PUBLIC MATTER – NOT FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **RONALD PAUL GOLDMAN,** A Member of the State Bar.	**06-O-11449** **OPINION ON REVIEW**

The key facts in this case are both extremely simple and undisputed.

Respondent Ronald P. Goldman, who was a member of the State Bar for almost 22 years at the relevant time of the found misconduct with no record of prior discipline, represented himself and his wife in a civil court action against them involving realty. In 2003, in filing a separate verified answer for his wife, respondent signed his wife's name without indicating that her verification was not made personally by her. Respondent had his wife's consent to sign her name.

The State Bar Court hearing judge considered respondent's candor, cooperation, acceptance of responsibility and 29 character reference declarations, collectively, from attorneys, judges and clients. Although she concluded that respondent did commit an act of dishonesty by misrepresenting that his wife had signed the verified answer when she had not, the judge imposed a private reproval based on the presence of strong evidence in mitigation and no evidence in aggravation.

Both sides seek our review. Respondent claims that he did not commit an act of dishonesty or moral turpitude and that this case should be dismissed. The State Bar's Office of Chief Trial Counsel (State Bar) argues that aggravation surrounds the misconduct, that the State

Bar Court is without authority to recommend less than a suspension and that we should recommend a 90-day actual suspension as a condition of a longer stayed suspension. Upon our independent review (Cal. Rules of Court, rule 9.12; *In re Morse* (1995) 11 Cal.4th 184, 207), we find that the hearing judge has fairly and fully considered the evidence, properly evaluated witness credibility and rendered the appropriate findings and conclusions. We uphold them and conclude that the appropriate degree of discipline in this case is private reproval as recommended by the hearing judge.

I. FACTS AND FINDINGS

Respondent was admitted to practice in December 1981 and has no record of prior discipline. He was the principal of his law firm and its major emphasis was the representation of physicians and dentists in malpractice defense and in business and employment cases.

In 2003, respondent and his spouse, Janna, were sued in Marin County Superior Court by Eugene Berman over a real estate commission allegedly owed Berman from a parcel respondent and Janna purchased. At the times in issue, respondent's law office was in Tiburon and his home, where Janna was often located, was in Greenbrae, about eight miles away. Both of these locations are in Marin County.

Respondent's law firm represented both himself and Janna in the *Berman* litigation. As their respective defenses differed, respondent filed separate verified answers for himself and for Janna. In January 2004, relying on his spousal relationship and a written power of attorney executed by Janna as part of their estate planning, respondent filed Janna's answer and signed her name to its verification without indicating in any way that Janna had not personally subscribed it. There is no dispute that Janna understood the nature of the answer, agreed with it and authorized respondent to sign her name to it. Respondent testified that he reviewed with

Janna the content of her proposed answer "line by line" to make sure that it was consistent with her position.

Respondent's simulation of Janna's signature did not come to light until the *Berman* case was tried in early 2006. At that time, Berman's counsel cross-examined Janna and used her verified answer to seek to impeach her. Janna testified that she had not signed her name to the answer, but that respondent had done so. Respondent also so testified in the civil action.

Judge Allan Hardcastle, who presided over the *Berman* trial, believed that he was under obligation to report respondent's conduct and sent a written report on it to the State Bar, leading to this proceeding. Judge Hardcastle testified that he had a high opinion of respondent, having presided over other cases in which respondent was counsel. He characterized respondent's act as a "dumb thing" to do. Although Judge Hardcastle noted that Janna and respondent had a history in the *Berman* case of signing documents for each other for expediency reasons, he also testified as to the import of a signature on a document under penalty of perjury and the difference between signing other documents for another and a declaration under penalty of perjury.[1]

Respondent's testimony also showed that he signed Janna's name to her verification largely for expediency reasons or convenience, as well as relying on the fact that respondent was Janna's attorney and spouse with a durable power of attorney to sign documents for her and Janna's specific approval to sign her verification. Respondent denied that he sought to deceive or gain an unfair advantage. He also testified that he was familiar with the provisions of Code of Civil Procedure, section 446, which allow a party's attorney to verify the party's answer under

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[1]"Q. [By the State Bar]: Do you see a difference between, for instance, signing a letter on behalf of one's spouse, even including one's spouse's name, as compared to a document that's under penalty of perjury? [¶]. . .[¶] A. [By Judge Hardcastle]: Well, there is. The declaration is saying, 'This is my testimony,' when you're signing under penalty of perjury, 'This is what I would say,' and you can't step into somebody's shoes. That's a little different than just signing their name to a letter or a document … ."

certain conditions. He testified that he should have used those provisions, but he did not do so.[2] Respondent also testified that he had never signed the name of any other person to a verified pleading and was admittedly wrong and "foolish" to do so in the *Berman* case. He would not repeat this conduct.

