

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No. **08-O-14364-LMA**
)
FRANCIS HOTCHKISS LEWIS, JR.,)
) **AMENDED DECISION**
)
Member No. 61894,)
)
A Member of the State Bar.)

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **Francis Hotchkiss Lewis, Jr.**, is charged with six counts of professional misconduct in a single matter in which he represented a group of three tenants. For the reasons set forth *post*, the court finds that respondent is culpable on all six counts of the charged misconduct.

The court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, that he be placed on probation for two years and that he be suspended for a minimum of the first nine months and until he makes restitution to two clients.

II. PERTINENT PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) against respondent on March 17, 2010. Respondent filed his response to the NDC on April 26, 2010.

Trial was held on September 15, 17, 21 and 22, 2010. On September 15, 2010, the parties filed a stipulation as to undisputed facts in this proceeding. (Rules Proc. of State Bar, rules 130 and 131.) The court took the case under submission for decision on October 7, 2010.¹

The State Bar was represented by Deputy Trial Counsel Sherrie B. McLetchie. Respondent represented himself.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court's findings of fact are based on the parties' September 15, 2010 stipulation as to undisputed facts as well as the documentary evidence and testimony presented at trial. A number of the court's findings of fact are based in large part on credibility determinations, which determinations the court carefully made after considering multiple relevant factors (e.g., Evid. Code, § 780).

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 18, 1974, and has been a member of the State Bar of California since that time.

B. Findings of Fact

On November 26, 2007, respondent and Camila Aguilar ("Aguilar"), Wernher Krutein ("Krutein"), and respondent's son, Fred Lewis ("Fred") (collectively, "the clients"), entered into a written fee agreement whereby respondent was hired to represent the clients in a landlord-tenant matter in which the clients' landlord, M & E Development, LLC ("landlord"), proposed to pay the landlord's five tenants – the clients, Leo Bersamina ("Bersamina") and Jennifer Bryce ("Bryce") – to vacate the warehouse located at 1045 17th Street, San Francisco, where all five tenants lived. The landlord was represented by attorney Ronald D. Schivo ("Schivo").

¹ The State Bar's ex parte application for permission to file a closing brief in excess of 15 pages filed September 29, 2010, is granted.

As part of the written fee agreement, respondent agreed to represent the clients for an hourly fee of \$200 and to provide periodic statements of fees and costs. Thereafter, the clients paid respondent \$5,000 as advanced attorney's fees pursuant to the written fee agreement, and paid respondent \$3,800 in additional fees on or about January 24, 2008.

Some of the tenants, including Fred, Krutein and Bersamina, had subtenants. Respondent himself was a subtenant of his son, Fred.

As a condition of the settlement, all five tenants would vacate the premises in exchange for payment from the landlord.

The clients believed that they were each entitled to a different percentage of the money to be paid by the landlord (Aguilar – 20.73%, Krutein – 32.73%, and Fred – 11.65%). And respondent was aware of that.

Yet, at no time did respondent advise the clients of any potential or actual conflict of interest among them because of their differing interests.

On December 28, 2007, an aggregate settlement was signed between the landlord and all five tenants. As part of the settlement, the landlord agreed to pay the tenants a total of \$265,000 in two installments. At no time before entering into the settlement did respondent obtain the informed written consent from each of his clients to the aggregate settlement.

Respondent maintained a client trust funds account (“CTA”) at Citibank.

On January 11, 2008, respondent deposited a check from the landlord in the amount of \$42,055 into his CTA on behalf of the clients. This \$42,055 reflected the clients' portion of the first installment of the settlement funds.

Respondent prepared an accounting dated January 24, 2008, which reflected his receipt of the \$42,055, claimed that he had performed 44 hours of legal work, acknowledged the \$5,000

previously paid by the clients, and showed a balance owing of \$3,800. Respondent then paid himself the \$3,800 out of the \$42,055 settlement.

Prior to May 15, 2008, one or more of Bersamina's subtenants filed their position with the San Francisco Rent Stabilization and Arbitration Board.

On May 15, 2008, respondent invoiced the clients \$500 for a 2.5 hour telephone conversation with Schivo regarding "possible means of resolving the Bersamina subtenant issue and the Rent Board Hearing."

