FILED JULY 21, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **G. PAUL HOWES,** **Member No. 187772,** A Member of the State Bar.	)	**Case Nos.: 09-J-14696, 13-J-15307-DFM (Cons.)** **DECISION**

INTRODUCTION[1]

Respondent is a prominent trial attorney, who has built a nation-wide reputation as a top securities class action lawyer. Before going into the private sector, Respondent served as an Assistant United States Attorney in the District of Columbia from 1982 to 1995, where he devoted his life and professional energies to curbing the escalating epidemic of drug-related homicides in the nation's capital.

This disciplinary proceeding is based professional misconduct by Respondent while he was a criminal prosecutor in Washington, D.C., as subsequently determined by two other jurisdictions. The earlier of those two determinations was made by the New Mexico Supreme Court in May 1997, over the objection of the United States Justice Department, and resulted in a public reproval at that time. The second determination was made by the Court of Appeals of the

[1] Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

District of Columbia in 2012 and resulted in Respondent be disbarred from practicing in that jurisdiction, effective September, 2010. None of the conduct occurred in California, and all of it took place prior to Respondent being admitted to practice in this state in 1997.[2]

The only disputed issue for this court to decide is the issue of what discipline should result in this state as a result of Respondent's prior misconduct. Although this court finds no basis for recommending that Respondent be disbarred in this state as a result of his misconduct two decades ago in the District of Columbia, the court does conclude that significant discipline is nonetheless required to make clear to all the impropriety of that conduct and to protect the public's faith in the criminal justice system, both here and throughout the country. Accordingly, the court recommends, inter alia, that Respondent be actually suspended for a minimum of three years and until he presents proof to this court of his rehabilitation, present fitness to practice, and then present learning and ability in the general law pursuant to standard 1.2(c)(1) of the Standards for Attorney Sanctions for Professional Misconduct.

Significant Procedural History

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on June 28, 2013, in case No. 09-J-14696, which was based on the discipline ordered by the D.C. court in 2012. On July 30, 2013, Respondent filed his response to the NDC.

An initial status conference was held in the matter on August 1, 2013. At that time the case was given a trial date of September 26, 2013, with a three-day trial estimate.

On September 4, 2013, a status conference was held at the request of the parties. At that conference, the parties requested that the case No. 09-J-14696 be abated until new charges

[2] The California Supreme Court's inherent power to discipline an attorney extends to misconduct that occurred prior to the attorney's admission to practice law in this state. (*Stratmore v. State Bar* (1975) 14 Cal.3d 887.)

involving additional discipline from another jurisdiction could be filed. On that date the case was ordered abated and the existing pretrial and trial dates were vacated.

On November 13, 2013, Respondent filed a motion to unabate case No. 09-J-14696 based on the delay in the State Bar filing the anticipated new charges. On November 26, 2013, the State Bar filed a statement of non-opposition to the motion. A status conference was then held in the matter on January 15, 2014, at which time a follow-up status conference was scheduled for February 3, 2014, and the State Bar was directed to file the new charges prior to that date. In the interim, the order of abatement of case No. 09-J-14696 was vacated.

On January 31, 2014, the NDC was filed in case No. 13-J-15307. Thereafter, on February 10, 2014, an Amended NDC was filed in the matter. The underlying discipline was a decision by the New Mexico Supreme Court in 1997, finding that Respondent had violated his professional obligations as an attorney licensed in New Mexico by virtue of his conduct as a criminal prosecutor in Washington, D.C. in 1988, despite the fact that the conduct at issue did not violate any professional obligation of a criminal prosecutor in Washington, D.C.

At the status conference on February 3, 2014, the two cases, now consolidated, were given a trial date of April 22, 2014, with a four-day trial estimate.

On March 3, 2014, Respondent filed a motion to dismiss case No. 13-J-15307, based on his contention that the disciplinary decision by the New Mexico Supreme Court did not fall within the definition of Business & Professions Code section 6049.1, subdivision (a), which calls for reciprocal discipline when there has been a final order in another jurisdiction determining that the attorney "committed professional misconduct in such other jurisdiction." He argued that, because his misconduct took place in Washington, D.C., rather than in New Mexico, the misconduct was not "in such other jurisdiction" for purposes of section 6049.1.

On March 12, 2014, the State Bar filed an opposition to the motion to dismiss.

On March 19, 2014, this court issued an order denying the motion to dismiss, concluding:

> A review of the New Mexico decision makes clear that the court found that Respondent's conduct constituted misconduct by him as an attorney admitted in that state under the rules of conduct of that state. This was a finding that Respondent had committed misconduct in that state. Accordingly, there is authority under section 6049.1 for this proceeding to go forward.
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> The language relied on by Respondent in his motion, quoted above, does not refer to the location where the misconduct occurred but instead refers to whether the conduct violated the rules of that jurisdiction applicable to that attorney at the time of the conduct. That meaning is made clear by the fact that section 6049.1 goes on to provide that the finding of "professional misconduct in such other jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state" unless the Respondent can prove, as a matter of law, that the conduct would not have warranted discipline under the laws or rules of this state applicable to Respondent at the time of the conduct.

On April 2, 2014, Respondent filed his response to the Amended NDC.

Trial was commenced and completed on April 22, 2014, followed by a period of post-trial briefing. The State Bar was represented at trial by Supervising Senior Trial Counsel Kristin L. Ritsema and Deputy Trial Counsel Elizabeth Stine. Respondent was represented in the proceeding by Arthur Margolis of Margolis and Margolis and Ellen R. Peck.

Statutory Overview

This proceeding is governed by section 6049.1. Subject to certain exceptions, section 6049.1, subdivision (a), provides, in pertinent part, that a certified copy of a final order by a court of record of the United States or any state thereof, determining that a member of the State Bar committed professional misconduct in that jurisdiction, shall be conclusive evidence that the member is culpable of professional misconduct in this state. After the receipt by this court of such evidence, the issues in this streamlined proceeding, including the exceptions to the above rule, are limited to: (1) whether the prior disciplinary proceeding lacked fundamental

constitutional protection; (2) whether, as a matter of law, the respondent's culpability in that proceeding would not warrant the imposition of discipline in California under applicable California laws and rules; and (3) the degree of discipline to be imposed on the respondent in California. (Bus. & Prof. Code, section 6049.1, subd. (b); *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 353.) The burden of proof with regard to the first two issues is on the Respondent. (Section 6049.1, subd. (b).)

No contention is made in this matter that either of the two prior disciplinary proceedings lacked due process. Further, except as reflected in Respondent's motion to dismiss case No. 13-J-15307, noted above, no argument is advanced that the misconduct found in either of the two proceedings would not warrant the imposition of discipline in California under applicable California laws and rules. Hence, as previously noted, the only disputed issue raised by the parties during trial is the appropriate level of discipline.

Findings of Fact and Conclusions of Law

The following findings of fact are based on portions of Respondent's response to the NDC, the findings in the two disciplinary matters, the extensive stipulation of facts submitted by the parties in this proceeding, and the evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on April 9, 1997, and has been a member of the State Bar at all relevant times.

Background Facts - Respondent

Respondent grew up and attended high school in Albuquerque, New Mexico, where he was an excellent student, state champion orator, and all-state musician. After high school, he enlisted in the Marine Corps and served in Vietnam. After his military service was completed, he attended the University of New Mexico, where he graduated in 1975 with a double major in

Political Science and Journalism. While in college, he held full-time employment as a musician with the New Mexico Symphony Orchestra and working at several radio stations. Respondent then enrolled at the University of Virginia, where he subsequently graduated with a law degree in 1978 and a master's degree in public administration in 1979.

While in law school, Respondent accepted a judicial clerkship with the Honorable William Webster, who was then a judge on the United States Court of Appeals for the Eighth Circuit in St. Louis. After Judge Webster was appointed FBI Director in early 1978, Respondent worked as his special assistant for one year. The following year, Respondent clerked for the Honorable Roger Robb of the United States Court of Appeals for the District of Columbia.

Respondent was admitted to the New Mexico Bar in 1980. After completing his second federal clerkship, Respondent worked for a year in the private practice of law, followed by a stint as a correspondent with ABC News.

In March 1984, Respondent began work as an Assistant United States Attorney in the District of Columbia. That office, unlike most, prosecutes both federal and local (state) felonies.

Respondent was initially assigned in the U.S. Attorney's Office to the Superior Court Division. By 1986, he was trying serious felonies and, within a year, was assigned to prosecute major homicide and sex offender cases. In January 1989, he was selected by the U.S. Attorney to be one of the first five prosecutors assigned to the Drug Homicide Strike Force. As will be discussed in much greater detail below, he served in that position until May 1995, where he investigated and prosecuted numerous homicide cases, both in the Superior Court of that district and in the United States District Court. In addition to the many convictions that he secured, he is credited with "closing" approximately 50 murders during that time.

In May 1995, Respondent left the United States Attorney's Office to enter private practice. He moved to San Diego, was admitted to the California Bar in 1997, and eventually

became a partner in the Lerach, Coughlin (later Coughlin, Stoia) nationwide law firm, where he eventually had principal responsibility for pursuing litigation on behalf of the University of California as a result of the Enron failure.[3] That litigation eventually resulted in over $7 billion being recovered on behalf of defrauded shareholders, including the University of California.

As will be discussed below, Respondent was disbarred from the practice of law in Washington D.C., effective September 2010. At that time, he resigned from his partnership. In addition, because of his concern that holding himself out as an attorney could create potential legal problems for him in the District of Columbia, he completely stopped practicing law and relocated to Texas, where he accepted a job and has continued to work as an investigator for a law firm specializing in asbestos exposure/mesothelioma cases.

Case No. 13-J-115307 (New Mexico Discipline)

Respondent was admitted to the practice of law in New Mexico in January 1980.

In May 1990, nearly seven years before Respondent was admitted to practice law in California, the Board on Professional Responsibility for the District of Columbia referred a case of possible professional misconduct by Respondent in Washington D.C. to New Mexico's disciplinary counsel. The Board on Professional Responsibility for the District of Columbia did not have disciplinary jurisdiction over Respondent due to his employment as an Assistant United States Attorney. Because Respondent was a member of the New Mexico bar, New Mexico's disciplinary board had disciplinary jurisdiction over Respondent pursuant to Rule 16-805 of the Rules of Professional Conduct in New Mexico.

The issue in that disciplinary matter was whether Respondent had violated his professional obligations by talking in Washington D.C. with a represented party that he knew to

[3] After disciplinary charges were initiated by the District of Columbia Bar, Respondent relinquished after 2006 to others the role of being one of the chief courtroom lawyers in the matter, although he remained an integral member of the team preparing the case for trial.

be represented. It was undisputed that there was at the time no professional rule of conduct in the District of Columbia that prohibited such conduct.

