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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **HERBERT PAPENFUSS,** **Member No. 51299,** A Member of the State Bar.	)	Case No.: **05-O-03774-LMA** **DECISION**

I. Introduction

In this contested matter, respondent **Herbert Papenfuss** is charged with two counts of misconduct in one client matter. The charged misconduct includes (1) failing to deposit funds received on behalf of a client into a client trust account; and (2) committing an act of moral turpitude by using said funds to make investments for his own benefit. The court finds, by clear and convincing evidence, that respondent is culpable of these two charged acts of misconduct.

In view of respondent's misconduct and the aggravating and mitigating evidence, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of the suspension be stayed, and that he be placed on probation for two years with conditions, including an actual suspension of 90 days from the practice of law.

II. Pertinent Procedural History

On August 23, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a two-count Notice of Disciplinary Charges

(NDC). On September 11, 2006, respondent filed a response to the NDC. Approximately one year later, on August 28, 2007, the State Bar filed and properly served on respondent its First Amended Notice of Disciplinary Charges (First Amended NDC). Thereafter, on September 4, 2007, respondent filed a response to the First Amended NDC.

On February 2, 2007, the parties filed a factual stipulation. Then, on September 25, 2007, the parties filed a supplemental factual stipulation.

A one-day trial was held on October 12, 2007. Respondent appeared at trial in propria persona. Deputy Trial Counsel (DTC) Melanie J. Lawrence represented the State Bar. The court took this proceeding under submission on October 12, 2007, after the parties presented their closing arguments.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on January 5, 1972, and has since been a member of the State Bar of California.

B. Counts One and Two

In July 2002, Wallace Goodstein, M.D., employed respondent to represent him in pursuing a claim against California Federal Bank (California Federal). Respondent agreed to represent Dr. Goodstein on a contingent fee basis.

In March 2003, respondent settled Dr. Goodstein's claim against California Federal in the amount of $82,621.23. Respondent received a settlement draft on behalf of California Federal for the full amount of the settlement, payable to "Herbert Papenfuss Trust Account." After subtracting respondent's fees and costs, Dr. Goodstein's portion of this settlement was $51,991.23.

During this same time period, respondent maintained a personal investment account at Morgan Stanley (Morgan Stanley account). This was a joint account that respondent co-owned with his wife, Jeanne Papenfuss. This account permitted respondent to invest in stocks and bonds and still have access to his money on a short-term basis. It also had a margin provision.[1] The monies in this account were invested at the direction of respondent after consultation with his Morgan Stanley financial advisor.

The Morgan Stanley account contained funds belonging to respondent and his wife. It was not labeled or identified as a "trust account" or "Client Funds Account" or by words of similar import.

On March 17, 2003, respondent deposited the California Federal settlement draft into the Morgan Stanley account. The funds belonging to Dr. Goodstein were not separated or earmarked in any way. Respondent simply added Dr. Goodstein's funds to his existing account.

On March 21, 2003, respondent issued a check to Dr. Goodstein for his portion of the settlement with California Federal. This check was drawn on the Morgan Stanley account. Respondent issued this check to Dr. Goodstein along with a disbursement sheet. The disbursement sheet listed the amount to be remitted to Dr. Goodstein as $51,991.23, which represented the principal amount of settlement, less $30,630.00 in respondent's "commissions."

Dr. Goodstein did not immediately present the check for payment. On March 31, 2003, the Morgan Stanley account had a total asset value of $203,735.73 of which: $29,123.26 was invested in money market funds; $107,294.00 was invested in stocks; $51,234.00 was invested in corporate fixed income; and $16,084.47 was in cash. Respondent did not know how much of Dr. Goodstein's funds were allocated into each of these investment categories.

[1] This provision permitted the account owners to purchase stocks or write checks up to 150% of the asset value of the account.

For the month ending March 31, 2003, the total income generated by the investments in the Morgan Stanley account was $2,228.55.