After May 15, 2008, neither Aguilar nor Krutein received any further accounting from respondent until April 26, 2010, when respondent prepared a "draft" accounting and submitted it to this court when he filed his response to the NDC.

On or about June 30, 2008, all tenants and subtenants vacated the premises at 1045 17th Street.

On July 7, 2008, respondent deposited a check from the landlord in the amount of \$77,164.92 into his CTA on behalf of the clients. The \$77,164.92 represented the clients' second portion of the final installment of the settlement proceeds.

Immediately prior to the deposit of the \$77,164.92 into respondent's CTA, the balance of the CTA was \$12.16, and the balance had been less than \$13 since February 19, 2008.

On July 8, 2008, respondent cashed CTA check number 143 in the amount of \$3,000 which included the memo line notation "services rendered 1045 17th Street."

Soon thereafter, the clients learned from a source other than respondent that he had received the \$77,164.92. On July 18, 2008, Aguilar left a letter to respondent dated July 17, 2008, for respondent at his new residence in Alameda requesting payment of the settlement funds and an accounting. Soon thereafter, respondent received the July 17, 2008 letter but did not provide an accounting to Aguilar or Krutein.

On July 21, 2008, respondent made the following payments to the clients from the \$77,164.92: \$20,000 to Aguilar, \$33,000 to Krutein, and \$12,000 to Fred. Thus, after paying the clients a total of \$65,000 on July 21, 2008, respondent still held \$12,164.92 from the settlement funds in his CTA (\$77,164.92 - \$65,000).

If the \$77,164.92 had been divided between the clients as the first installment of the settlement proceeds had been according to the clients' agreed upon percentage shares, Aguilar would have received \$24,569.31 and Krutein would have received \$38,790.81. Based on the parties' stipulation, respondent still owed Aguilar \$4,569.31 (\$24,569.31 - \$20,000) and Krutein \$5,790.81 (\$38,790.81 - \$33,000).

On July 21, 2008, in response to the clients' request for their full portion of the settlement funds, respondent told both Aguilar and Krutein separately that he was withholding a portion of their settlement funds pending completion of a final accounting and that he would issue the remaining payments once the accounting was completed.

The April 26, 2010 "draft" accounting that respondent submitted with his response to the NDC totals \$12,150.

To date, respondent has failed to pay Aguilar and Krutein any portion of the \$12,164.92.

Between July 21, 2008 and June 30, 2009, the balance in respondent's CTA fell on repeated occasions below the \$12,164.92 respondent was required to maintain on behalf of the clients in his CTA, as follows:

<i>Date</i>	<i>Balance in Respondent's CTA</i>
07/31/08	\$9,177.08
08/21/08	\$8,677.08
08/26/08	\$8,477.08
09/25/08	\$6,477.08
11/06/08	\$4,477.08
06/30/09	\$4,477.08

On September 25, 2008, respondent cashed CTA check number 144 payable to himself in the amount of \$2,000 with the memo line notation of “fees for services rendered 1045 17th Street.”

In October 2008, Aguilar and Krutein submitted a complaint to the State Bar regarding respondent.

On November 6, 2008, respondent cashed another CTA check number 145 payable to himself in the amount of \$2,000 with the memo line notation of “1045 17th Street legal fees.”

By November 6, 2008, respondent had withdrawn at least \$7,687.84 of the \$12,164.92 he had received on behalf of his clients for his own use and benefit (\$12,164.92 - \$4,477.08).

By letter dated February 6, 2009, State Bar Investigator Jeanne Isola (“Isola”) notified respondent of Aguilar and Krutein’s complaint. In response to the February 6, 2009 letter, respondent telephoned Isola and spoke with her on February 20, 2009, and obtained an extension of time to respond to Isola’s written request for an accounting of the settlement funds and bank records documenting his handling of the entrusted funds. Respondent never replied in writing to Isola or provided any accounting or bank records to her, despite a second letter Isola sent to respondent on May 14, 2009, reminding respondent of his duty to cooperate with the State Bar’s investigation.

