, respondent authorized Roach to represent Mr. Macias at his deposition. He also began authorizing Roach to participate in other depositions on the firm's behalf. Because Roach was now a salaried employee, his attendance at the depositions meant that respondent was free to attend other matters while the depositions were occurring without having to incur the additional expense of retaining a contract attorney.

The Macias deposition took place on December 18, 2002, and was attended by Roach.[1] Thereafter, from December 18, 2002 until February 2004, Roach represented respondent's firm

[1] The NDC only charges misconduct based on depositions taken after May 21, 2003. The depositions taken prior to this date are nonetheless relevant to show respondent's awareness of Roach's activities and that his authorization of them was not a consequence of Roach's passing of the Bar examination.

in more than 29 additional depositions.[2] Most of the depositions were of respondent's clients, and many of those depositions required the use of an interpreter. On some occasions, the clients were prepared for deposition by respondent, although only Roach would appear at the deposition itself. On other occasions, only Roach prepared the client. In neither situation did respondent tell the client that Roach was not an attorney. Nor did he ever direct Roach to advise the clients of his non-admitted status, and Roach did not do so unless directly asked by the client. The clients regularly attended their own depositions believing that they were being represented there by an attorney.

Respondent also gave no instructions to Roach that he was to make clear to the court reporters and opposing counsel that he was not an attorney. In the vast majority of the transcripts, Roach is identified in the deposition transcript's cover pages as an attorney and is referred to as such by opposing attorney throughout the proceedings. At no time did Roach ever correct this misapprehension by the opposing attorney, even when it was built into questions being asked of and answered by his client.[3] During the depositions for which transcripts were provided to this court, Roach at various times made objections, instructed the deponent not to answer questions based on relevancy, asked questions, stipulated to relieve the court reporter of the reporter's statutory duties, agreed to provide additional discovery responses, and (on two occasions) made a stipulation on the record that respondent's clients would not seek a particular category of damages. Although respondent testified that he believed Roach could "defend" a

[2] Although the parties have stipulated to Roach's appearance at 30 depositions, the stipulation does not state that he appeared at only 30 depositions. The undisputed evidence is to the contrary. Roach testified at trial that he would estimate having appeared at 70 depositions and referred to cases and deponents not included within the depositions provided to the court. Respondent testified that the list represents only those depositions which his office staff had been able to locate and that their search efforts have relied primarily on expense reports generated by Roach for mileage and parking expenses incurred in attending depositions.

[3] The following portion of the Lagunas deposition transcript is illustrative: "Q: Did you have a chance to speak with your attorney, Mr. Roach, about what's going to happen here today? A: Yes." (Lagunas Deposition, pp. 6-7.)

deposition, he admitted knowing that Roach could not take a deposition.[4] However, there is no evidence that respondent ever placed any limitation on Roach's ability to ask questions in a deposition. Quite the contrary, in one of the deposition transcripts provided by respondent to the State Bar, Roach can only be described as "taking" the deposition, since he was both the initial and primary interrogating attorney of a defendant (Jones) in an action brought by respondent's plaintiff-clients. In many of the other depositions, Roach also asked questions of the deponent, albeit after the initial interrogating attorney had concluded.[5]

During the yearlong period that Roach was taking depositions, respondent was aware that Roach was asking questions at the deposition sessions. Roach reported to respondent on the depositions he attended. Transcripts of the depositions were later routinely received by respondent's office for the depositions attended by Roach. However, respondent took no other steps to supervise or review how Roach conducted himself during the depositions, even though several clients complained to respondent about Roach's performance at the depositions.

Roach participated in the deposition of Ralph Macias on December 18, 2002. Thereafter, he attended the depositions of Drs. Weymore and Amin in December 2003, transcripts of which were made exhibits at trial.

This court does not find credible respondent's testimony that he was unaware that Roach was taking depositions prior to being told by Roach that he had passed the bar examination and

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[4] In respondent's initial written response to the State Bar's investigation, he indicated, "It is very important to note that Mr. Goldberg was fully aware that Mr. Roach could not take the deposition of a party or witness, that is, ask questions and conduct the inquiry. All Mr. Roach did on these depositions was "defend," or attend with Mr. Goldberg's client, or a witness favorable to their side….Mr. Roach would attend the deposition with the client or witness, and take notes. Mr. Roach may have sometimes objected to questions, but Mr. Goldberg is not certain." (Exhibit 8, p. 3.)