As of April 30, 2003, Dr. Goodstein still had not presented his check for payment and the total asset value of the Morgan Stanley account was $99,589.17; of which: $49,717.17 was invested in money market funds; $49,494.50 was invested in stocks; and $377.50 was in cash.

For the month ending April 30, 2003, the total income generated by the investments in the Morgan Stanley account was $1,724.48.

On May 20, 2003, as a result of divorce proceedings between respondent and his wife, all of the assets held in the Morgan Stanley account were frozen. The funds remained frozen for three days, and were then divided into two new Morgan Stanley accounts. Respondent and his wife owned these two new accounts individually.

Ultimately, Dr. Goodstein never presented the $51,991.23 check for payment. In May 2003, Jeanne Papenfuss issued a check to Dr. Goodstein in the amount of $25,995.62, representing one-half of the $51,991.23 owed to Dr. Goodstein.

On May 27, 2003, respondent issued a check to Dr. Goodstein for $20,995.00, from his new Morgan Stanley account. This check was paid on June 9, 2003. While Dr. Goodstein's client funds were ultimately paid out to him, respondent never paid Dr. Goodstein any interest or income generated by Dr. Goodstein's client funds while they were held in the Morgan Stanley account.

If Dr. Goodstein had presented the $51,991.23 check for payment anytime between March and May 2003, even after the account had been divided into two separate accounts, it would have been honored, as upon presentation of the check, respondent's Morgan Stanley financial advisor would have contacted respondent to liquidate enough securities to cover the debit or transfer funds from one of respondent's other accounts.

Count 1: Failing to Deposit Client Funds in Trust (Rules Prof. Conduct, Rule 4-100(A))[2]

Rule 4-100(A) requires a member to put all funds received or held for the benefit of clients into an identifiable bank account labeled "Trust Account," "Client's Funds Account" or words of similar import. No funds belonging to the member are permitted to be deposited into said account or otherwise commingled.[3]

The State Bar charged that respondent failed to preserve the identity of his client's funds, in violation of rule 4-100(A), by failing to deposit the $82,621.23 received on behalf of Dr. Goodstein into a bank account labeled "Trust Account," "Client Funds Account," or words of similar import and by commingling Dr. Goodstein's funds with his own funds in his personal investment account.

Respondent testified as follows: Dr. Goodstein was a good friend who was experiencing financial difficulties and had filed bankruptcy prior to the time the funds came into respondent's possession. [4] Therefore, Dr. Goodstein asked respondent to hold his settlement funds for an unspecified period of time during which Dr. Goodstein could determine how to best use the funds.[5] Dr. Goodstein anticipated that his money would be held by respondent for an extended period of time and wished to draw interest on it. Believing that a client trust account could not

[2] References to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

[3] Rule 4-100(A) articulates some limited exceptions to this provision; however, these exceptions are not pertinent to the instant case.

[4] Dr. Goodstein did not testify in this proceeding.

[5] The State Bar argued that this arrangement between respondent and Dr. Goodstein was a conspiracy to conceal assets from creditors constituting additional uncharged misconduct. However, based on the limited evidence presented at trial on this subject, the court is not able to determine this fact by clear and convincing evidence.

generate interest, Dr. Goodstein asked to deposit his funds into respondent's Morgan Stanley account.[6]

The court finds that Dr. Goodstein requested that respondent hold his funds for an extended period of time. However, it remains unclear to the court whether Dr. Goodstein specifically requested that his money be invested in the Morgan Stanley account. It seems counter-intuitive that Dr. Goodstein, a man suffering financial difficulties, would request that his funds be invested in an incoming-generating account, only to subsequently abandon any expectations of earned interest.[7] It seems equally unlikely that respondent would invest Dr. Goodstein's funds with the intention of earning interest for his client, only to subsequently fail to calculate or account for any interest earned by his client's funds.

Regardless, even if the court were to assume that respondent acted with his client's consent, this still does not justify respondent's conduct. For an attorney cannot deviate from the rule requiring the deposit of client funds into a trust account even when the attorney has the client's consent. (*In the Matter of Lilly* (Review Dept. 1992) 2 Cal State Bar Ct. Rptr. 185, 191.)