The circumstances and nature of Respondent's conduct were described in the New Mexico Supreme Court's decision imposing discipline as follows:

> In early August 1988, Billy Wilson (Wilson) was shot and killed in an apartment house in Washington, D.C. On August 23, 1988, Darryl Smith (defendant) was arrested for this murder and subsequently gave a lengthy videotaped statement to police, in which he admitted being at the scene of the murder but claimed that the murder had actually been committed by a Larry Epps.
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> Public Defender Jaime S. Gardner was appointed to represent defendant, and respondent, who was at all material times an attorney licensed by this Court, represented the United States. At the time of the events giving rise to the charges in this case (November 1988), respondent practiced law as an Assistant United States Attorney (AUSA) in the Superior Court of the District of Columbia pursuant to the authorization of the United States Attorney General under 28 USC §517.
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> On August 24, 1988, defendant appeared for presentment in the Superior Court of the District of Columbia and was ordered held without bond until a preliminary hearing could be held. On September 6, 1988, respondent moved the court to release defendant on his own recognizance pending further investigation of the case. Prior to defendant's release, respondent indicated to the public defender that he would like to speak with defendant about the case; however, she refused permission unless respondent was willing to offer her client complete immunity, which he was not willing to offer.
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> Between September 26 and October 5, 1988, defendant contacted District of Columbia Metropolitan Police Detective Donald R. Gossage (detective) on several occasions and made statements to him about the Wilson murder and two other murders. The detective told respondent about these statements. Respondent had no personal experience with a defendant who contacted police to discuss his own case, but office policy permitted him to deal with witnesses who were represented by counsel in other cases without notifying their attorneys. Respondent discussed the situation with the chief of the felony section, who told him to advise the detective that if defendant were to initiate further contact with the detective, the detective could listen but that he was not to initiate contact with defendant. There was no discussion about whether to notify the public defender. Respondent relayed the message to the detective and told him as well to make notes of anything defendant might say, so that any inconsistent statements could be used for impeachment purposes.
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> The public defender first learned of these contacts with her client through testimony presented at his preliminary hearing on October 5, 1988. Probable cause

was found to charge defendant with the murder of Wilson, and he was remanded to custody and ordered held without bond. Defendant's attorney complained in open court about the contacts with her client made without her knowledge and asked the court to issue a directive that there be no further contacts with defendant. Respondent stated that he expected no further contacts with defendant but added that "if he wants to call us, we will take his call." The court issued no directive but observed on the record that the public defender would undoubtedly instruct her client that such contacts were not in his best interest.

Between October 5 and November 1, 1988, however, defendant continued his efforts to contact the detective from the jail. He left messages for the detective on his beeper and even spoke with him on several occasions regarding the Wilson murder and the other two cases (wherein he was not charged and, therefore, not represented by counsel.) Respondent was aware that defendant was talking about the Wilson murder to the detective but did not notify the public defender or obtain her permission for the detective to discuss the case with her client.

On November 18, 1988, the detective was in respondent's office working with him on the Wilson murder case when respondent himself received a call from defendant on his private line. Respondent had never given his private number to defendant, although he had given it to the detective. At respondent's request, the detective listened in on an extension. Although defendant was advised that he did not have to speak with defendant [sic] and the detective and that his lawyer would not be happy, he proceeded to talk about the Wilson case for approximately six minutes while respondent and the detective listened and took notes. Defendant called back about ten minutes later and spoke with respondent and the detective for another fifteen minutes, although he was again reminded that the public defender would be unhappy with him. At the conclusion of this call, the detective agreed to visit defendant at the jail. Although respondent's notes indicate that defendant now was focusing almost exclusively on the Wilson murder, the public defender was advised neither of the calls nor of the impending visit with her client.

The detective had been advised by respondent that because defendant was initiating the calls, the constitutionality and the voluntariness of the statements were established and that he should “let Darryl talk" but refrain from posing questions of his own. After the call to his own office and the appointment for the detective to visit personally with defendant, respondent consulted with the chief and deputy chief of the felony section, who advised him that the detective should take a partner with him to the jail and give defendant his Miranda warnings before proceeding with the interview.

While the deputy chief recalled that there may have been some discussion of the ethical proprieties of communicating directly with defendant, the chief of the felony section acknowledged in his testimony that his primary concern in advising respondent was whether the evidence would be constitutionally admissible. The deputy chief did not recollect that respondent advised either himself or the chief that he had personally spoken with defendant. It is also clear from the record that

the chief's advice as to any ethical considerations was more directed at the contacts the detective was having with defendant rather than to any calls respondent might be receiving. The chief acknowledged that his understanding of the rules regarding professional responsibility would probably not have affected his advice, because he "didn't think the D.C. bar rules had much to say about how the police behaved."

On November 21, 1988, the detective and a partner visited with defendant at the jail and gave Miranda warnings, but defendant refused to sign the form because, he said, it would make his lawyer angry. The meeting was terminated.

On November 25 or 26, 1988, respondent received four more collect calls from defendant from the jail, all of which he accepted. He reminded defendant that his attorney had already complained to the court about his contacts with representatives of the government but permitted defendant to continue to speak with him nonetheless. Respondent asked no questions but listened to everything defendant had to say. While his notes again indicate that defendant was now speaking only of the Wilson murder, respondent did not advise defendant's attorney of these calls.

Defendant was indicted for the murder of Wilson on December 8, 1988. The public defender subsequently sought to have defendant's statements to respondent and the detective suppressed and/or the indictment dismissed on the basis of prosecutorial misconduct. The motion was denied by written order dated July 10, 1989, but the judge referred the matter of respondent's possible violation of DR 7-104 of the Code of Professional Responsibility to the District of Columbia Board of Professional Responsibility.

The Board of Professional Responsibility for the District of Columbia at that time had disciplinary jurisdiction over any attorney who engaged in the practice of law in the District of Columbia on a pro hac vice basis, but in 1988 the relevant rule did not apply to an AUSA practicing pursuant to 28 USC §517. For this reason, the case was referred to the office of New Mexico's disciplinary counsel in May 1990.

On December 4, 1992, Robert S. Mueller, then Assistant Attorney General of the Criminal Division of the Department of Justice,[4] wrote a letter on behalf of the Department of Justice to the New Mexico disciplinary counsel, expressing the Department's view that Respondent's conduct was appropriate and that the disciplinary proceeding should be dismissed. That letter provided, inter alia:

The trial court in the District of Columbia ruled that the conduct of the detective and Mr. Doe [Respondent] did not violate the Fifth or Sixth Amendments

[4] From September 2001 to September 2013, he was head of the United States Federal Bureau of Investigation.

> to the Constitution. Moreover, it is undisputed that [Respondent] did not violate any federal statute, federal regulation, or other federal law. In addition, [Respondent's] actions, if taken today, would not violate the attorney ethical rules of the District of Columbia. See District of Columbia Rules of Professional Conduct 4.2, Comment 8 ("This rule is not intended to regulate the law enforcement activities of the United States or the District of Columbia" (adopted subsequent to the disputed actions)).
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> [Respondent's] actions were thus appropriate under federal law. Furthermore, [Respondent's] actions did not violate any applicable federal policy, and he was acting in accord with instructions from his Department of Justice supervisor. Under these circumstances, a federal prosecutor should not, consistent with the Supremacy Clause, be punished for actions undertaken in his official capacity and consistent with constitutional norms and federal law. [citations in letter omitted.]

Rule 16-805 of the New Mexico Rules of Professional Conduct subjects a lawyer admitted to practice in New Mexico to the disciplinary authority of that court, even though he or she may be engaged in practice elsewhere. At all relevant times, rule 16-402 of the Rules of Professional Conduct in New Mexico read as follows: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so...."

On December 4, 1995, a hearing was held before the New Mexico Disciplinary Board Hearing Committee in case No. 08-90-194.

On April 24, 1996, the Hearing Committee issued a "Findings of Facts, Conclusions and Recommendations" in case No. 08-09-194. The Hearing Committee concluded that Respondent violated New Mexico Rules of Professional Conduct, rules 16-402 [directly communicating with a represented party he knew to be represented without the consent of the other lawyer], and 16-804 [communicating with represented party through a third party and by knowingly assisting and assisting the third party to communicate with represented party]. The recommendation of the Hearing Committee was that Respondent be publicly censured.

On September 20, 1996, the Disciplinary Board issued a decision in case No. 08-09-194. The Disciplinary Board adopted the Hearing Committee's Findings of Facts, Conclusions of Law, and Recommendations regarding discipline.

On May 21, 1997, the Supreme Court of New Mexico held that: (1) the duty of Respondent as an Assistant United States Attorney (AUSA) to refrain from communicating with a represented criminal defendant was not subject to argument and, thus, that a finding of a violation of the New Mexico disciplinary rule was not precluded on basis of the advice Respondent received from the chief and deputy chief of U.S. Attorney's felony section; (2) Respondent "communicated" with a represented defendant by listening to him after that defendant initiated the communications; (3) the communications were not authorized by law; (4) the Supremacy Clause did not preclude discipline; and (5) the appropriate sanction was public censure. The Supreme Court of New Mexico found that Respondent had committed two violations of the New Mexico Rules of Professional Conduct, rules 16-402 and 16-804.

On September 16, 1997, after the New Mexico Supreme Court's decision had issued, Eric H. Holder, Jr., then Deputy Attorney General and now Attorney General of the United States, issued the following letter to Respondent on behalf of the United States Department of Justice:

> I am writing regarding the sanction recently imposed on you by the New Mexico Supreme Court for conduct engaged in while you were an Assistant United States Attorney in the District of Columbia, investigating and successfully prosecuting a murder case on behalf of the United States. The New Mexico court concluded that your conduct as a federal official violated the state ethical rule concerning contacts with represented persons.
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> During the course of the New Mexico proceedings, in 1992, then-Assistant Attorney General Robert Mueller wrote to the New Mexico Disciplinary Board, noting that your conduct in the criminal case had not violated any applicable federal policy, statute or regulation. Assistant Attorney General Mueller explained that your actions were "appropriate under federal law" and that you were "acting in accord with instructions from [your] Department of Justice supervisor." Mr. Mueller asked the

> New Mexico board to dismiss the proceedings because your actions were "undertaken in the performance of * * * official duties and * * * do not violate the Constitution or other federal law." Unfortunately, the board declined to do so.
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> Now that the New Mexico court has acted, I wish to reiterate what Mr. Mueller said. It is the view of the Department of Justice that the sanction against you was inappropriate and should not have been imposed. The Department has filed a number of briefs in this matter, asserting that you should not be sanctioned. The Department continues to stand by that position.
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> Please feel free to use this letter as appropriate in the future.

(Ex. 1057.)

This letter was sent at the instruction and with the concurrence of Janet Reno, then Attorney General of the United States. (Ex. 1056.)

Respondent's conduct in the above matter took place in 1988, more than eight years before he was admitted to the California bar. The order of the New Mexico Supreme Court was issued on May 21, 1997, slightly more than a month after Respondent was admitted to the California Bar and more than 16 years before the instant charges were filed by the California State Bar, seeking to impose discipline in this state for the New Mexico's decision in 1997.

The parties have stipulated, and this court finds, that Respondent's culpability, as determined by the foreign jurisdiction, indicates that the following California rule would have been violated: rule 7-103 of the former Rules of Professional Conduct in effect January 1, 1975 through May 26, 1989 (precursor to current rule 2-100.)[5]

[5] Current rule 2-100(C)(3) provides that the rule does not prohibit "communications otherwise authorized by law." In the discussion appended to the rule, the drafters noted, "There are a number of express statutory schemes which authorize communications between a member and person who would otherwise be subject to this rule. These statutes protect a variety of other rights such as the right of employees to organize and to engage in collective bargaining, employee health and safety, or equal employment opportunity. Other applicable law also includes the authority of government prosecutors and investigators to conduct criminal investigations, as limited by the relevant decisional law." Although Respondent and the

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Background Facts Resulting in Underlying Discipline

While Respondent was serving as an Assistant United States Attorney in the District of Columbia, that city saw a tremendous increase in the number of drug-related homicides. On December 8, 1988, the United States Attorney for the District of Columbia issued the following announcement regarding his creation of a Drug Homicide Strike Force to deal with the massive increase in the number of murders then occurring in that jurisdiction:

> One of the most fundamental rights which government must seek to protect is the right of each individual to be secure in his person and home. The escalating level of violence in this city, attributable in large part to narcotics trafficking, threatens the safety of the people in many of our communities and undercuts the sense of security of all who live and work here. Stopping the bloodshed on our streets and restoring the sanctity of human life require the full cooperation and commitment of concerned citizens, elected officials, police, and federal law enforcement agencies.
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> To address the rising tide of drug-related homicides in Washington, I am today announcing the creation of a Drug Homicide Strike Force within the United States Attorney's Office. This special unit will focus intensive prosecutive and investigative resources on organized criminal activity responsible for the growing number of murders in this city. We intend to use the full array of federal and local criminal statutes and penalties available to us including where appropriate the recently enacted federal death penalty statute, to prosecute and bring to justice those responsible for the violence in the Nation's Capital.
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> More than 330 people have been murdered in the District of Columbia already this year. The number of homicides has more than doubled since 1985. The Metropolitan Police Department estimates that more than 56% of homicides this year are drug related; more than 70% have involved firearms. Within the United States Attorney's office we are prosecuting today more than twice as many first degree murder cases as we have at any time during the past five years.