[5] In the defendant's deposition where Roach began the questioning, he repeatedly referred to himself as an attorney during the early admonitions: "So at times either myself or the *other* attorneys present will say is that a yes or is that a no….The booklet will look like a series of questions and answers. It will have my questions, the *other* attorneys' questions and your answers. It's very important that you listen to my whole question and then answer. The reason is—and I'm—*a lot of attorneys are notorious for this, we* tend to change the meaning of our questions at the end with a phrase." [emphasis added.]

somehow believed that passing the bar examination elevated Roach to some greater level of entitlement to practice. The bar examination results for the February 2003 bar examination were announced on May 23, 2003. By that date, Roach had taken numerous depositions in at least three different cases (*Macias*, *Acevedo*, and *Corea/Ortega*). Given that each of these cases had an assigned paralegal, other than Roach, who was responsible for notifying respondent of all noticed depositions and significant developments, respondent would have been aware that Roach was participating in depositions. That is particularly true since the depositions were frequently of respondent's client. This court notes that none of the paralegals assigned responsibility for these cases testified at trial that he/she was unaware of the depositions or of Roach's activities on his/her assigned cases at the time. In contrast, Roach has consistently stated that respondent approached him about taking depositions many months prior to learning that he had passed the examination. Further, at trial Roach explained that, after he submitted his first notice of resignation from respondent's firm in 2004, he drafted a second resignation letter (more hostile in tone) because of respondent's efforts to get him to agree that respondent had only been consulted about the deposition appearances after Roach had passed the bar.

At the trial of the *Macias* matter in June 2004, respondent notified both opposing counsel and the court of the fact that Roach had participated in several depositions.[6] He did this because he was instructed during his conversation with the Ethics Hotline in February 2004 that he needed to so notify any affected court. This disclosure, however, reflects some lack of candor: "I learned in February of this year [2004] that I had sent a law clerk to defend several of the depositions." Respondent, in fact, knew for many months before February 2004 that he was sending a law clerk to handle depositions. What happened in February 2004 was that the State

[6] Roach participated in the deposition of Ralph Macias on December 18, 2002. Thereafter, he attended the depositions of Drs. Weymore and Amin in December 2003.

Bar told him that he needed to stop doing so and that he needed to disclose what he had done to the courts.

As a consequence of the above disclosure to the *Macias* trial court, the trial court immediately ruled, "To the extent you intend to rely on objections or other information raised in the deposition, you are unable to do so." (Exhibit 65, pp. 9-10.)

History of Respondent's Prior Discipline

On February 17, 1977, respondent was indicted by the Grand Jury of the County of Los Angeles on a 31-count indictment; and on November 1, 1978, he was convicted based on his plea of nolo contendere to one count charging a violation of Penal Code section 487, subd.1, for the crime of grand theft and alleging that he did wilfully and unlawfully take the personal property of the Hartford Insurance Company in excess of $200.00.

On March 29, 1979, respondent was suspended from the practice of law by an order of interim suspension because of the above conviction. Thereafter, the Supreme Court adopted a recommendation of the Review Department of the State Bar Court that respondent be disbarred and issued an order disbarring respondent. The decision of the Review Department found both that respondent knew or should have known that one or more of the accidents he was purchasing from a capper were fraudulent and also that respondent admitted to capping over a prolonged period of time.

Although respondent was reinstated to active status in the State Bar effective October 1, 1991, he did not commence practicing again until 1998 or 1999.

Count One - Aiding the Unauthorized Practice of Law (Rule of Professional Conduct 1-300(A))

The Court concludes that respondent wilfully violated Rule of Professional Conduct 1-300(A) by aiding Roach in the unauthorized practice law.

Rule 1-300(A) of the Rules of Professional Conduct provides, "A member shall not aid any person or entity in the unauthorized practice of law." Section 6125 of the Business and Professions Code provides, "No person shall practice law in California unless the person is an active member of the State Bar."

Roach's conduct in purporting to represent clients in depositions, including but not limited to making objections on the client's behalf, asking questions, entering into stipulations, and holding himself out to be an attorney, constituted the practice of law. Because he performed these acts prior to be admitted to the bar, his conduct constituted the unauthorized practice of law.

Respondent authorized and aided Roach in this unauthorized practice of the law, was aware of Roach's presence and general activities at the depositions, and assisted in holding Roach out to the public to be an attorney. He did this knowing that Roach was not admitted to practice law and with no reasonable or good faith basis for believing that Roach's conduct was appropriate.

Respondent's contention that he relied on the legal opinion of Roach in allowing Roach to appear at depositions provides no defense. Roach, at the time he expressed this opinion, was not an attorney, had not yet passed the bar, and was only a law clerk/paralegal. Further, as verified by the trial testimony of both Roach and Patricia Galindo (one of respondent's paralegals), Roach merely told respondent that he could not find anything prohibiting him from participating in depositions, not that he found any authority saying that he could. Respondent requested no additional legal analysis or explanation, and none was provided. Nor did respondent take any steps to research the issue himself or to seek advice from any other source, although he subsequently indicated to the State Bar that he was always aware that there were

limitations on what Roach could do at a deposition (i.e., that he could not "take" the deposition). Throughout this time, there was clear case law from the California Supreme Court stating that the proposed conduct was inappropriate, and the State Bar's Ethics Hotline was available.