Additionally, any profit or benefit derived from the investment of Dr. Goodstein's funds in the Morgan Stanley account should have been passed on to Dr. Goodstein. In justifying his failure to pay interest to Dr. Goodstein, respondent argued that Dr. Goodstein's funds were only held in respondent's private investment account for three months and therefore the interest generated was minimal and not a concern of Dr. Goodstein. However, in making this argument, respondent contradicted his premise for placing Dr. Goodstein's funds into the Morgan Stanley account in the first place; i.e., that Dr. Goodstein wanted to earn interest on his money.

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[6] This belief was mistaken. Business and Professions Code section 6211 permits the creation of interest earning bank accounts or other trust investments for client funds when the funds are to be held longer than a short period of time and exceed a nominal amount.

[7] There was no indication in the record that Dr. Goodstein ever requested or demanded payment of the interest generated by his funds in respondent's Morgan Stanley account.

Further, the court disagrees with respondent's assertion that Dr. Goodstein's funds generated minimal interest. In March and April 2003, respondent's Morgan Stanley investment account generated a total income of $3,953.03. While the court lacks adequate information to determine exactly what percentage of the Morgan Stanley account belonged to Dr. Goodstein at all pertinent times, the evidence shows that Dr. Goodstein's funds accounted for a significant portion of the assets in the Morgan Stanley account.[8] Consequently, Dr. Goodstein's funds generated a significant portion of the interest earned in the Morgan Stanley account.[9]

Accordingly, the court finds that respondent deposited funds received on behalf of his client into a non-client trust account and commingled said funds with his own, in willful violation of rule 4-100(A).

Count 2: Moral Turpitude (Business and Professions Code, Section 6106)[10]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, the law is clear that where an attorney's fiduciary obligations are involved, particularly trust account duties, a finding of gross negligence will support such a charge. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

Here, respondent intentionally commingled his client's funds with his own assets and took no steps to preserve the identity of his client's money. Respondent subsequently earned significant interest on his client's funds and made no effort to calculate or pass along these

[8] The court finds that on March 31, 2003, Dr. Goodstein's funds represented 25.5% of the assets in the Morgan Stanley account; and on April 30, 2003, Dr. Goodstein's funds accounted for 52.2% of the assets in the Morgan Stanley account.

[9] Respondent held Dr. Goodstein's funds in the Morgan Stanley account for 71 days, from March 17 to May 27, 2003. Assuming a 10% interest rate per annum, Dr. Goodstein's funds would have generated interest in the amount of $1,011.34 during that period of time. Consequently, the court orders that respondent pay restitution to Dr. Goodstein as discussed more fully below.

[10] Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

earnings to his client. Respondent's commingling of his client's funds and profiting from their use without remuneration, constitute, at least, a finding of gross negligence in the dereliction of respondent's duty to safeguard any and all entrusted client funds.

By willfully investing his client's funds into his personal investment account and unilaterally reaping the benefit of said investment, respondent committed an act or acts involving moral turpitude, in willful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)[11] Here, respondent has proven some mitigating circumstances.

Respondent was extremely cooperative with the State Bar during these proceedings. (Standard 1.2(e)(v).)

Respondent presented evidence of substantial pro bono work. Respondent has performed pro bono work for the National Missing Children's Locate Center, a non-profit corporation devoted to locating missing children. Additionally, respondent has provided pro bono legal services for multiple low-income clients.

Additionally, the court admitted five letters from a wide range of individuals attesting to respondent's good character. (Standard 1.2(e)(vi).) Among other things, these letters described respondent as generous, caring, reliable, trustworthy, helpful, and understanding. However, these letters can only be afforded nominal weight in mitigation, because there has been no showing that their authors were aware of the full extent of respondent's misconduct, as required by standard 1.2(e)(vi).