Department of Justice argued in the New Mexico proceeding that a comparable provision in the New Mexico rule applied to Respondent's conduct, no such argument has been advanced in this proceeding.

The drug epidemic engulfing this city, especially the distribution and use of cocaine and crack, is the fundamental cause of the increase in violence we have witnessed. Murders related to narcotics distribution take many forms. Many killings are directly related to the business activities of drug trafficking organizations. Organizations wage turf battles over control of distribution territory; an enforcer for an organization murders someone who interferes with the organization's street sales; a senior organization member kills a junior member who fails to turn over all the proceeds of drug sales from drugs consigned to him for sale; an enforcer murders someone who threatens to go to the police or as a means of disciplining someone in the organizational network. Other homicides involve robberies of drug dealers, collections on unpaid narcotics debts, and disputes over the quality of the product delivered. The environment of narcotics trade, such as crack houses, provides a fertile ground for violence. And yes, some of the most tragic murders are committed by persons under the influence of drugs. The pervasive, insidious impact of narcotics trafficking is vividly demonstrated by the fact that nearly 75% of all adults arrested for crimes in the District of Columbia test positive for drug usage; nearly 65% test positive for cocaine.

From an investigative and prosecutive perspective, the increase in the number of homicides frequently is compounded by the difficulty in solving narcotics-related killings and in developing convincing evidentiary proof for trial. The unavailability of cooperative witnesses; witnesses who themselves are heavily involved in criminal activity; witnesses who fear for their safety; unreliable witnesses; multiple-defendant cases; involvement by persons operating outside this jurisdiction; and the execution style of killing all provide significant hurdles to swift, successful justice.

But, these obstacles only underscore the need to focus available investigative and prosecutive resources in a concentrated and creative way on the problem. The tools and tactics of our Drug Homicide Strike Force will be those used effectively against other organized criminal activity. We will use sophisticated investigative techniques and aggressive prosecutive action to penetrate drug organizations, to target their leadership, to develop intelligence, to build cases through grand jury investigations, and ultimately to bring to the bar of justice the perpetrators of death and destruction.

I will staff this Strike Force initially with five senior attorneys with proven investigative and trial skills. Each attorney will be assigned a limited number of drug-related first degree murder investigations in order to facilitate a greater concentration of prosecutive attention and grand jury investigative action. In addition, I am increasing to ten the number of prosecutors assigned to our existing Superior Court Felony I

> unit which prosecutes first degree murders. These staffing decisions constitute nearly a 100% increase in resources dedicated to the prosecution of first degree murder cases by the United States Attorney's Office. This level of staffing will permit us to focus increased prosecutive attention on some of the most difficult murder cases as well as provide prosecutive guidance to necessary longer term investigations of homicides linked to trafficking organizations. Strike Force attorneys will work closely with detectives of the Metropolitan Police Department, and with agents of the FBI, the DEA and ATF to develop the best possible prosecutable cases.
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> While the formation of this Drug Homicide Strike Force constitutes a significant prosecutive step in addressing the toll of death and human destruction arising from narcotics trafficking in this city, aggressive law enforcement by itself will not stop the flow of drugs and the killing. Ultimately, success in banishing this blight from the streets of the Nation's capital depends upon the meaningful commitment and determination of the people of this city and its leaders to eliminate the demand for drugs and to take a no-nonsense approach to those who violate the law. Through our families, schools, churches, community organizations and in cooperation with law enforcement, we must make it clear that there is no room in our communities for the dealers of drugs, death and destruction.

On January 10, 1989, Respondent was selected by the United States Attorney from the pool of applicants to be one of the five attorneys assigned to this Drug Homicide Strike Force. Respondent's initial term of appointment to the job was one year. (Ex. 1062.) He continued to handle these cases until leaving the U.S. Attorney's Office in May 1995.

The situation confronted by Respondent as a member of this Task Force, and Respondent's conduct in that position, were described as follows for the State Bar by James Bradley, Jr., then a Detective in the Washington, D.C. Metropolitan Police Department and now retired:

> Confronted with the plague of drug-fueled armed violence, and without the resources to prevail on the streets and in the courts, the District appealed to the federal government for money and manpower. The Bureau of Alcohol, Tobacco and Firearms responded with Project Achilles, known as ACES (Armed Criminal Enforcement Study). ATF brought in agents from all over the country to team with four MPD Detectives of which I was one. Working out of Alexandria, VA, just

across the Potomac River, we made plans to attack the District's armed drug traffickers. Over the next 11 months I authored 50 search-and-seizure warrants for weapons and drugs and my team recovered hundreds of firearms, large caches of drugs and vast amounts of drug-related money. The initial results were hugely effective, but the resources expended and the stress - we were working around the clock - particularly on the out-of-town agents was incredible. Even with this federal-local enforcement effort, the District's homicide rate continued to grow, reaching over 500 murders in the Metropolitan Area by 1989. By comparison, Chicago, a population-density and geographic giant compared to the Nation's Capital, expects the same number of murders this year, which is being called a national nightmare. After a year the ACES approach was abandoned, while the number of annual murders in the District stayed in the 500 range for several more years.

By 1990 the number of drug-trafficking murders was skyrocketing and the accompanying violence to the community, as whole neighborhoods were taken over and controlled by organizations - crews - was horrific. Victims were no longer just shot; as a message to rivals and the community, victims were often duct taped, tortured, suffocated and left in car trunks, hanged or disemboweled, with the number of cases where multiple victims were executed at the same time increased dramatically. As a veteran detective I was appalled to arrive on a crime scene to find three, four or five victims in grisly circumstances.

Our investigations routinely revealed multiple weapons with multiple shooters attributed to these new crews, often of particular ethnic groups, that were competing for or protecting their territorial control of a block or a neighborhood or even a section of the District to sell their kilos-quantities of crack. Intelligence revealed that, apart from home-grown organizations, like the Newton Street Crew in upper Northwest Washington, Panamanian and Jamaican gangs were making their dominance known in Southeast D.C. neighborhoods and with it a large spike in the number of murders both by and against their affiliates, while intra-crew rivalry proved deadly too. These were notorious, brutal, loyalty-driven groups never before seen on the streets of Washington. As we battled 24/7 with limited resources even from federal agencies, we learned through rigorous and continual investigation that seemingly unrelated homicides in disparate neighborhoods in Southeast D.C. and suburban Virginia and Maryland were, in fact, their distinctive work - scores of murders - as they moved kilos of crack on the District's streets.

The Law-Enforcement Approach to La Banda: REDRUM

In 1990 the FBI and DEA launched task forces of agents and experienced MPD detectives to combat the drug-homicide plague claiming at least one victim a day in the District. The FBI-MPD taskforce was

known as Safe Streets, which coupled agents with Homicide Sgt Dan Wagner's Fourth District team in Northwest to go after the Newton Street Crew. The DEA task force was known as REDRUM - murder spelled backwards - made up of four DEA agents, two MPD homicide detectives and a supervisor, two MPD narcotics detectives, and I was the Intelligence detective. REDRUM focused on the Javier Card Crew, operating in Southeast D.C., close by the 7th District headquarters and, as we learned later, assisted by a young, attractive female patrol officer who used her police skills and contacts and her sexuality to promote and protect the drug business run from a local restaurant called The Deli Den. Our investigative portfolio expanded to include the Panamanian organization La Banda (The Band), based in suburban Maryland, of which the Card Crew was the parent's most profitable and murderous branch. Our Card/La Banda investigation led from Washington to Brooklyn, to Philadelphia, to St Croix, to Panama, and back to DC. Our investigation required over 1000 interviews, four grand juries in both District (federal) and Superior (local) courts, and 200+ witness statements, plus thousands of man hours collecting street-level intelligence, which started well before the beginning of the first trial against the Card Crew for murder conspiracy in September 1993 and continued after Paul's departure from the USAO in May 1995.

The Investigation and Prosecution of Javier Card

In the mid-1980s, Javier "Joshua" Card was a 26-year-old Panamanian known to the DEA in Brooklyn as a violent purveyor of crack with a charismatic flare who attracted many willing followers eager to do his bidding. It was there that he met Julio "Jack" Guerrero, the head of La Banda, whom he called his brother. Card fled New York City in 1988 after gunning down his pregnant girlfriend with a machine-gun in a night club. He then set-up shop in Philadelphia where he surrounded himself with, among others, Jerome "Rome" Edwards, Yusef Battle, James "Studda" Crallie, Irvin "Jazz" Pittman, and James "Jay-Boo" Kirby. In Philadelphia, Card gained a reputation for using brutal force to take over and control his drug turf, which included the cost of protecting and expanding his business: robbing and murdering his rivals. By 1993, Joshua and Rome were in jail, Battle had been executed by Jack, who in turn was murdered by Joshua, and Studda, Jazz and Jay-Boo were cooperating with Paul [Respondent].

In spring 1990, with Jack Guerrero, Card's patron, in prison, Guerrero's wife moves to suburban Maryland. Card, still on the run from the New York murders, follows her, and, through La Banda members in Maryland, meets Jimmy Murray, a small-time drug dealer in Southeast D.C. Murray soon becomes a star distributor, moving Card's crack out of Murray's mother's carry-out, the Deli Den, frequented by many 7th District Officers, including Officer Fonda Moore. Within days of his

arrival, Card establishes the American side of La Banda in Southeast D.C. Between April and Halloween 1990, Card and his partner Murray sold street- and kilo-quantities through a band of runners led by Card's lieutenants - Crallie, Battle and Edwards - who reported to Murray and Card at the Deli Den, and supplied by the parent La Banda organization in Maryland.

Card regularly delivered several kilos of cocaine to an expert cooker (the process by which powder cocaine hardens into far more potent crack) in D. C., Ida Mae Stanford, who he paid $3000 per kilo for her services.

Guns, supplied by Jimmy Murray's uncle (his mother's brother) and identified later as murder weapons, were stashed at the Deli Den, at Murray's mother's house in Maryland, and at safe houses in the Chesapeake neighborhood near the 7th District. Our investigation revealed that Murray, with a girlfriend, also had an intimate relationship with Off. Moore, who was a regular at the Deli Den. Later she was observed being very close to Card and his Crew, often comparing her service-issued Glock 9mm to their weapons and sitting on Card's lap as drug money was collected and crack distributed to runners at the restaurant.