In mitigation, the hearing judge considered evidence showing respondent's strong character. Retired Marin County Superior Court judge Lynn O'Malley Taylor[3] testified that respondent appeared before her on various motions and has volunteered his service to the court on the court's settlement conference panel. Judge Taylor regarded respondent as honest, prompt, well-prepared and he enjoyed a good reputation for honesty among the other members of the court. Judge Taylor considered that respondent had no intent to deceive when he signed Janna's name to the verification, so long as he had her permission to sign her name to it. This incident also did not detract from Judge Taylor's opinion of respondent's character. It was sloppy lawyering and a dumb thing for a lawyer to do but not "that egregious" in Judge Taylor's view.

Also considered were 29 character reference letters, variously from clients, attorneys and judges, attesting to respondent's positive character, honesty and trustworthiness. Although not every letter recited the writer's specific or complete awareness of the nature of the charges, most

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[2]Code of Civil Procedure section 446(a) would have allowed verification by respondent if Janna had been absent from Marin County, where respondent had his principal law office. As noted *ante*, that exemption did not appear to have applied and respondent never alleged that it did, although Janna had testified in the civil action that she was outside of Marin County at the time her answer was to be verified. Section 446(a) would have also allowed respondent to verify Janna's answer if due to "some other cause," she was unable to personally verify it. No other cause was offered by respondent. In any case, if respondent had verified Janna's answer, he would have been obliged, under section 446(a), to "set forth in the affidavit the reasons why" it was verified by respondent rather than Janna. (See also *Aronin v. State Bar* (1990) 52 Cal.3d 276, 286-287) This respondent did not do.

[3]Judge Taylor had no role in the *Berman* litigation.

showed sufficient familiarity with the essence of those charges and the references adhered to their positive view of respondent's character, notwithstanding.

The evidence showed that respondent had no prior discipline in 22 years of practice at the time he verified Janna's answer, that he cooperated with the State Bar in resolving the facts incident to this proceeding, and that he expressed his regret over his signature of Janna's name to her verification. As noted *ante*, respondent offered evidence of his pro bono service to the Marin County Superior Court in its settlement conference program and he has assisted his law school as well as the University of San Francisco and University of the Pacific in pro bono teaching and support activities.

The evidence in aggravation was that in April 2004, respondent also signed Janna's name to a verification of her response to Berman's request for production of documents in the civil case.[4] Respondent testified that Janna had reviewed her answers to Berman's request and had helped to provide the factual basis of the response. Respondent's state of mind was that Janna had authorized him to take all steps to verify the responses of both her and respondent to the discovery requests. The hearing judge made no findings in aggravation concerning respondent's simulation of Janna's signature on this verification during discovery.

From the foregoing evidence, the hearing judge concluded that respondent willfully violated Business and Professions Code, section 6106[5] by his dishonesty in signing Janna's name to her verified answer. The judge found that this act misled that Janna had personally signed the verification. However, the hearing judge found the other charge against respondent – that he had violated section 6068, subdivision (a) by seeking to mislead the superior court by his signature of

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[4]The Notice of Disciplinary Charges alleged as the only act of misconduct, respondent's signature of Janna's name to her verified answer to the complaint.

[5]Unless noted otherwise, all later references to sections are to the provisions of the Business and Professions Code.

Janna's name – to be duplicative since it was based on the same essential facts as the section 6106 charge.