As of July 31, 2010, the CTA balance remained \$4,477.08.

C. Conclusions of Law

*Count 1 – Avoiding the Representation of Adverse Interests – Potential Conflict (Rules of Prof. Conduct, Rule 3-310(C)(1))*²

Rule 3-310(C)(1) provides that an attorney must not, without the informed written consent of each client, accept representation of more than one client in a matter in which the interests of the clients potentially conflict.

The intent of the rule is clearly prophylactic. The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: “By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client’s interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent.” (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; see *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

The clients believed that they were entitled to a different percentage of the money to be paid by the landlord. Based on the differences, there was a potential conflict of interest due to respondent’s representation of the three clients. Moreover, one of the clients was respondent’s own son and respondent himself was his son’s subtenant, which fueled the potential conflict of interest even further and heightened the necessity of obtaining an informed written consent from each client. Respondent knew of the potential conflict of interest. Yet, he failed to advise the

² References to the rules are to the Rules of Professional Conduct, unless otherwise stated.

clients of the potential conflict of interest, or obtain their informed written consent to the potential conflict of interest.

Therefore, by accepting representation of the clients when the interests of the clients potentially conflicted and without the clients' informed written consent, respondent willfully violated rule 3-310(C)(1).

Count 2 – Conflict – Aggregate Settlement (Rule 3-310(D))

Rule 3-310(D) prohibits an attorney who represents two or more clients from entering into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

By representing three clients in the landlord-tenant matter and entering into an aggregate settlement of the claims of the clients in the landlord-tenant matter, without the informed written consent of each client, respondent represented two or more clients and entered into an aggregate settlement of the claims of or against the clients without the informed written consent of each client, in willful violation of rule 3-310(D).

Count 3 – Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in his possession and render appropriate accounts to the client.

By failing to provide an accounting to the clients until 21 months after he had received the \$77,164.92 and only after the clients reported him to the State Bar, respondent failed to render appropriate accounts to a client, in willful violation of rule 4-100(B)(3).

Count 4 – Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive.

Where a client asks an attorney to distribute funds claimed by the client and where the attorney claims an interest in the funds, the attorney violates rule 4-100(B)(4) if he or she does not promptly take appropriate substantive steps to resolve the dispute in order to disburse the funds. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 854.) The mere fact that payment was not made is sufficient to constitute willfulness for purpose of finding this willful violation of this rule. (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 114.) Moreover, any objection that a client raised to attorney fees and costs would have to be resolved before the attorney's withdrawal of funds from trust account to pay his fees and costs. (*In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 396.)

Here, after paying the clients a total of \$65,000 on or about July 21, 2008, respondent still owed his clients \$12,164.92 from the \$77,164.92 settlement funds. To date, respondent has failed to pay the clients any portion of the \$12,164.92. Although his clients had repeatedly asked respondent to distribute the remaining settlement funds, respondent did not take any steps to resolve the dispute. Instead, he paid himself \$2,000 in September 2008 and \$2,000 in November 2008 from the CTA. By November 6, 2008, respondent withdrew a total of \$7,687.84 from the settlement funds for his own benefit and use.

Therefore, by failing to promptly resolve the dispute with his clients before disbursing the funds to himself, respondent failed to promptly pay or deliver, as requested by the clients, any funds, securities or properties in the possession of the member which the clients are entitled to receive, in willful violation of rule 4-100(B)(4).

Count 5 – Failure to Maintain Funds in Trust Account (Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith.

When the CTA balance fell below \$12,164.92 on several occasions, reaching a low of \$4,477.08 on November 6, 2008, there is clear and convincing evidence that respondent failed to maintain the \$12,164.92 in the CTA on behalf of the clients in willful violation of rule 4-100(A).

Count 6 – Moral Turpitude – Negligent Misappropriation (Bus. & Prof. Code, §6106)³

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

It is well settled that the mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

“[O]nce the trust account balance is shown to have dipped below the appropriate amount, an inference of misappropriation may be drawn.” (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618.)