Jimmy Murray was robbed of a large cache of crack and executed on Sunday night, October 28, 1990, left in his car, with a 9mm still in his waistband. Card assembled his Crew and targeted Billy Ray Tolbert, Eric "Hands" McDow, Dennis Davis and James "Chick" Sims for retaliation. The next day Card dispatched the Crew to purchase plastic sheeting, paint and other supplies to clean up a crime scene, and then lured Tolbert to a safe house, where he is held hostage, beaten by the Crew, and then most of his upper torso was duct taped. In desperation, Tolbert attempted to throw himself through a second-floor window casement but he only made it halfway. He was then shot several times while suspended from the window. The body was later dumped in his car. The Crew cleaned up the scene, including replacing the window and painting the apartment, even using acid on the brick facade to remove the blood stains. Before and during the removal of Tolbert's body, Off. Moore was spotted alone in her patrol car, driving by the safe house, shining a spot light on the outside of the second-floor apartment and on Tolbert's car in the alley.

In the following days Off. Moore takes several Crew members in her own car to search for Tolbert's compatriots, including Dennis Davis, whose photo she secreted from police files to assist the Crew in identifying their targets. Moore was at Murray's funeral and then often seen sitting on Card's lap at The Deli, often in a modified police uniform, and often collecting money directly from Crew distributors. In the following weeks several aborted attempts were made to kill the co-conspirators in Murray's murder, usually with Off. Moore's assistance,

which included using her sexuality to gather information about the investigation from homicide detectives.

Literally in the wake of Murray's murder and the retaliatory strike against Tolbert, Card's Crew imploded in a matter of months. Between November 1990 and March 1991 Yusuf Battle was executed and other members were caught with guns by the police or killed by rivals. The violent intrigue was so bad that James Crallie, Card's chief lieutenant after Murray's murder, who had followed Card from Philadelphia, willingly surrendered to the 7th District in late December 1990 to escape the escalating turf war. And the blood-letting included Card turning on Jack Guerrero: he supplied a heroin overdose to his so-called La Banda brother in retaliation for Jack's killing of Battle, another close Card associate from Philadelphia days. In response, La Banda targeted Card for Jack's murder, which left Card running from his Panamanian cohorts and from REDRUM for Tolbert's murder.

Javier Card was arrested in Philadelphia on a DEA lookout in May 1991 and was held without bond. Procedurally, he had to be indicted by early January 1992. The original AUSA was removed from the case for mishandling evidence. Faced with an imminent 20-day deadline, the U.S. Attorney's Office asked Paul to take over the Card prosecution. Without hesitation, and true to his reputation, Howes agreed. After concentrated grand-jury work over the Christmas 1991 holidays, an indictment against just Javier Card was obtained in U.S. District Court, but, in an unusual move, returned in Superior Court before the January 1992 deadline. Then, after more grand-jury work in District Court – all while Paul juggled Newton Street and other murder trials and the on-going Newton Street Crew investigation and his other extensive caseload – a superseding drug-murder-conspiracy indictment was again returned in Superior Court in late April 1992. Every day for months, during which I worked with him daily, Paul prepared for and tried several serious, complex murder cases; did the witness work in the grand jury to return a comprehensive conspiracy indictment for the Card case; handled the pretrial motions practice in all of his cases, including the six-codefendant Card case; and conducted personally and directed officers in the interviews of scores of witnesses for the on-going Newton Street and La Banda/Card investigations. Judge Herbert Dixon severed the Tolbert murder conspiracy from the drug conspiracy in late summer 1993. Paul chose to try the murder case first, which began in September 1993, and the drug-conspiracy trial, which followed.

REDRUM's umbrella La Banda work dovetailed with the separate Card cases, which was the product of the parent organization's most successful branch before its implosion. As one example, my group found out in late April 1992 that Card's hit man, "Rome" Edwards had been arrested in Philadelphia on a D.C. fugitive warrant. (Earlier, before

fleeing, Edwards had secreted a 9mm Glock in the backseat of a detective's car while being questioned on the street. Edwards told me later he decided against murdering the detectives when their questions did not inculpate him and they believed his alias.) Once notified of Edward's arrest, two teams from REDRUM, including my years-long partner Det. Dave Shirk, now deceased, and AUSA Howes – on his birthday – drove to Philadelphia at 10 pm. We met with Det. Jack Szymczak, now deceased, who arrested Edwards in a local crack house, and later came to Washington several times to testify in the Card trial and to work and to work with REDRUM on the Philadelphia part of the larger La Banda investigation. We then read Edwards his rights, interviewed him, put him in the back seat of a detective's cruiser, bought him a Philly Cheese Steak, and brought him back to Washington for trial - leaving the windows down for the entire ride because of his pungent body odor after a days-long binge in a crack house.

Day in the Life of the Javier Card Trial

Paul presented some 40 witnesses during the eight months of trial. It was my job to make sure that the REDRUM team protected each one of them, beginning with the four incarcerated former codefendant cooperators; the two cooperators who had pleaded guilty and were released to work in Philadelphia, but required to appear weekly in Washington and report to the prosecutor; the former girlfriends of Card and Murray, who testified at the murder trial, were key witnesses for the scheduled drug-conspiracy trial, very knowledgeable about Off. Moore and Card's interaction with La Banda, and the murders of rivals and affiliates; the uncle who provided all of the automatic weapons to the Crew; and many other witnesses who were necessary to tell the whole story about the events surrounding Jimmy Murray's funeral, the murder of Billy Ray Tolbert and the clean-up afterwards, the threats made by Card to force Crew members and others to participate in Tolbert's kidnapping and torture and stay silent, and even finding the gorilla masks used by the Crew as they searched with Off. Moore for their other three targets. Off. Moore had been so popular, with good performance ratings from her training officers, that, even after her indictment, she had many strong MPD supporters. To forestall leaks and problems, Paul went to the 7th District and met with more than 100 officers to explain how Off. Moore went from a star rookie on the street to a corrupt coconspirator - and that it had played out in front of many of her other colleagues at the popular Deli Den.

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Paul and the team met with each of those 40 witnesses pre-trial and then in preparation just before they testified. Each of them received a witness voucher that one of the officers filed [sic] out and we handed Paul a stack of these every day and he signed them before going to the courtroom or on the run at lunch or during a recess. I understand that

some of the charges against Paul stem from witnesses who testified in Superior Court, where the Card trial was held, but who received District Court vouchers. I have an explanation that is not an excuse, but one I believe is reasonable and understandable: **first**, we started this case in federal court, presented the witnesses to two federal court grand juries, and then returned the indictments in Superior Court, by which time the officers were accustomed to filling out federal vouchers; **second**, some of the witnesses' testimony dovetailed with evidence in Paul's Newton Street investigation, which was in federal court; and **third**, vouchers were essential for the witnesses - as I testified in May 2007 before the first Hearing Panel, vouchers were expected by witnesses and sources and those payments were the **only way** violent crime was solved in the District of Columbia then and now - but for us vouchers were a necessary administrative nuisance. And we continued to meet with many of the witnesses after their testimony, to prepare them for the drug-conspiracy trial and, more importantly, to mine their knowledge, and many other sources, of La Banda's on-going criminal enterprise.

The pressure to protect all government witnesses and sources was ever-present and escalated as the trial opened, with Card's associates still on the street delivering threatening messages to those linked to our investigation, and to those loyal to La Banda within the prison system who tried several times to harm our incarcerated cooperators. Every day of trial our witnesses, civilian and imprisoned, were housed, with the REDRUM team, in a very small two-room cubicle that was built - literally thrown together - in the basement lobby of Superior Court, in the hallway leading to the cafeteria. We called it The Galley - no fresh air, no windows, confined, crowded, and Houston-like humid - and it was our home for eight months. Some of the team was assigned to prisoner logistics to and from the cell block; others handled getting witnesses to and from the courtroom; some handled guns and all other evidence presented - poster boards in a non-digital age before PowerPoint; and all of us, including Paul before and after his trial day and during lunch and recesses, interviewed witnesses about threats, what was happening in the neighborhood and in jail, and developments as we worked other aspects of La Banda.

And holding these moving parts together month after month was like herding cats at times. Paul battled five and six aggressive, often truculent defense counsel every day, with myriad motions, extended and repeated bench conferences and personal attacks on Paul, his witnesses and police procedures. Meanwhile, in The Galley, we helped witnesses prepare to testify, gathered intelligence, met sources, and dealt with what we could not anticipate that prevented an efficient presentation of the government's case. Huge snow and ice storms that meant government shut downs, defense counsel suffering nervous and physical breakdowns, extended holidays, and juror issues - brief illnesses, repeated tardiness,

and one juror going to Atlantic City for the weekend and not having the money to get back by Monday - added **months** to the trial schedule.

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Our REDRUM investigation, which lasted nearly five years, showed that the Card Crew and La Banda were responsible for 19 murders in New York, Philadelphia, Maryland and D.C. The six- and then five-codefendant primary murder-conspiracy trial lasted eight months (September 1993 - April 1994), and the three principals were convicted. Off. Moore, whose inculpatory post-arrest statement was so truncated by the trial judge as to make it a defense tool in closing, and Murray's mother were acquitted. Card's girlfriend cooperated with Paul after her lawyer became ill mid-trial and she was instrumental later in Off. Moore's drug-conspiracy guilty plea before the trial in April 1995. Moore served five years in prison. After the major trial ended in April 1994, we continued working on La Banda, using intelligence and evidence REDRUM and Paul developed from scores of witnesses over the years and particularly throughout the eight-month trial. Consequently, all leads were followed and several related cases closed along the way, along with a half-kilo crack purchase from the Crips of Los Angeles, who had become La Banda's new cocaine cookers, and a shootout I and my team had with members of that group on the grounds of Howard University in Washington. And before I retired, I testified in Card's New York trial for killing his pregnant girlfriend; he was convicted and is still serving 35 years.

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It has been more [than] two decades since the nation's capital was a war zone, but, in judging Paul, you must consider the conditions that began in the District of Columbia in the late 1980s and continued for several years: multiple horrific murders; the rise of vicious drug-trafficking crews; threats against lawyers, witnesses and cops; kilos of crack distributed and neighborhoods destroyed; police corruption; failed or under-resourced federal-local taskforce strategies; an annual murder rate over 500; and an overwhelmed judicial system and exhausted officers. Finally, after seven years of investigation and prosecution, resulting in six trials in U.S. District Court and Superior Court spanning virtually every day for 18 months, the most dogged and courageous prosecutor that I have known in my 26 years of policing convicted all but one of the Newton Street Crew and all but one (a deceased member's mother] of the Card Crew.

(Ex. 1002.)

Respondent left the Office of the United States Attorney in May 1995.

On August 22, 2005, the Office of Bar Counsel for the District of Columbia (Bar Counsel) filed a Petition for Disciplinary Action against Respondent in case number 131-02,

charging Respondent with misconduct pertaining to three criminal investigations and/or prosecutions:

- the investigation and prosecution of Javier Card, Fonda Moore, and others (the Card/Moore matter);
- (the investigation and prosecution of Mark Hoyle and others (the Newton Street Crew matter); and
- the investigation of an alleged sexual assault (the Jones matter).