II. DISCUSSION

A. Pending Motions

At the outset, we rule on two pending motions: In June 2008, the State Bar requested that we take judicial notice that, in the case of *Hallinan v. State Bar* (1948) 33 Cal.2d 246, Hallinan had no prior record of discipline and was admitted to practice 28 years earlier. The State Bar advances this motion in order to correct a reference in the hearing judge's decision that the Supreme Court cited no mitigation in its *Hallinan* decision. Respondent opposes the motion on grounds, inter alia, that it is untimely and not a proper subject of judicial notice. We deny the motion to take judicial notice. In our view, the Supreme Court's decision in *Hallinan* should be read as written by the Court and we so consider it. Contrary to the hearing judge's characterization of it, and, as we note *post*, that decision did recount some mitigating factors such as Hallinan's good faith and immediate steps to protect the parties. Nevertheless, this circumstance does not cause us to grant the motion.

Next, we address the State Bar's August 2008 Supplemental Statement (Statement), which respondent opposes. The State Bar proffered this statement in order to cite and discuss an additional authority which State Bar counsel had not cited in its earlier briefs. Respondent has opposed the Bar's Statement largely on timeliness grounds. We refuse to consider the State Bar's Statement as it is more in the nature of advocacy that should have been included as part of its briefing. Although we have allowed counsel appearing before us to cite to us and opposing counsel additional authorities not in the briefs and which are to be mentioned at oral argument, the State Bar's proffered Statement goes beyond an appropriate citation of such additional

authority and well into advocacy. In view of our ruling, it is unnecessary to consider on the merits respondent's opposition.

B. Culpability

Respondent urges us to reverse the findings of dishonesty and the conclusion that he violated section 6106. He contends that he had no intent to deceive or to seek an unfair advantage and that greater scienter than surrounded his culpability should be required before holding him to a violation of section 6106. We disagree with respondent's argument and uphold the hearing judge's conclusion that respondent did engage in an act of dishonesty, proscribed by section 6106.

For over 60 years, the Supreme Court has found members of the State Bar culpable of professional misconduct when they intentionally misstate facts in papers filed in court actions or in papers settling litigation. (E.g., *Davis v. State Bar* (1983) 33 Cal.3d 231, 239-240 [misrepresentation in answer]; *Hallinan v. State Bar*, *supra*, 33 Cal.2d at p. 249 [simulation of party's signature to settlement agreement after litigation]; *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145 [false statements in complaint verified as notary public].)[6]

We find dispositive here the clear language of the Supreme Court in an earlier case of an attorney signing his clients' names to a verified answer to a complaint for unlawful detainer, (*Aronin v. State Bar, supra,* 52 Cal.3d at pp. 286-287): "Relying on Penal Code section 470's definition of forgery, [Aronin] contends his action was not a forgery because he did not intend to defraud and because he believed he had authority to sign his clients' names. Both [Aronin] and

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[6]Indeed, discipline under section 6106 is not reserved for an attorney's act of deceit toward a court or counsel. As section 6106 points out and case law attests, an attorney's deceit toward a third party can be disciplinable. (E.g., *McKinney v. State Bar* (1964) 62 Cal.2d 194, 196 [attempt to deceive bank by simulating client's signature on settlement draft; other misconduct involved]; *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 336-337, 339 [use of resume misleading as to educational achievements].)

the State Bar miss the mark by concentrating on the notion of forgery. The more important point is whether the conduct, whatever its label, was misconduct. It was. . . . Moreover, [Aronin's] signatures were obviously misleading because they constituted a representation that the clients had in fact signed the document. On very similar facts, we have cautioned that, 'Such conduct should not be condoned.' (*Hallinan v. State Bar*, *supra*, 33 Cal.2d at p. 249.) [Aronin] necessarily intended to cause the trial court and opposing parties in the unlawful detainer action to believe that *his clients* had verified their answer. This was an intentional deception and thus constituted moral turpitude." (Italics in original.)

Respondent, an experienced civil litigator, was aware that he was signing Janna's name to her verified answer. He knew the import of that answer and the significance of the verification process as he had never before simulated the signature of another client on a verified answer. Moreover, he took no steps to indicate in the answer that he, not Janna, had signed her name. Although Judge Hardcastle believed that respondent's action was best characterized by the label "dumb", he also testified that signing a declaration was quite different from subscribing another document. Under all the circumstances, particularly as to the applicable law, respondent acted with sufficient knowledge and intent to have violated section 6106, notwithstanding that Janna had agreed to the contents of her answer and authorized respondent to sign her name.