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

B. Aggravation

Respondent has a prior record of discipline. (Standard 1.2 (b)(i).) On August 5, 1991, respondent was publicly reproved with conditions in State Bar Court Case No. 90-O-18215 for signing his client's name (with his client's consent) on several documents including court-filed pleadings and declarations without disclosing that it was not his client's signature, in violation of sections 6106 and 6068, subdivision (d), and rule 5-200. In mitigation, respondent had no prior record of discipline over many years of practice, cooperated with the State Bar, and expressed remorse for his misconduct. No aggravating factors were involved.

Respondent argues that this prior discipline is too remote in time and should not be considered in aggravation. The court disagrees. Although thirteen years elapsed between the past and present misconduct, the court notes similarities between the two. Both cases involved moral turpitude; and, in both cases, respondent appears to justify or minimize his misconduct based upon the fact that the clients consented to the misconduct. Further, respondent's prior discipline did not serve to rehabilitate respondent and prevent the instant misconduct. Therefore, the court finds that respondent's prior misconduct is not too remote in time and warrants consideration in aggravation. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443-444.)

V. Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of sanctions ranging from actual suspension to disbarment. (Standards 2.2(b) and 2.3.) Standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions." In addition, standard 1.7(a) requires that the degree of discipline in the current proceeding must 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.

Standard 2.2(b) provides that culpability of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, none of which offenses result in willful misappropriation of entrusted funds or property "shall result in at least a three-month actual suspension from the practice of law, irrespective of mitigating circumstances." Standard 2.3 provides that culpability for an act of moral turpitude "shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent

arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be actually suspended for one year. In support of its recommended discipline, the State Bar cites standards 2.2(b) and 2.3, but failed to cite any similar case law in support of its recommendation.

In its closing argument, the State Bar mentioned several cases, notably including: *In the Matter of Lilly*, supra, 2 Cal. State Bar Ct. Rptr. 185; *Hatch v. State Bar* (1961) 55 Cal.2d 127; and *Lipson v. State Bar* (1991) 53 Cal.3d 1010. *Lilly*, *Hatch*, and *Lipson* each resulted in an actual suspension of one year or more. However, all three of these cases also involved the misappropriation of client funds. Consequently, the instant case is easily distinguished from *Lilly*, *Hatch*, and *Lipson*.

Respondent, on the other hand, likened the instant misconduct to several cases including: *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387; *In the Matter of Whitehead* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 354; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732; and *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092. These five listed cases advocate a level of discipline ranging from a private reproval to 45 days actual suspension. However, the court notes that each of these cases do not include a finding of moral turpitude.

Respondent further argued that the instant case involved a "technical violation" of rule 4-100(A). The court disagrees with this assertion. In a handful of cases, the Review Department has found what has been equated to a "technical violation" of rule 4-100(A) [or former rule 8-

101(A)]. (See *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17; and *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732.) In each of these cases, the attorneys were disciplined for inadvertently withdrawing client funds from their client trust accounts. In contrast, respondent's actions in the instant case were intentional and not the result of some type of accounting error. Therefore respondent's present misconduct constitutes more than a mere technical violation of rule 4-100(A).

In determining the recommended discipline in this matter, the court is guided by *In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420. In *McKiernan*, the respondent agreed to let his long-time friend use his law firm's client trust account for business purposes. During this same time period, respondent failed to maintain and supervise his client trust account and commingled his own funds within the account. Additionally, the respondent issued two client trust account checks when he knew there were insufficient funds to cover them. The Review Department found that the respondent's repeated misuse and neglect of his client trust account constituted a violation of rule 4-100(A). Additionally, the Review Department found that by issuing checks without a reasonable expectation that they would be honored upon presentation, the respondent's actions, at best, were the result of his gross negligence and therefore involved moral turpitude in violation of section 6106. In mitigation, the respondent had no prior record of discipline for over 21 years prior to the start of his misconduct.[12] In aggravation, the respondent demonstrated indifference toward rectification and atonement for his misconduct. The Review Department ultimately concluded that there was no compelling reason to depart from the three-month minimum suspension called for by standard 2.2(b). As a result, it

[12] The weight of this mitigation was discounted by the fact that respondent's inattention to the maintenance and supervision of his client trust account began before the charged misconduct.

was recommended that the respondent be suspended for two years, stayed, and that he be placed on probation for two years, including the condition that he be actually suspended for 90 days.