On June 21, 2006,[6] Respondent entered into a lengthy Stipulation of Facts and Charges in the then pending D.C. disciplinary proceeding with Bar Counsel. In this stipulation, he agreed, as follows, to the facts underlying that matter:

> 1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on October 5, 1992, and assigned Bar number 434709.
>
> The conduct and standards that Respondent has violated are as follows:
>
> OVERVIEW AND BACKGROUND
>
> 2. From on or about March 26, 1984 until May 26, 1995, Respondent was an Assistant United States Attorney in the United States Attorney's Office in the District of Columbia. As an Assistant United States Attorney, he was responsible for prosecuting persons charged with federal and/or local crimes. Since leaving the U.S. Attorney's Office, Mr. Howes has been in private practice for the last eleven (11) years.
>
> 3. As a prosecutor, Respondent had access to federal government fact witness vouchers ("federal vouchers"). Respondent, by law, was authorized to provide federal vouchers to fact witnesses, associated with federal cases, to compensate them for attendance at certain judicial proceedings in federal court matters. The term "judicial proceeding" was defined by federal regulations and included "pre-trial conferences."

[6] The stipulation filed by the parties in this matter incorrectly stated that this stipulation was dated June 21, 2003. (See instead Ex. 15, p. 33.)

4. Before payment is made on a federal voucher, the federal voucher must include the name of the relevant criminal case, the witness' name, dates of attendance and the prosecutor's signature authorizing payment. Each federal voucher requires that the prosecutor sign the voucher certifying that, "the witness named above attended in the case or matter indicated and is entitled to the statutory allowance of attendance and travel."

5. From on or about September 8, 1993 to April 11, 1994, Respondent prosecuted Javier Card and Fonda Moore ("Card/Moore case") and other associated criminal defendants in the Superior Court of the District of Columbia for, *inter alia*, drug conspiracy, murder and murder conspiracy charges which emanated from an extensive, multi-year investigation. *United States v. Card,* F-7682-91, *et al.* Respondent was the sole prosecutor in this complex, seven-month, multi-defendant trial, involving more than thirty government witnesses.

6. The day after the conclusion of the *Card/Moore* trial, Respondent began another six-month trial against Mark Hoyle and his co-defendants in the United States District Court for the District of Columbia for, *inter alia*, continuing criminal enterprise, RICO conspiracy (Racketeer Influenced Corrupt Organization), drug conspiracy, murder and murder conspiracy charges. *United States v. Hoyle,* Cr. 92-284, *et al.* This highly complex and contested trial lasted from on or about April 12, 1994 to October 13, 1994. As a result of a far-reaching, multi-year investigation dating back to the late-1980s, the government alleged that Mark Hoyle and his co-defendants were the leadership of a violent drug gang called the Newton Street Crew. The Mark Hoyle trial will herein be referred to as the *"Newton Street Crew* case."

7. Before, during and after the prosecution of the *Card/Moore* and *Newton Street Crew* cases, Respondent signed federal vouchers for individuals who were not entitled to such federal vouchers or who were not entitled to a federal voucher for "the matter indicated."

8. In both the *Card/Moore* and the *Newton Street Crew* cases, the government relied chiefly on the testimony of cooperating incarcerated witnesses who themselves had been participants and/or conspirators in the criminal conduct charged against the defendants. The veracity of their testimony was disputed and hotly contested throughout the two trials by the defense. Benefits provided directly or indirectly to cooperating government witnesses by the government could have been relevant to the jurors' duty to determine credibility and weigh bias. Prosecutors are required by law to inform defendants of all benefits, including derivative benefits, provided by the government to government witnesses at a time when use by the defense would be reasonably feasible. *See Giglio v.*

United States, 405 U.S. 150(1972); *Brady v. Maryland*, 373 U.S. 83 (1963).

9. Respondent intentionally failed to fully disclose, or failed to disclose at all, to attorneys representing the defendants he prosecuted the fact that he provided, was providing and/or intended to provide unauthorized federal vouchers to family and friends of government witnesses, incarcerated government witnesses and former police officers associated with the *Card/Moore* and *Newton Street Crew* cases. Respondent was aware that incarcerated witnesses were not entitled to receive vouchers, yet he authorized vouchers for incarcerated witnesses. Respondent also provided vouchers to the family and friends of government witnesses for unauthorized purposes and to cooperating witnesses who were not incarcerated but who were not entitled to such vouchers.

10. Federal vouchers are not authorized to be distributed to witnesses in Superior Court matters. At the time of the *Newton Street Crew* and *Moore/Card* matters, $40 per day was paid for each day of attendance on a federal case, no matter whether the witness' attendance was for an entire day, a half day or one hour. Further, federal vouchers permit payment for multiple days on one voucher. District of Columbia Superior Court witnesses, on the other hand, were paid by the half day, through the Superior Court, by Superior Court witness vouchers. Superior Court witness vouchers only permit payment for one day per voucher.

11. Respondent intentionally provided federal vouchers to individuals and government witnesses associated with the *Card/Moore* Superior Court case. This meant that they were paid at the higher federal rate of $40/day no matter how long they actually attended a court proceeding.

12. On March 1, 1996, the Office of Professional Responsibility of the Department of Justice ("OPR") opened an investigation into allegations of misconduct during the *Newton Street Crew* prosecution. On or about February 9, 1998, OPR concluded its investigation and found misconduct on the part of Respondent.

13. Although OPR found that Respondent was pursuing legitimate goals and did not personally profit from the use of vouchers, OPR concluded that Respondent significantly misused government funds by his issuance of improper federal vouchers and that he committed intentional professional misconduct. OPR concluded that Respondent "distributed the vouchers in ways that went so far beyond the limits of appropriate conduct as to constitute flagrant abuse of the system." OPR concluded that Respondent "used the government's witness fee funds as a discretionary

source of money to be paid out virtually at will." On October 10, 2002, OPR referred the matter to Bar Counsel.

COUNT 1 *(CARD/MOORE* CASE)

14. Bar Counsel incorporates by reference the Background allegations as stated in paragraphs 1 through 11 above.

15. *Card/Moore* was prosecuted in the Superior Court of the District of Columbia before the Honorable Herbert B. Dixon, Jr., from September 8, 1993 to April 11, 1994. Respondent was the sole prosecutor assigned to prepare and try this complex, multi-defendant, homicide and drug conspiracy case.

16. In *Card/Moore* Respondent relied extensively on the testimony of cooperating witnesses who were themselves complicit in the charged offenses. Respondent did not fully disclose the benefits provided to the government witnesses although the defense requested such information pursuant to *Brady* and *Giglio.* Respondent repeatedly and falsely assured the court and defense counsel, that he had provided all *Brady* and *Giglio* information to the defense, even though he had not revealed to the defense voucher payments he had authorized to government witnesses and/or to the friends and relatives of government witnesses who were not entitled to receive such payments.

17. Before, during and after the prosecution of *Card/Moore,* Respondent provided improper federal vouchers to government witnesses in the case, their friends and relatives and to an incarcerated government witness. Respondent authorized payment to these individuals by providing federal vouchers to them, although these individuals were witnesses, or associated with witnesses, in the *Card/Moore* Superior Court case. Respondent knew they were not entitled to be paid by federal vouchers in a Superior Court case.

a. Clarice Haywood, wife/girlfriend of government *Card/Moore* witness Irvin Pittman, was paid $2,036 with federal vouchers under the federal court captions *United States v. Hoyle* and *United States v. Perry* covering dates between September 6, 1993 and March 22, 1995. Ms. Haywood was never called as a trial witness.

b. Irvin Pittman, was paid $3,750.65 under the federal court captions *United States v. Hoyle* and *United States v. Perry.* Mr. Pittman testified for the government in *Card/Moore.* He testified between October 14 and October 25, 1993, but his voucher payments covered dates between September 28, 1993 to March 22, 1995.

c. Leroy Pearsall was paid $5,095.55 under the federal court captions *United States v. Hoyle* and *United States v. Perry.* Mr. Pearsall testified for the government in *Card/Moore* between October 25 and October 28, 1993, but his voucher payments covered dates between September 28, 1993 to February 14, 1995.

d. Kalvin Bears was paid $672.00 under the federal court captions *United States v. Perry Graham, United States v. El Toro Graham* and *United States v. Perry,* although he was a witness in *Card/Moore.* Of the total funds paid Mr. Bears, $160 covered dates when he was incarcerated.

e. Fred Johnson was paid $452 under the federal court caption *United States v. Hoyle.* Mr. Johnson testified in *Card/Moore* between November 29 and December 2, 1993, and his voucher payments covered dates between November 3, 1993 to December 2, 1993.

f. Theresa Bryant Green was paid $1,472.50 under the federal court captions *United States v. Hoyle* and *United States v. Perry.* Ms. Green testified for the government in *Card/Moore* between January 11 and January 31, 1994, her voucher payments covered dates between October 15, 1993 and May 22, 1995.

g. Jack Szymozak was paid $411 under the federal court caption *United States v. Hoyle.* Detective Szymozak testified one day in *Card/Moore,* and then he returned to Philadelphia. Respondent authorized a federal voucher to Detective Szymozak which covered three days of attendance ($120) and meals and/or lodging ($173), although the Detective arrived from Philadelphia on the day of his testimony and completed his testimony on the same day in the *Card/Moore* case. Respondent falsely certified attendance and entitlement on the voucher provided to Detective Szymozak.

h. Jacqueline Hayes, fiancé of government witness Kalvin Bears, was paid $4,376.50 under the federal court caption *United States v. Perry* and *United States v. Hoyle.* The vouchers cover the dates between October 4, 1992 and March 31, 1995. Ms. Hayes was not called as a trial witness. Respondent provided vouchers to her before Mr. Bears testified in *Card/Moore;* during Mr. Bears' testimony in *Card/Moore* and in March 1995, when Mr. Bears also

received an improper voucher for dates when he had been incarcerated.

18. Respondent authorized vouchers totaling approximately $4,949.50, to retired Metropolitan Police Officer Ronald Fluck for appearances, food and/or lodging and/or mileage on 78 days between May 14, 1993 and December 15, 1993. Officer Fluck testified one day in the *Card/Moore* trial. Respondent provided federal vouchers to him for his assistance as a case agent. Neither Superior Court vouchers nor federal vouchers are authorized to pay individuals who provide assistance as a case agent. Respondent falsely certified on federal vouchers provided to Officer Fluck that Officer Fluck was entitled to federal vouchers, when he was not.

19. Defense counsel in *Card/Moore* became aware of the post-conviction litigation in the *Newton Street Crew* cases (discussed herein in Court II) and filed motions to vacate their clients' convictions based upon Respondent's prosecutorial misconduct. Although the government initially resisted the defendants' motions, the government ultimately agreed to stipulate to relief in the form of vacating and dismissing numerous counts of conviction and agreeing to significant reductions in prison sentences. The Superior Court agreed to accept the stipulated dispositions, vacated the convictions and resentenced the defendants as follows:

Antoine Rice, *United States v. Rice*, Case No. F 6601-92
original sentence: 40 years-life with a mandatory minimum of 25 years;
amended sentence: 5-15 years.

Javier Card, *United States v. Card*, Case No. F 7682-91
original sentence: 69 years to life;
amended sentence: 23 years to life, with the execution of all but 23 years suspended.

Jerome Edwards, *United States v. Edwards*, Case No. 4437-92
original sentence: 61 years to life, mandatory minimum of 30 years;
amended sentence: 23 years to life, with the execution of all but 23 years suspended.

COUNT II *(NEWTON STREET CREW* CASES)

20. Bar Counsel incorporates the allegations as stated in paragraphs 1 through 19 above.

21. The *Newton Street Crew* case was a six co-defendant murder and drug conspiracy case against the leadership of the *Newton Street Crew* prosecuted in the United States District Court for the District of Columbia before the Honorable Judge Thomas Penfield Jackson. This trial was the culmination of an extensive, multi-year investigation by Respondent and numerous detectives, agents and officers, as well as several prior, related prosecutions of Newton Street Crew members by respondent. Trial in this case commenced on April 12, 1994, the day after Respondent completed the *Card/Moore* prosecution, and concluded six-months later, on October 13, 1994. Three Assistant United States Attorneys participated in the trial, but Respondent was the lead prosecutor.