From July 21, 2008 through June 30, 2009, respondent was required to maintain at least \$12,164.92 (\$77,164.92 - \$20,000 - \$33,000 - \$12,000) in his trust account on behalf of the clients. When the balance in the CTA fell below \$12,164.92 and the balance was only \$4,477.08 on November 6, 2008, there is an inference that respondent negligently misappropriated \$7,687.84 of his client funds for his own use and benefit, even in the absence of deliberate wrongdoing. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 37.)

Thus, respondent committed an act of moral turpitude with gross negligence in willful violation of section 6106 by misappropriating at least \$7,687.84 of his client funds.

³ References to sections are to the provisions of the Business and Professions Code, unless otherwise noted.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b) and (e).)⁴

A. Mitigation

Respondent does not have a prior record of discipline. He was admitted to practice in 1974, and his misconduct began in 2007. Thus, he practiced law discipline-and-misconduct-free for 33 years. Respondent's 33 years of discipline-free practice preceding his misconduct is a very compelling mitigating circumstance even though the present misconduct is serious. (Std. 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

Respondent has health issues and suffers from glaucoma. But the court finds that he could read and write well and read and wrote well and represented himself well in these proceedings. Where respondent failed to establish through expert testimony that his physical maladies were directly responsible for his misconduct and failed to establish through clear and convincing evidence that he no longer suffered from the disabilities, his health issues are not treated as mitigating circumstances. (Std. 1.2(e)(iv); *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.)

B. Aggravation

Respondent had demonstrated indifference toward rectification of his misconduct. He has no insight into his wrongdoing or shown any remorse. (Std. 1.2(b)(v).) At the end of trial, respondent still refused to recognize his fiduciary duty to avoid adverse interest in his

⁴All further references to standards are to this source.

representation of multiple clients and to settle disputes over client funds before unilaterally deciding to pay himself from the settlement funds.

Respondent committed multiple acts of wrongdoing, including failing to maintain and promptly pay client funds, negligently misappropriating client funds, failing to render an accounting and failing to avoid adverse interests. (Std. 1.2(b)(ii).)

There is no clear and convincing evidence, as urged by the State Bar, that respondent's misconduct was followed by bad faith and by violation of uncharged violation of section 6068, subdivision (i) (std. 1.2(b)(ii)); that his misconduct significantly harmed the clients (std. 1.2(b)(iv)); or that he lacked candor (std. 1.2(b)(vi)).

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.”

The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2(b), 2.3 and 2.10 apply in this matter.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(b) provides that the commission of a violation of rule 4-100 must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty must result in actual suspension or disbarment.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges that respondent be suspended for three years, stayed, placed on probation for four years and be actually suspended from the practice of law for two years and until he makes restitution.

Respondent argues that the charges either were not supported by evidence or should be dismissed. After carefully considering respondent's contentions, the court finds that they are without merit.

The following cases provide guidance on the appropriate level of discipline – a period of actual suspension ranging from three months to two years.

In *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, the attorney was actually suspended for three months with a stayed suspension of four years for misappropriating and commingling his client funds of \$11,000. In particular, he appropriated \$6,000 of client funds to his own use, treating it as a loan from his client without his client's authority. His misconduct was not excused in any way merely because his client ultimately suffered no loss as he had repaid the

client. (*Id.* at p. 903.) The attorney remained unrepentant and maintained that he was justified in using his client's funds and taking out the loan.

In *Bates v. State Bar* (1990) 51 Cal.3d 105, the attorney misappropriated \$1,229.75 from his client trust account and made misrepresentations to the client's new attorney regarding the status of the trust account. The attorney did not make restitution until after the State Bar referee issued his decision, reflecting his lack of appreciation of his moral and ethical obligations to his client and his lack of remorse for his wrongdoing. The Supreme Court noted that the attorney's misconduct was especially harmful to his client because the misappropriated funds were significant in amount and were meant to reimburse the client for personal injuries. Nevertheless, the Supreme Court imposed a six-month actual suspension in view of mitigation evidence, including his lack of a prior record of discipline in 14 years of practice.