LEVEL OF DISCIPLINE

Aggravating Circumstances

The State Bar of California must prove aggravation by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b) ("standards" or "std.").)[7] The following are aggravating circumstances listed in standard 1.2(b) that are present in this action:

The existence of a prior record of discipline and the nature and extent of that record (Stds. 1.2(b)(i) and 1.7)

As noted above, respondent has a significant record of prior discipline, having been previously disbarred by the Supreme Court as a result of his felony conviction. As will be discussed in greater detail below, this prior discipline is a significant aggravating factor.

That the current misconduct evidences multiple acts of wrongdoing (Std. 1.2(b)(ii))

As discussed above, this court concludes that respondent authorized and aided Roach to participate inappropriately in at least 30 separate depositions. There were multiple clients, opposing counsel, opposing parties, and courts potentially harmed by these improper appearances.

That the member's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct (Std. 1.2(b)(iii))

As noted above, respondent did not have a reasonable or good faith belief that Roach could appropriately appear for and represent his clients in depositions. He made no effort to

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

research or investigate the issue himself and was not justified in relying solely on the oral report offered by Roach. There were explicit rules and case law available at the time making clear that Roach's conduct was not appropriate.

Further, respondent did not disclose Roach's true status to his clients or to opposing parties or counsel and took no steps to require Roach to do so either. Instead he allowed Roach to hold himself out to others as an attorney and assisted him in doing so.

That the member's misconduct harmed significantly a client, the public or the administration of justice (Std. 1.2(b)(iv))

Respondent's clients agreed to give up a portion of any recovery by them in their cases in exchange for respondent's commitment to provide them with legal representation in those cases. Respondent's undisclosed decision not to have an attorney act on his clients' behalf at depositions deprived those clients of the benefit of their agreement. With respect to at least Macias, it also deprived him of any benefit at trial of all of Roach's objections and questioning during depositions.

The fact that respondent's clients were unrepresented during important aspects of their cases, especially their own depositions, necessarily creates doubt as to whether those clients actually received in settlement the true value of their potential recoveries. Those same clients (as they learn that they were unrepresented by an attorney at critical stages of discovery) could justifiably come to view themselves as victims. This, in turn, results in injury to the public's faith in the legal profession.

Mitigating Circumstances

The respondent must prove mitigation by clear and convincing evidence. (Std. 1.2(e).) The following are mitigating circumstances listed in standard 1.2(e) that are present in this action:

An extraordinary demonstration of good character of the member attested to by a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct (Std. 1.2(e)(vi))

At trial respondent presented testimony and letters from numerous attorneys, clients, and members of the business community regarding his good character and legal abilities. Their testimony described respondent as well-respected, honest, and very effective as an attorney.

Although the testimony of these witnesses was credible and is mitigating, the weight to be afforded it as character evidence is limited by the lack of knowledge these witnesses demonstrated regarding the circumstances of respondent's current and past misconduct. In order to establish mitigation under this standard, the character witness must be aware of the full extent of the member's misconduct. In virtually each instance the witness's knowledge about respondent's problems came solely from the description provided to them by respondent himself. As reported in the resulting declarations, this description fell short of being a full and fair disclosure, since it minimized the description of the unauthorized conduct and sought to justify respondent's responsibility for it. The letter of James D'Amico is typical: "A paralegal who worked for George made a research error and George allowed him to defend several depositions after he passed the Bar Exam but before he was sworn in." So biased was respondent's disclosure to his witnesses that a number of them devoted time to arguing that respondent had done nothing wrong.

Discussion

As previously noted, the primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v.*

State Bar (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, we are "'not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.' [Citations.]" (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) We also consider relevant decisional law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) directs that the degree of discipline imposed on a member with a prior record of discipline "shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust." As noted above, respondent has a history of having previously been disbarred. In instances where a previously disbarred attorney has been reinstated to active status, the California Supreme Court has indicated that disbarment is the appropriate sanction for subsequent misconduct by that attorney unless either the prior offense was both remote in time and relatively minor or there are other extraordinary circumstances warranting leniency. (*In re Silverton, supra,* 36 Cal. 4th at p. 95.) The burden is on the

respondent to demonstrate the existence of any extraordinary circumstances justifying a lesser sanction. (*Id*.)