22. After the *Newton Street Crew* prosecution was completed, Respondent signed and provided, or had others provide on his behalf, federal vouchers to four government witnesses who were incarcerated on the dates of attendance stated on the federal vouchers. All four of these incarcerated individuals had been government witnesses in the *Newton Street Crew* trial prosecuted by Respondent. Respondent knew that none of them were entitled to payment on the dates specified in the federal vouchers. These witnesses were: Lazaro Santa Cruz, Robert Smith, William Woodfork and Frank Lynch. The federal voucher Respondent provided to each incarcerated witness entitled each individual to approximately $160.

23. Respondent signed and provided, or had others provide on his behalf, federal vouchers totaling approximately $9,835.00, to retired Metropolitan Police Officer David Belisle for appearances on 167 days between July 13, 1993 and September 23, 1994. Officer Belisle testified three days in the *Newton Street Crew* case trial. Respondent provided federal vouchers to Officer Belisle not only for the three days of testimony but also for his assistance as a case agent. Respondent falsely certified that Officer Belisle was entitled to federal vouchers, when he was not. Also, Respondent failed to disclose these payments to the attorneys representing the criminal defendants.

24. Respondent signed and authorized federal vouchers to friends and relatives of incarcerated government witnesses in the *Newton Street Crew* case although these individuals were not entitled to federal vouchers. Respondent failed to disclose, or fully disclose, these payments to defense counsel who were entitled to know of these benefits to government witnesses.

25. Respondent improperly authorized federal vouchers for the following friends and relatives of incarcerated government witnesses in the amounts shown below. None of the friends and/or relatives listed below were called to testify at trial in the *Newton Street Crew* case.

a. Kenneth Forgy, cooperating incarcerated government witness, who testified between May 4 and May 17, 1984.
   (i) Tarita Forgy, sister of Kenneth Forgy, paid: $3,192, covering dates of attendance between August 2, 1993 and February 24, 1995; she was never called to testify at trial;
   (ii) Diane Henson, aunt of Kenneth Forgy, paid: $462, covering dates of attendance between July 26, 1993 and September 16, 1994; she was never called to testify at trial;
   (iii) Lavinia Henson, grandmother of Kenneth Forgy, paid: $7,518, covering dates of attendance between July 2, 1993 and May 1, 1995; she was never called to testify at trial;
   (iv) Nichelle Jackson, girlfriend of Shelton Brooks Seldon (another government witness), paid: $166, covering dates of attendance between January 4, 1995 and January 6, 1995; she was never called to testify at trial.

b. Lazaro Santa Cruz, cooperating incarcerated government witness, who testified between May 19 and June 3, 1994.
   (i) Nancy Santa Cruz, sister of Lazaro Santa Cruz, paid: $1,164.50, covering dates of attendance between April 26, 1993 and August 5, 1994; she was never called to testify at trial;
   (ii) Neko Stevenson, girlfriend of Lazaro Santa Cruz and the mother of his child, paid: $4,578, covering dates of attendance between April 26, 1993 and January 25, 1995; she was never called to testify at trial;
   (iii) Betty Stevenson, mother of Neko Stevenson, paid $4,420, covering dates of attendance between December 1, and December 22, 1994; she was never called to testify at trial.

c. Andre Wilson, cooperating incarcerated government witness, who testified between June 6 and June 8,1994.
   (i) Cheryl English, girlfriend of Andre Wilson and mother of his child, paid: $1,633.25, covering dates of attendance between April 23, 1993 and August 9, 1994; she was never called to testify at trial.

d. Don Price, cooperating incarcerated government witness, who testified between June 22 and August 3, 1994.
   (i) Mario Deolo, girlfriend and mother of the child of witness Don Price, paid $1,919.30, covering dates of

attendance between July 11, 1994 and April 7, 1995; she was never called to testify at trial;

e. Frank Lynch. Jr., cooperating incarcerated government witness, who testified between August 9, and August 16, 1994.
   (i) Michelle Washington, girlfriend of Frank Lynch, Jr. and the mother of his child, paid: $8,409, covering dates of attendance between June 25, 1993 and April 6, 1995; she was never called to testify at trial;
   (ii) Frank Lynch III, father of Frank Lynch, Jr., paid: $714, covering dates of attendance between June 29, 1994 and April 6, 1995; he was never called to testify at trial;
   (iii) Karen Lynch, sister of Frank Lynch, Jr., paid: $1,008, covering dates of attendance between July 15, 1993 and July 5, 1994; she was never called as a witness;
   (iv) Helen Lynch, mother of Frank Lynch, Jr., paid $ 126, covering dates of attendance between July 15, 1993 and July 20, 1993; she was never called to testify at trial.

f. William Woodfork, cooperating incarcerated government witness, who testified between July 25 and July 26, 1994.
   (i) Kathleen Baldwin, grandmother of William Woodfork, paid: $5,421.20, for dates of attendance between July 2, 1993 and April 6, 1995; ($2,734.50 during the trial, $243.20 given one year after the trial was over, the balance pre-trial); she was never called to testify.
   (ii) Jacqueline Young, mother of William Woodfork, paid: $1,016.20, for dates of attendance between July 20, 1993 and September 1, 1994; she was never called to testify at trial.
   (iv)[sic] Michael McNeil, uncle of William Woodfork; paid: $1,554, for dates of attendance between July 26, 1993 and July 15, 1995.
   (v) Anne Green, aunt of William Woodfork, paid: $168, for dates of attendance between July 20, 1993 and July 23, 1993.
   (vi) Kit Beane, aunt of William Woodfork, paid: $178, for dates of attendance between July 26, 1993 and July 28, 1993.

26. Mark Hoyle, the lead defendant, as well as co-defendants John McCollough, Anthony Goldstone and Mario Harris, were convicted and each was sentenced to life in prison without parole. One defendant,

Andre Perry, was severed midtrial because of the illness of his counsel. One defendant was acquitted.

27. In 1996, OPR disclosed their initiation of an investigation into allegations of misconduct in the *Newton Street Crew* case to defense counsel in that case and to the United States District Court for the District of Columbia. Each convicted defendant filed a motion for a new trial based upon Respondent's misconduct. On March 15, 2002, the government agreed not to oppose the defendants' motions and stipulated to dispositions. The District Court accepted the stipulated dispositions, vacated and dismissed numerous counts of conviction. The defendants were granted significant reductions in their prison sentences. The defendants' sentences were reduced as follows:

Mark Hoyle. *United States v. Hoyle,* Crim. No. 92-284
original sentence: 8 life terms, plus 25 years
amended sentence: 336 months, (i.e., 28 years)

John McCollough, *United States v. McCollough,* Crim. No. 92-284
original sentence: 9 life terms, plus 85 years
amended sentence: 336 months, (i.e., 28 years)

Anthony Goldston. *United States v. Goldston,* Crim. No. 92-284
original sentence: 4 life terms, plus 5 years
amended sentence: 216 months, (i.e., 18 years), concurrent to Superior Court sentences

Mario Harris, *United States v. Harris*, Crim. No. 92-284
original sentence: 5 life terms, plus 25 years
amended sentence: 216 months, (i.e., 18 years)

28. Respondent had prosecuted other criminal defendants before the *Newton Street Crew* case and at their trials presented some of the same witnesses who later testified in the *Newton Street Crew* case. Two of these defendants filed motions to vacate their sentence and also convinced the government to agree to stipulated dispositions and new sentences based upon Respondent's misconduct:

Donnie Strothers, *United States v. Strothers,* Crim. No. 92-285
original sentence: 360 months, (i.e., 30 years)
amended judgment (Dec. 4, 2004): 174 months, (i.e., 14½ years)

William Hoyle, *United States v. William Hoyle,* Crim. No. 92-285
original sentence: 360 months (i.e., 30 years)
amended sentence: 174 months, (i.e., 14½ years)

COUNT III (THE JONES)

29. Respondent authorized federal vouchers to be paid to Ms. Marjorie Jones and her three grandchildren for 53 days of attendance between December 1, 1993 and June 13, 1995, totaling $3,603.20 for Ms. Jones (including meals and/or mileage) and $2,080.00 for each grandchild, for a total of $9,483.20 to the family. Respondent authorized federal vouchers to two of the Jones grandchildren although he knew that they were not attending as fact witnesses.

30. Respondent provided and authorized the federal vouchers to Ms. Jones and her three grandchildren as witnesses for the *Newton Street Crew* case although neither Ms. Jones nor her grandchildren attended court proceedings to address *Newton Street Crew* matters. Respondent provided and authorized federal vouchers to Ms. Jones and her three grandchildren although they were not entitled to them.

31. Respondent signed federal vouchers dated June 13, 1995, for attendance on May 31, June 2, June 8 and June 13, 1995, to Ms. Jones and her three grandchildren. Respondent had terminated his employment with the United States Attorney's Office and had left that office by May 26, 1995. Respondent authorized these federal vouchers for Ms. Jones and her grandchildren although he knew they were not entitled to them.

In addition to the above factual stipulations, Respondent also stipulated that the above conduct violated the following District of Columbia Rules of Professional Conduct:

a. Rule 3.3(a), in that Respondent knowingly made a false statement of material fact or law to a tribunal;

b. Rule 3.4(c), in that Respondent knowingly disobeyed an obligation under the rules of a tribunal;

c. Rule 3.8, in that Respondent, in a criminal case, intentionally failed to disclose to the defense, upon request and at a time when use by the defense was reasonably feasible, evidence of information that he knew or reasonably should have known tended to negate the guilt of the accused;

d. Rule 8.4(a), in that Respondent violated or attempted to violate the Rules of Professional Conduct, knowingly assisted or induced another to do so, and/or did so through the acts of another;

e. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty or misrepresentation; and

f. Rule 8.4(d), in that Respondent engaged in conduct that seriously interfered with the administration of justice.

On May 7 through May 11, 2007, a hearing was held before the District of Columbia Court of Appeals Board on Professional Responsibility in case number 131-02. On August 9, 2009, the District of Columbia Court of Appeals Board on Professional Responsibility Hearing Committee Number One (Hearing Committee) filed a Report and Recommendation, finding that each of the stipulated violations was supported by clear and convincing evidence, except for the alleged violation of Rule 3.8 in connection to the Jones matter because the Jones matter did not proceed beyond the investigative stage. Bar counsel had also charged Respondent with violating Rule 3.4(b) (offering a prohibited inducement to a witness) and Rule 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, and fitness to practice law), and Respondent had contested those charges. The Hearing Committee found that the Rule 8.4(b) violation was supported by clear and convincing evidence but that the Rule 3.4(b) violation was not.

The Hearing Committee could not reach a unanimous decision regarding sanctions. One member proposed a two-year suspension with a fitness requirement and another member recommended disbarment.

On July 27, 2010, the District of Columbia Court of Appeals Board on Professional Responsibility (Board) filed a Report and Recommendation in case number 131-02. The Board unanimously agreed with the Hearing Committee's findings of facts and conclusions of law and adopted them with only minor exceptions. Again, however, there was no agreement by the Board as to the appropriate sanction. Three Board members recommended a three-year suspension, two Board members recommended a one-year suspension, and four Board members

recommended disbarment. The matter then went to the District of Columbia Court of Appeals (Court of Appeals)

On March 8, 2012, the Court of Appeals filed an opinion in case number 10-BG-938, adopting the sanction of disbarment. Thereafter, on June 7, 2012, the Court of Appeals issued an Order amending the opinion to clarify that the effective date of Respondent's disbarment was set nunc pro tunc to September 30, 2010.