C. Degree of Discipline

As we have found respondent culpable of violating section 6106, we start by consulting the Standards for Attorney Sanctions for Professional Misconduct (Standards), which serve important functions in an appropriate recommendation of discipline. (*In re Brown* (1995) 12 Cal.4th 205, 220.) Standard 2.3 provides for actual suspension or disbarment for cases of acts of dishonesty or moral turpitude, depending on the extent to which the victim is harmed or misled and depending on the magnitude of the misconduct, and the degree to which it relates to the

practice of law. Respondent's misconduct was central to the practice of law and it misled the court and opposing counsel, but the harm was minimal.

The specific discipline to recommend is affected by balancing the aggravating and mitigating factors. (Std. 1.6(b).) In this case, the balance weighs most strongly toward the significant mitigating factors present. The only factor we find aggravating is the uncharged misconduct of respondent's simulation of Janna's signature to a verified response to a discovery request in the *Berman* case. However, because that occurred at about the same time frame as his charged misconduct and for the same reason of expediency, we do not consider it significantly aggravating in view of all the evidence in this case. Whether respondent simulated Janna's signature once or twice, it was clearly an isolated offense measured against his 22 years of previously unblemished law practice experience. As to the State Bar's claim that respondent misled as to his entitlement to a real estate commission as a broker, we agree with respondent that the record shows that he set forth his status as a member of the bar and did not misrepresent that he was licensed as a real estate broker.

The several strong mitigating factors are most weighty: respondent's 22 years of practice without prior discipline, his extensive and impressive character references, his pro bono service and his recognition of and regret for his offense. We note, as did the State Bar, that respondent testified at times about his actions in a way that might not show the greatest of insight. But we also note that the hearing judge observed respondent throughout as a witness and she concluded that respondent's position was consistent with those defined mitigative factors. Accordingly, we should and do give the hearing judge's assessment great weight. (See, e.g., *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931.)

The State Bar urges that section 6106 requires disbarment or suspension. It points to the language in the section that makes an attorney's act involving moral turpitude, dishonesty or

corruption a "cause for disbarment or suspension" and also argues that the section does not authorize reprovals, as does section 6077 for violations of the State Bar Rules of Professional Conduct. However, we disagree with the State Bar that disbarment or suspension is required. Providing that defined conduct is a "cause" for disbarment or suspension allows those sanctions to be imposed. It does not *mandate* that level of discipline for that conduct. (Cf. *In re Cooper* (1971) 5 Cal.3d 256, 257 [conviction referral proceeding which involved moral turpitude in the surrounding circumstances; reprimand imposed]; see *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, 605-606 [violation of section 6103, containing the same pertinent language as section 6106; private reproval imposed].)

Since in appropriate cases, other discipline can be imposed or recommended than that provided as statutory grounds or as recommended in the Standards (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994-996), we consult case law to guide us further. We note a wide variety of discipline has been imposed for an attorney's isolated instance of deceit of the type which occurred here. The State Bar cites cases to conclude that all instances of similar misconduct have resulted in some actual suspension. However, many of the Bar's cited cases involved other misconduct than an isolated misrepresentation, convictions of felonies, or attorneys with prior records of discipline.

One case which does have similarities to the present is that of *Hallinan v. State Bar, supra*, 33 Cal.2d 246. There, the Supreme Court imposed a three-month suspension. Hallinan had simulated his client's signature to a release and executed an acknowledgement of that signature, in order to settle the case for his client, the plaintiff, for a slightly lower amount than obtained by a trial judgment after it was reversed on appeal for a jury instruction error. The form of release signed by Hallinan included a line for his client and one for Hallinan. Hallinan understood that the defendant required the personal signature of Hallinan's client on the release

and conceded that Hallinan's simulation of the client's signature gave the defendant the impression that the client had personally signed it when he had not. (*Id.* at p. 248.) Hallinan had used a broad power of attorney to sign his client's name. The defendant, fearing that Hallinan's client might contest the settlement, when it became clear that Hallinan had simulated the client's signature, paid an additional $5,000 to obtain a release actually signed by the plaintiff. Hallinan offered promptly to reimburse the defendant and to guarantee the validity of the signature. In upholding the three-month suspension, the Supreme Court noted Hallinan's good faith and immediate steps to protect the opposing party, and that the three-month suspension was adequate discipline as the "maximum recommended by a member of the local administrative committee" hearing the matter. (*Id.* at p. 249.) In *Hallinan*, it appeared that the attorney was aware of the specific import placed by the defendant on the client's personal signature on the release and that the attendant deceit on the defendant seemed more serious than respondent's conduct.