In evaluating whether a prior offense is to be treated as remote, the courts look not to the number of years that have passed since the prior disbarment, but instead to the length of time that the member has practiced since returning to active status. In *Silverton*, 19 years had elapsed between Silverton's prior disbarment and his new misconduct, but Silverton had only been returned to active status for 22 months before he was again in non-compliance with professional standards. As a result, the Supreme Court accorded "little weight" to the remoteness of the prior discipline. Here, respondent was disbarred in 1982 and reinstated in late 1991. The misconduct began in late 2002. Hence, the new misconduct occurred approximately 20 years after his prior discipline and 11 years after his reinstatement. While at first blush respondent would appear to present a more qualifying case for finding remoteness, the situation is complicated by the fact that he did not actually return to the practice of law until 1998 or 1999. Hence, he may have been back in active practice for as little as three years and certainly was back for less than five years before he was again violating his ethical obligations. As a result, this court concludes that the remoteness of his prior discipline should not be given sufficient weight to invoke the exception to standard 1.7(a).

In addition, in order for the exception of standard 1.7(a) to apply, this court must also conclude that the prior misconduct was so minimal in severity that imposing greater discipline would be manifestly unjust. In performing this analysis, *Silverton* is again instructive. There, the member had previously been disbarred because of his conviction of two felonies: one count of conspiracy to obtain money by false pretenses and to present a fraudulent insurance claim, and one count of soliciting another to commit or join in the commission of grand theft. The Supreme

Court concluded that those offenses are "serious crimes involving moral turpitude" and do not fall within the exception specified in standard 1.7(a). Here, respondent was disbarred because of his conviction of grand theft, a conviction that arose directly out of his practice of law. The Review Department's decision recommending disbarment also recites a prolonged period of capping by respondent. This prior misconduct is remarkably similar in nature to that addressed by the *Silverton* court, involves serious misconduct involving moral turpitude, and also does not justify application of the exception to standard 1.7(a). (See also *In re Honoroff* (1975) 15 Cal.3d 755, 760; *In re Bogart* (1973) 9 Cal.3d 743, 748.)

Nor does this court find that there are extraordinary circumstances present causing this court to have grave doubts as to the propriety of the discipline. For more than a year, respondent allowed his clients to go to their depositions unrepresented there by an attorney. In many other instances, when depositions were taken of other important witnesses, respondent's clients were "represented" there only by a paralegal--which (as reflected in *Macias*) meant that they were effectively unrepresented. Respondent did not solicit his clients' advance approval for this procedure but instead chose not to disclose it to them.

Respondent's clients agreed to give up a portion of any recovery by them in their cases in exchange for respondent's commitment to provide them with legal representation in those cases. Respondent's undisclosed decision not to have an attorney act on their behalf at depositions both deprived his clients of the benefit of their agreement and casts doubt on whether they received in settlement the true value of their potential recoveries. Although respondent likes to view his clients as victors in their cases because they got a settlement, those same clients (should they learn that they were unrepresented by an attorney at critical stages of discovery) could justifiably

view themselves as victims. Causing such damage to the public's trust in the legal profession is an outcome that cannot be condoned.

Nor did respondent take any steps to make certain that his use of a paralegal to take and defend depositions would be disclosed to opposing counsel or to the other parties before they invested their time and money in those depositions. The presence of an unauthorized player in the judicial process can jeopardize the validity of the entire proceeding. (See, e.g., *In re Johnson* (1992) 1 Cal. 4th 689, 701 [vacating criminal judgment based on conclusion that representation of defendant by a person who has never been admitted to the practice of law or has fraudulently procured admission denies a criminal defendant his constitutional right to counsel as a matter of law. So too does representation by a person who, although formerly licensed, has resigned from the State Bar.] People participating in a legal proceeding are entitled to be confident that all attorneys participating in that same proceeding are entitled to be there. There were multiple clients, opposing counsel, and opposing parties potentially harmed by Roach's many improper appearances. For an attorney to aid in causing such damage to the public's confidence in the justice system is also an outcome that cannot be allowed.

Although respondent is entitled to some mitigation credit for the character testimony he received from numerous witnesses, the weight of that credit is diminished by those witnesses' lack of knowledge regarding the true circumstances and extent of respondent's current misconduct and, regardless, is sufficiently negated by the above aggravating factors that it does not cause this court to doubt the appropriateness of recommending the discipline normally to be applied to new misconduct of a previously disbarred attorney.

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Recommended Discipline

This court recommends that respondent **GEORGE SANDERS GOLDBERG** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Rule 9.20

The court further recommends that GOLDBERG be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[8]

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order Of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **GEORGE SANDERS GOLDBERG** be involuntarily enrolled as an inactive

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[8] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, a ground for denying his or her petition for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

member of the State Bar of California effective three court days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).[9]

Dated: March 4, 2008.

DONALD F. MILES
Judge of the State Bar Court

[9] Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid*.; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)