The parties have stipulated, and this court finds, that Respondent's culpability, as determined by the Court of Appeal, indicates that the following California statutes or rules have been violated: Rules of Professional Conduct, rule 5-220 and Business and Professions Code sections 6106, 6068(a), and 6068(d).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,[7] std. 1.5.)[8] The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent's multiple acts of misconduct is an aggravating factor. (Std. 1.5(b).)

Significant Harm

Respondent's misconduct significantly harmed the administration of justice. (Std. 1.5(f).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)[9] The court finds the following with regard to mitigating circumstances.

[7] All further references to standard(s) or std. are to this source.
[8] Previously standard 1.2(b).

No Prior Discipline

Respondent has practiced in this state since April 1997, with no prior discipline. Further, all of the misconduct resulting in his discipline in the two other jurisdictions occurred while he was an Assistant United States Attorney in Washington D.C., prior to his admission to practice in this state. This history of no discipline and no misconduct since Respondent was admitted to practice in this state more than 17 years ago is a significant mitigating factor.

Cooperation

Respondent entered into an extensive stipulation of facts in both this matter and in the underlying Washington D.C. proceeding, and freely admitted culpability, for which conduct Respondent is entitled to mitigation credit. (Std. 1.6(e); see also *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded those who admit to culpability as well as facts].)

Community Service/Charitable Activities

Respondent has an extensive history of significant community service and charitable activities. He has donated significant funds to numerous charitable organizations. These groups have included organizations devoted to (1) aiding the poor, the sick, and the homeless (such as San Diego Food Bank, San Diego State University Global Medical Brigade, San Diego Rady Children's Hospital, and Elder Help); (2) providing aid to current and former members of the armed forces (such as the USO, AmVets Foundation, Soldiers Angels, Green Beret Foundation, Veterans of Foreign Wars, and Disabled American Veterans); (3) working to cure and prevent specific medical conditions (such as the American Cancer Society, Muscular Dystrophy Association, Alzheimer's Association, United Cerebral Palsy, Susan G. Komen Three Day Walk

[9] Previously standard 1.2(e).

for the Cure, and Leukemia & Lymphoma Society);(4) rescuing and providing other services for animals (such as the San Diego Humane Society and Society for the Prevention of Cruelty to Animals); (5) providing musical education and other opportunities for youth (such as the Albuquerque Youth Symphony, Tucson Boys Chorus, Dale Kempter Foundation, Opera Works, Dallas Patriots, Inc., and Special Olympics); and (6) educational and entertainment benefits to the general public (KPBS, Reporters Committee for Freedom of the Press). In addition, he has provided financial assistance to many needy individuals (including paying for medical expenses and college costs for various unrelated individuals). Finally, he had devoted significant time in the past guest lecturing at USC Law School and mentoring numerous young attorneys.

This voluntary and extensive commitment by Respondent to his community and others is a mitigating factor that is entitled to "considerable weight." (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785; *Rose v. State Bar* (1989) 49 Cal.3d 646, 665.)

Pro Bono Efforts

Respondent has provided significant assistance on a pro bono basis in helping mesothelioma victims and their families secure benefits available to them through various trusts established for the victims of asbestos exposure. This is also a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service as mitigating factor]; *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305; *In the Matter of Crane and DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158.)

Character Evidence

Respondent presented extensive good character testimony from numerous individuals, representing a wide range of references in the legal and general communities and who are aware of the full extent of the member's misconduct. These individuals included two retired U.S. District Court judges, prominent attorneys from California and from numerous other jurisdictions

throughout the country, former clients (including from the Chief Campus Counsel for the University of California – Berkeley), opposing counsel in the *Enron* litigation, the Dean of the College of Journalism at the University of Maryland, and various members of the business community. Virtually all of these individuals had read the D.C. Court of Appeals' disciplinary decision. Nonetheless, they consistently commented favorably on Respondent's strong sense of ethics, his professionalism, his compassion for others, his talents as an attorney, and his incredible work ethic.

A number of letters were received from attorneys from various states whom Respondent had mentored when they were young lawyers. In addition to the praise that they had for him as a talented and ethical attorney, they all commented on his significant commitment to helping young attorneys to learn their trade and instilling in them, both by word and deed, the values of civility and professionalism. They also commented on his fine qualities as a person and his compassion for others. Many of them mentioned that he continued to act as a mentor to them even after they had left for other firms.

A number of the letters received in evidence were from former members of the U.S. Attorney's Office in the District of Columbia, who had worked there at the same time as Respondent. In addition to uniformly expressing the highest of opinions regarding Respondent's integrity, work ethic, and talents as an attorney, many of them commented on the fact that Respondent's mishandling of the vouchers had not only resulted from good faith intentions on his part, but also reflected accepted practices and a general lack of knowledge in the office at that time of the controlling regulations. Illustrative of these letters was that of Wallace H. Kleindienst, now Senior Litigation Counsel to the United States Attorney for the District of Arizona. Among Mr. Kleindient's accomplishments is his recent successful prosecution of Jared Loughner, the individual who attempted to assassinate Congresswoman Gabrielle Giffords,

murdered Chief U.S. District Court Judge John M. Roll and five other individuals, and wounded thirteen other people outside of a Tucson market in January 2011. Mr. Kleindienst provided the following recollection regarding the use of vouchers in the U.S. Attorney's Office in Washington, D.C., when he and Respondent practiced there:

> Paul's sanction by the District of Columbia Court of Appeals was predicated on his misuse of and failure to disclose witness voucher payments. During my six years as a prosecutor in the District of Columbia Office, I too, just like other AUSAs, routinely gave witness vouchers to individuals I asked to meet me at the U.S. Attorney's Office because they might have useful information about the crime I was investigating. Many of those individuals did not testify at trial for a variety reasons. For example, their testimony would be inadmissible hearsay or the information they provided led me to better more relevant information useful at trial, making their original contribution, though quite valuable to the prosecution of the case, simply unnecessary for presentation at trial. In some cases, I initially intended to call them as rebuttal witnesses, but for whatever reason decided against doing so. In other circumstances, the crime they had information about was either never presented to the grand jury or the grand jury was never asked to return a true bill. These are but a few of the reasons that a witness who received a voucher might not be actually called as a witness. But even on the occasion when a person who had received a witness voucher testified for the government at trial, I never disclosed such payments to the defense. They were not considered a *Giglio* benefit to the witness. Rather, it was my understanding, and so far as I know, everyone else's understanding as well, that the law entitled them to be compensated for their time and inconvenience. Never at any time during my 31 years with the Department of Justice have I ever received any formal training on the use of witness vouchers. While there may very well have been reference to them in an AUSA manual I do not recall having ever received a manual when I joined the D.C. office. I learned how to - and when to - provide witness vouchers the same way everyone else did. I asked the first AUSA I ran into who had been there longer than I had. To the best of my knowledge, that "training method" remains in place today.

(Ex. 1020, pp. 2-3.)

This lack of any guidance within that office regarding the restrictions on the use of vouchers was corroborated by David Schertler, Esq. Mr. Schertler is now a prominent attorney in private practice in Washington, D.C., a member of the prestigious College of Trial Lawyers, and is routinely listed as one of the "Best Lawyers in America." Significantly, he became Chief of the Homicide Section of the U.S. Attorney's Office in Washington, D.C. in 1992, making his recollections, quoted below, even more significant:

> Third, I believe that any misconduct Paul is alleged to have committed was not the result of any intentional or knowing effort to violate the ethical rules. As I testified at the Bar proceeding, the U.S. Attorney's Office provided no training to prosecutors regarding the proper procedures or rules on the issuance of witness vouchers. If there was a manual providing guidance on the procedure, I was never made aware of it during my time with the U.S. Attorney's Office. As homicide prosecutors during an exceedingly violent era in Washington, we witnessed the horrible effects that crack cocaine had upon entire communities of people. It was not at all unusual for entire families to be affected by and have important knowledge of the drug trade and of the individuals - often their neighbors, friends, and relatives - who were involved in drug-related violence. In my own experience, many brothers, cousins, girlfriends - even grandmothers - of offenders were witnesses to the surge of violent crime that affected the District for so many years. Identifying those witnesses and securing their cooperation was essential to our prosecutions and was the only hope for bringing extremely violent offenders to justice. I believe that Paul's investigations were motivated by a genuine effort to seek justice under these very difficult circumstances. If he used poor judgment in those efforts, I believe that it was with good intentions. I believe that Paul is a person and an attorney of fundamental integrity and honesty, and I maintain that belief notwithstanding the findings made by the District of Columbia Court of Appeals.
>
> As Chief of the Homicide Section, I was for a time Paul's supervisor and was responsible for performing his work evaluations. I consistently rated Paul's work as excellent or outstanding in all areas.

(Ex. 1003, p. 2.)

Finally, this court received in evidence the following letter, addressed to the State Bar in February 2013, from the Hon. Thomas Penfield Jackson, a retired U.S. District Court judge for the District of Columbia. Judge Jackson, during his career on the bench, presided over many

significant matters, including the Microsoft antitrust case; the drug trial of former D.C. mayor Marion Barry; the public censure over former Senator Packwood's diaries; the case involving the constitutionality of the presidential line-item veto; and, most significantly here, the Newton Street Crew criminal trials prosecuted by Respondent.

> I was the federal trial judge who presided over the entire panoply of cases collectively known as the *Newton Street Crew* case - one of which was the subject of the D.C. Bar's investigation into the ethical behavior of then AUSA Paul Howes. I was appointed a U.S. District Judge on the U.S. District Court for the District of Columbia by President Ronald Reagan in 1982. I retired from the bench and returned to private practice as Counsel to Jackson & Campbell in August, 2004.
>
> I became aware of the allegations against Mr. Howes through a report from the Office of Professional Responsibility while I was still on the bench. When the OPR report was made available to defense counsel, the inevitable motions for new trial were filed. At that point, I had to make a difficult decision. I believed then, as I do now, that these individuals had, notwithstanding the allegations against Mr. Howes, absolutely received a fair trial. Further, I had no doubt whatsoever of the guilt of any of the defendants. They were vicious, brutal people that the community was well rid of and in my opinion it would have been a public service to keep them in confinement. These opinions, though formed as a result of my personal involvement in trials that went on for many months at a time - one of which had to be held in a special bulletproof-glass enclosed courtroom due to the extraordinarily dangerous nature of those involved - were simply incompatible with the neutral judicial approach that would be required of me while presiding over post conviction matters. I was also keenly aware of the significance of Paul Howes to the construction of all those cases. He was absolutely instrumental to those prosecutions. I knew very well that he handled the crucial-cooperating witnesses without which the federal cases could not have been made. And I knew that his unique ability to earn the trust of those cooperating witnesses would likely make reconstruction of the case without him impossible. Concerned that these facts could affect my ability to be impartial, I decided it was best that I recuse myself.
>
> I do remember the disciplinary proceedings against Paul Howes in the District of Columbia but was never informed of the final disposition by the D.C. Court of Appeals until my recent review of the District of Columbia's Court of Appeals' opinion dated March 8, 2012 (No. 10-BG-938) which sets forth the sanctions against Howes, as well as the underlying facts. I was frankly shocked to discover that the Court had disbarred him. I have always regarded Howes' infractions as far less

serious in the context of the entire case than the Court of Appeals obviously did. Once I learned from the OPR Report of Paul's disbursement of voucher funds my first - and lingering - impression was that they had been made in a good cause, although regrettably contrary to the precise letter of the law.