Like *McKiernan*, the instant case involves violations of rule 4-100(A) and section 6106. Both cases involve an attorney's willful violation of his ethical duties in an effort to assist a friend. Both cases also include moral turpitude based on a finding of gross negligence.

While the client trust account abuse in *McKiernan* was certainly egregious, it is rivaled by respondent's misconduct in the instant case. The trust fund and trust account rules are designed to safeguard client funds from the serious risk of loss or misappropriation, whether through carelessness or design. (*In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, 420.) Respondent chose to ignore these safeguards when he willfully deposited his client's settlement funds directly into his personal investment account.

Here, similar to *McKiernan*, the evidence of mitigation and aggravation act as counterbalancing agents. Respondent's prior record of discipline effectively offsets his mitigation for pro bono work and cooperation with the State Bar. Therefore, after weighing the evidence, including the factors in aggravation and mitigation, the court finds no compelling reason to deviate from the three-month actual suspension required by standard 2.2(b).

VI. Recommended Discipline

Accordingly, it is recommended that **Herbert Papenfuss** be suspended from the practice of law for two years and until: (1) he makes restitution to Wallace Goodstein, M.D., in the amount of $1,011.34, plus 10% interest per annum from May 28, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Wallace Goodstein, M.D., plus interest and costs, in accordance with Business and Professions Code section 6140.5), and (2) he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), that execution of

the suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 90 days of probation and until he furnishes satisfactory proof to the State Bar's Office of Probation that he has made restitution to Wallace Goodstein, M.D., in the amount of $1,011.34, plus 10% interest per annum from May 28, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Wallace Goodstein, M.D., plus interest and costs, in accordance with Business and Professions Code section 6140.5);

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

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

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

4. Reporting requirements.

a. If Respondent possesses client funds at any time during the period covered by a required quarterly report, respondent must file with each required report a certificate from respondent and a certified public accountant or other financial professional approved by the Office of Probation, certifying that: respondent has

maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:

i. a written ledger for each client on whose behalf funds are held that sets forth:

1. the name of such client,

2. the date, amount, and source of all funds received on behalf of such client,

3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and

4. the current balance for such client;

ii. a written journal for each client trust fund account that sets forth:

1. the name of such account,

2. the date, amount, and client affected by each debit and credit, and

3. the current balance in such account.

iii. all bank statements and canceled checks for each client trust account; and

iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held;

2. the person on whose behalf the security or property is held;

3. the date of receipt of the security or property;

4. the date of distribution of the security or property; and

5. the person to whom the security or property was distributed.

b. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above.

c. The requirements of this condition are in addition to those set forth in rule 4-100.

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

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

7. Within one year after the effective date of the discipline herein, respondent must provide to the Probation Office satisfactory proof of attendance at a session of the State Bar Ethics School and a session of the State Bar Client Trust Accounting School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of each session.

Arrangements to attend Ethics School and Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fees. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School or Client Trust Accounting School (Rule 3201, Rules of Procedure of the State Bar.);

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

9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years and until: (1) he makes restitution to Wallace Goodstein, M.D., in the amount of $1,011.34, plus 10% interest per annum from May 28, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Wallace Goodstein, M.D., plus interest and costs, in accordance with Business and Professions Code section 6140.5), and (2) he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), will be satisfied and that suspension will be terminated.

It is further recommended that if respondent is actually suspended for two years or more, he must remain suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, present fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is also recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the

effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

It is further recommended that the Supreme Court order respondent to comply with rule 9.20, paragraphs (a) and (c) of the California Rules of Court, within 30 and 40 days, respectively, after the effective date of its order imposing discipline in this matter. **Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.**[7]

VII. Costs

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.

Dated: January _____, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court

[7]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.)