However, decided much later than *Hallinan* are cases which have involved isolated misrepresentations to courts and which have resulted in reproval of attorneys with no prior disciplinary record. (See *Mushrush v. State Bar* (1976) 17 Cal.3d 487; *Sullins v. State Bar* (1975) 15 Cal.3d 609; *Mosesian v. State Bar* (1972) 8 Cal.3d 60; *In re Cooper, supra,* 5 Cal.3d 256.) We consider these cases reasonably related to the offense here so as to be guiding in reaching a recommendation of discipline.

In *Mushrush v. State Bar, supra,* 17 Cal.3d 487, while representing the owner of valuable realty, the attorney represented falsely to the bankruptcy court that he had not seen a $638,694.69 check for the proceeds of sale of one of the parcels involved in Chapter 11 proceedings. He repeated these statements during the State Bar proceedings. Mushrush had been admitted to practice for ten years at the time of his misrepresentation to the bankruptcy court. Although it

concluded that Mushrush's conduct involved moral turpitude, the Supreme Court determined that public reproval was warranted.

In *Sullins v. State Bar, supra*, 15 Cal.3d 609, an attorney with a 45-year unblemished disciplinary record misled a superior court by concealing in a will contest a letter bearing on the issues in the contest. The Supreme Court imposed a public reproval.

In *Mosesian v. State Bar, supra,* 8 Cal.3d 60, the attorney testified falsely about his aunt's reputation in strongly contested civil litigation also involving his father. Mosesian had been admitted to practice only three years at the time of his misconduct. Although the court determined that Mosesian's conduct was "reprehensible," it also concluded that a reprimand, issued on the publication of the court's opinion, was sufficient.

In neither *Mushrush* nor *Mosesian* did the court discuss mitigating and aggravating evidence, although it was noted that Mosesian had produced a favorable letter by the civil trial judge, written some time after Mosesian's false testimony.

Finally, we note that *In re Cooper*, *supra*, 5 Cal.3d 256, involved an attorney convicted of federal criminal contempt charges (18 U.S.C. § 401) following his use of grand jury transcripts prior to the release of their secrecy status as well as making false statements concerning the source of the still-secret grand jury transcripts. Although the Supreme Court concluded that moral turpitude was involved in the facts and circumstances of Cooper's conviction, it did not discuss the specific factors leading to its decision of public reproval. However, it imposed that discipline "after reviewing the entire record and considering all the facts and circumstances." (*Id.* at p. 257.)

Considering the very isolated nature of the offense in the case before us and the extremely strong mitigation, we hold that a private reproval is appropriate. Without condoning respondent's conduct, we consider the conduct in *Cooper*, *Mushrush, Sullins* and *Mosesian*

slightly more serious, involving deceit as to substantive issues before the court. We also underscore that the evidence shows respondent's reliance on his spouse Janna's approval of the answer which respondent drafted.

III. DISCIPLINE IMPOSED

For the foregoing reasons, respondent, Ronald P. Goldman, is hereby privately reproved. Because of the specific nature of the violation and the other circumstances of this case, we follow the hearing judge's disposition and do not attach duties to this reproval. (See *In the Matter of Respondent X*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 606.)

STOVITZ, J.[7]

We concur:

EPSTEIN, Acting P. J.[8]

HONN, J.[9]

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[7]Hon. Ronald W. Stovitz, retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.

[8]Acting as Presiding Judge by designation of the Presiding Judge.

[9]Hon. Richard A. Honn, Hearing Judge of the State Bar Court, sitting by designation of the Presiding Judge.

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 Los Angeles, on January 8, 2009, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED JANUARY 8, 2009

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

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID A LEVY
DAVID A LEVY, ESQ
SAN MATEO COUNTY COUNSEL
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REDWOOD CITY, CA 94063

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Allen Blumenthal, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles California, on January 8, 2009.

Milagro del R. Salmeron
Case Administrator
State Bar Court