The case was one of the first prosecutions put together by a joint D.C. Police-FBI task force against a major drug conspiracy. All told, there were as I recall four or five separate trials. The investigation and trials took the better part of two years of my trial time, during which Paul Howes, as the lead prosecutor, was regularly before me. For the record, his courtroom deportment was meticulously proper. He is also a splendid trial lawyer, one of the best I have had before me in 22 years on the Bench.

The D.C. Court of Appeals found no mitigating circumstances to ameliorate Howes' conduct. I disagree. First, it should be noted that Howes profited not at all from the disbursements. They were all made to hold together an extremely fragile case, and while the aggregate amount of money involved may appear large, when viewed in relation to the size of the case they diminish in importance. Second, they were made for good purpose. The prosecution team lead by Howes managed to convict a score of murderous drug dealers with only one acquittal, all of whom served or are now serving long prison terms. Finally, whether or not the witness vouchers had been disclosed to the defense, my personal impression is that they would have been of little use; the favorable plea agreements the co-operators had been given in exchange for their testimony were far more useful for cross-examination purposes.

I certainly hope the California Bar does not impose reciprocal punishment on Howes. It would be a shame to lose a lawyer of his ability for what was a foolish but well-intentioned breach of the rules.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are

not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)[10]

Standard 1.7(a)[11] 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. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standards 2.7 and 2.8(a). Standard 2.7 provides that disbarment or actual suspension is appropriate for an act of moral turpitude, depending on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law. Standard 2.8 provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h).

[10] Neither section 6049.1 nor prior case requires this court to adopt the level of discipline decided by the other jurisdictions imposing discipline.
[11] Previously standard 1.6(a).

Because of the broad range of disciplines potentially applicable under these two standards, the court turns to the case law for guidance. In doing so, this court finds that the Review Department's recent decision in *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, is the most applicable authority. There, the respondent was a career prosecutor for Santa Clara County, who was found to have intentionally disregarded prosecutorial accountability in favor of winning cases. His misconduct in four criminal cases over a ten-year period included violating court orders and directives, acting in disrespect of the court, failing to obey the law, withholding evidence, misleading a judge, and committing multiple acts involving moral turpitude, dishonesty or corruption. These acts were summarized by the Review Department as follows:

> (1) **The Minor A. Matter**. In 1995, Field obtained a dental examination of a minor accused of sexual assault in violation of a court order. As a result, the juvenile court judge suppressed the evidence from the examination;
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> (2) **The Auguste and Hendricks Matter**. In 2003, Field intentionally withheld a witness's statement that was favorable to the defense in a habeas corpus proceeding involving a sexual assault case. As a result, the superior court judge found that Field committed a discovery violation by concealing evidence;
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> (3) The **Ballard, Barrientos and Martinez Matter**. In 2003, Field intentionally withheld a defendant's statement favorable to co-defendants in a murder case. As a result, the superior court judge found that Field committed a discovery violation and dismissed a 25-year gun enhancement against one of the co-defendants; and
>
> (4) **The Shazier Matter**. In 2005, Field made an improper closing argument in a sexually violent predator (SVP) case. As a result, the appellate court reversed the judgment committing the defendant as an SVP, describing Field's closing argument as "deceptive and reprehensible

In the *Field* matter the State Bar had requested discipline including a three-year period of actual suspension. The Hearing Department judge recommended a minimum four-year period of suspension and until Respondent presented proof of his rehabilitation, present fitness to practice,

and present learning and ability in the general law pursuant to standard 1.4(c)(ii).[12] On Respondent's appeal to the Review Department, the court affirmed the recommended period of suspension with the following analysis:

> Given the broad range of discipline in standard 2.3,[13] we look to comparable case law. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311). We note that the California Supreme Court has not hesitated to impose disbarment on attorneys whose interference with the fair administration of justice resulted in their criminal convictions. (See *In re Hanley* (1975) 13 Cal.3d 448, 454 [defense attorney's conviction for bribing witness not to testify in murder case "impugned the integrity of the judicial system" justifying disbarment]; see *In re Allen* (1959) 52 Cal.2d 762, 768 [plaintiff attorney's conviction for soliciting witnesses to commit perjury in civil trial "inherently" called for disbarment].) However, these cases are not directly on point with Field's circumstances because the record does not reveal any criminal convictions for his misconduct. In fact, our research reveals very limited case precedent as to State Bar discipline for prosecutorial misconduct, with the guiding cases imposing discipline ranging from 30 days' to two years' actual suspension.
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> In *Noland v. State Bar* (1965) 63 Cal.2d 298, a prosecutor committed an act of moral turpitude by attempting to delete potential pro-defense jurors from the jury list to gain an advantage at trials. The Supreme Court imposed a 30-day actual suspension, finding that his misconduct was a "calculated thwarting of objective justice." (*Id.* at p. 303.)
>
> In *Price v. State Bar, supra*, 30 Cal.3d 537, a prosecutor altered evidence presented at a murder trial in order to obtain a conviction. His misconduct involved moral turpitude, and was aggravated when the prosecutor visited the defendant in jail and offered to seek a favorable sentence if the defendant agreed not to appeal the conviction. The prosecutor in *Price* presented significant evidence in mitigation, including lack of a disciplinary record, cooperation, remorse, good character and community works. Although the misconduct was extremely serious, the Supreme Court concluded that the weight of the mitigation militated against disbarment and imposed a two-year actual suspension.
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> We agree with the hearing judge that Field's misconduct over the 10-year period warrants more severe discipline than that imposed in *Price*. Prosecutors must meet standards of candor and impartiality not demanded of other attorneys. They are held to this elevated standard of conduct

[12] Now standard 1.2(c)(1).
[13] Now standard 2.7.

because of their "unique function . . . in representing the interests, and in exercising the sovereign power, of the state. [Citation.]" (*People v. Hill* (1998) 17 Cal.4th 800, 820.) "The [prosecutor] is the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done." (*Berger v. United States* (1935) 295 U.S. 78, 88.) Although our system of administering criminal justice is adversarial in nature, and prosecutors must be zealous advocates in prosecuting their cases, it cannot be at the cost of justice. (*United States v. Young* (1985) 470 U.S. 1, 7 [". . . while [the prosecutor] may strike hard blows, he is not at liberty to strike foul ones"].) The "ultimate goal [of the criminal justice system] is the ascertainment of the truth, and where furtherance of the adversary system comes in conflict with the ultimate goal, the adversary system must give way to reasonable restraints designed to further that goal." (*In re Ferguson* (1971) 5 Cal.3d 525, 532.)

We find that Field lost sight of this goal when he prosecuted the four criminal cases examined here. And in doing so, he disregarded the foundation from which any prosecutor's authority flows -- " The first, best, and most effective shield against injustice for an individual accused . . . must be found . . . in the integrity of the prosecutor." (Corrigan, Commentary on Prosecutorial Ethics (1985) 13 Hastings Const. L.Q. 537.) Field's misconduct began shortly after his admission to the bar, involved moral turpitude, spanned a 10-year period and significantly affected the criminal justice system. A narrow reading of his discovery obligations, coupled with the desire to convict, blurred his understanding of a prosecutor's special duty to promote justice and seek the truth. Although we recognize that not every violation of the law regarding discovery and argument merits discipline, in the criminal cases before us Field was not candid and truthful in his dealings with the superior court, counsel and the defendants. His intentional violation of the law deprived criminal defendants of important rights. We consider Field's misconduct related to the discovery violations to be the most serious. When prosecutors act dishonestly or unilaterally decide that evidence favorable to the defense should be withheld, the accused is endangered, the case is damaged and public confidence is lost.

In the final analysis, however, the determination of attorney disciplinary sanctions must turn on a consideration of all factors in the case. (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 796.) The hearing judge found compelling the un-rebutted mitigation testimony of 36 character witnesses. These findings must be given great weight "because the hearing judge heard and saw the witnesses and observed their demeanor. [Citations.]" (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 315; see also Rules Proc. of State Bar, rule 305(a); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.) Recognizing that the hearing judge is in the best position to assign the proper weight to this

> evidence, and upon our own reading of the record, we concur that the mitigation was compelling.
>
> While Field's misconduct was serious, like the hearing judge, we do not recommend disbarment in view of his mitigation and the lesser discipline imposed in similar cases. Rather, after balancing all of the relevant circumstances, we believe that the goals of attorney discipline and prosecutorial accountability will be met by recommending a four-year actual suspension, which is basically the longest period to recommend short of disbarment. We also recommend that Field be suspended from the practice of law for five years, stayed, and placed on a five-year probation period. And finally, we recommend that after serving his actual suspension, Field be reinstated to practice law only if he establishes before the State Bar Court his rehabilitation, fitness to practice, and learning and ability in the law, as required in a standard 1.4(c)(ii) proceeding. Although Field acknowledged at trial that he would do things differently now, we find this to be only a first step on the road to proving rehabilitation from the serious misconduct that he committed.

(5 Cal. State Bar Ct. Rptr. at pp. 186-187.)

Comparing the facts of the *Field* matter with the evidence here, this court also finds that there is a need for substantial actual suspension, given the nature of Respondent's misconduct, its impact on the administration of justice, and its potential effect on the public's faith in the criminal justice system. However, a comparison of the facts and circumstances of the *Field* matter to those present here makes clear that a lesser period of actual suspension is appropriate in this matter. Respondent's misconduct here was not as egregious as that in the *Field* matter; it is far more remote in time, having occurred roughly two decades ago; none of the conduct occurred in California or involved the California courts; all of the conduct occurred before Respondent was a member of the California Bar; the character evidence received by this court was from prominent and significant sources (including the judge handling some of the affected cases) and was overwhelmingly positive; Respondent's longstanding commitment to his community, his profession, and to charitable activities is clear and unchallenged; Respondent has demonstrated his insight into his prior misconduct, as reflected in his stipulations in the District of Columbia

matter and here; and there is no evidence of any ethical breach by Respondent at any time in the 17 years since he has been a member of this Bar.

For those reasons, this court finds no basis for recommending that Respondent be disbarred from the State Bar of California.[14] Instead, it recommends that he be suspended from the practice of law for five years; that execution of that suspension be stayed; and that he be placed on probation for five years, with conditions of probation including, inter alia, that he be actually suspended from the practice of law for a minimum of the first three years of probation and 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 1.2(c)(1).

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **G. Paul Howes**, Member No. 187772, be suspended from the practice of law for five years; that execution of that suspension be stayed; and that Respondent be placed on probation for five years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first three years of probation and 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 1.2(c)(1).

[14] In support of its request that Respondent be disbarred, the State Bar cites to *In re Basinger* (1988) 45 Cal.3d 1348 and *In re Utz* (1989) 48 Cal.3d 468. Neither case is applicable. Both matters involved criminal convictions involving moral turpitude (grand theft and mail fraud, respectively), and neither arose out of prosecutorial misconduct.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

3. Respondent must maintain with the State Bar's Membership Records Office and the State Bar's Office of Probation his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within 30 days after the effective date of the Supreme Court order in this proceeding, Respondent must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with the assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. Thereafter, Respondent must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

5. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[15] However, if Respondent's probation

[15] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

(a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

(b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

6. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

7. During the period of Respondent's actual suspension, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is

separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

8. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

9. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the five-year period of stayed suspension will be satisfied and the suspension will be terminated.

MPRE

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[16]

[16] Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: September _____, 2014

DONALD F. MILES
Judge of the State Bar Court