In *Edwards v. State Bar* (1990) 52 Cal.3d 28, the Supreme Court actually suspended the attorney for one year for misappropriating \$3,000 of client funds. In mitigation, the court found that the attorney made full repayment within three months of the misappropriation, was candid with the client and the State Bar and took voluntary steps to improve his handling of entrusted funds. He had practiced law for 12 years without prior discipline.

In *Porter v. State Bar* (1990) 52 Cal.3d 518, the Supreme Court imposed a two-year actual suspension for an attorney who committed serious misconduct in nine client matters, including misappropriation of settlement funds, writing a bad check, forgery, lying to clients, and unlawfully practice law while suspended. In one matter, he settled the case for \$5,000 without the client's consent or knowledge, forged the client's name to a release and her endorsement on the check, and kept the money. He had strong mitigating factors, such as extreme emotional difficulties and rehabilitation evidenced by community and professional activities. Here,

respondent's misconduct is less egregious than that of *Porter* in that it did not involve nine clients or deceit.

Moreover, the Supreme Court has recognized that not every misappropriation which is technically willful is equally culpable. (*Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367.) Elements of dishonesty, concealment or deceit are often found in misappropriation cases in which the attorney has been disbarred for serious misconduct or received a lengthy suspension for less serious misconduct. (See, i.e., *Chang v. State Bar* (1989) 49 Cal.3d 114; *Hitchcock v. State Bar* (1989) 48 Cal.3d 690; *Rimel v. State Bar* (1983) 34 Cal.3d 128 [disbarment cases]; *Lawhorn v. State Bar, supra*, 43 Cal.3d 1357 [explained further in *Hipolito v. State Bar* (1989) 48 Cal.3d 621, 627-628]; *Mack v. State Bar* (1970) 2 Cal.3d 440 [suspension cases].) Those elements are not present in the instant case. Respondent was definitely wrong in failing to promptly disburse the remaining balance of the settlement funds and clearly disregarded his trust account responsibilities, but he was not intentionally dishonest. Respondent's negligent misappropriation was an isolated instance of misconduct in his 33 years of practice.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) After balancing all relevant factors, including the underlying misconduct and in particular, his lack of a prior record of discipline in 33 years of practice, and in light of the case law and standards, the court concludes that a two-year actual suspension would be unduly harsh and unnecessary to deter future misconduct and protect the public. Accordingly, the court determines that a nine-month actual suspension and until he makes restitution is proper and adequate for the protection of the public, the courts and the legal profession.

VI. RECOMMENDATIONS

A. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **FRANCIS HOTCHKISS LEWIS, JR.**, be suspended from the practice of law in California for two years, that said suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be suspended from the practice of law for a minimum of the first nine months of probation, and he will remain suspended until the following requirements are satisfied:
 - i. He makes restitution to **Camila Aguilar** in the amount of \$4,569.31 plus 10% interest per annum from July 21, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Camila Aguilar, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
 - ii. He makes restitution to **Wernher Krutein** in the amount of \$5,790.81 plus 10% interest per annum from July 21, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Wernher Krutein, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Respondent must furnish satisfactory proof of payments thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).
 - iii. If he remains suspended for two years or more as a result of not satisfying the preceding conditions, he must also provide proof to the State Bar

Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will be terminated pursuant to standard 1.4(c)(ii).

2. Within 15 days after the effective date of the Supreme Court order in this matter, respondent must pay \$2,200 to Camila Aguilar and \$2,200 to Wernher Krutein as part of the above-referenced restitution. Respondent will be given credit for such payments provided satisfactory proof of payments is shown to the Office of Probation. Failure to comply with this restitution payment requirement may constitute a violation of this probation condition and could result in further disciplinary proceedings.
3. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct.
4. 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 thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all 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 probation period.
5. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation

deputy to discuss these terms and conditions of his probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the probation period, respondent must promptly meet with the probation deputy as directed and upon request.

6. 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.
7. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics 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, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. Within one year after the effective date of the Supreme Court order in this matter, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2212, and passage of the test given at the end of

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

9. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter. 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 that is stayed, will be satisfied and that suspension will be terminated.

B. Multistate Professional Responsibility Exam

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

C. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to do so may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.⁵

⁵ 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.)

D. Costs

It is further recommended 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: March _____, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court