

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos. **09-O-19433-LMA**  
) (10-O-05160; 10-O-09746)  
**JUAN MANUEL FALCON,** )  
) **DECISION AND ORDER OF**  
**Member No. 177400,** ) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
A Member of the State Bar. )

**I. Introduction**

In this contested, original disciplinary proceeding, respondent **Juan Manuel Falcon** is charged with three counts of failing to obey court orders and one count of moral turpitude.

The State Bar urges that respondent be disbarred based on the severity of the present misconduct and his prior record of discipline. Respondent argues that a lengthy period of actual suspension, short of disbarment, would be adequate, in view of his strong mitigation, including his commitment to sobriety.

Despite the evidence in mitigation, including respondent's commitment to his sobriety and good participation in the Lawyer's Assistance Program, the serious nature of the misconduct, as well as the aggravation found by the court, do not warrant a lesser discipline than disbarment. Accordingly, the court recommends that respondent be disbarred from the practice of law.

## **II. Pertinent Procedural History**

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on December 22, 2010. Respondent filed his response to the NDC on January 18, 2011.

Trial was held on June 14-16, 2011. The court took the matter under submission for decision on June 23, 2011.

Deputy Trial Counsel Erica Dennings represented the State Bar. Attorney Eduardo Ruiz represented respondent.

## **III. Findings of Fact and Conclusions of Law**

This court's findings of fact are based on the documentary evidence and testimony presented at trial, and the admissions contained in the response to the NDC.

Respondent was admitted to the practice of law in California on July 3, 1995, and has been a member of the State Bar of California since that time.

### **A. Case Nos. 10-O-05160 & 10-O-09746 – The Perez and Oropeza Matters**

#### **Facts**

Respondent was admitted to the Alternative Discipline Program on May 18, 2009. The low level of discipline to be imposed, upon successful completion of the ADP, included a one-year actual suspension. The high-end discipline to be imposed, if respondent failed to successfully complete the ADP, included a three-year actual suspension.

On October 7, 2009, pursuant to rule 803(c) of the Former Rules of Procedure,<sup>1</sup> the court issued an order enrolling respondent inactive pursuant to section 6233 of the Business and Professions Code. The effective date of respondent's inactive status was October 17, 2009, and he was to remain on inactive status for a period of one year.

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<sup>1</sup> Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended.

Respondent was further ordered to comply with requirements set forth in California Rules of court, rule 9.20, within 30 days after the effective date of his inactive enrollment (by November 17, 2009). Specifically, respondent was ordered to:

Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment pursuant to Business and Professions Code section 6233 and his subsequent disqualification to act as an attorney effective October 17, 2009. In the absence of co-counsel, respondent must also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;

Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled or notify the clients and any co-counsel of a suitable place and time where the papers and other property may be obtained, calling attention to any urgency for containing the papers or other property;

Refund any part of fees paid that are unearned; and

Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of respondent's inactive enrollment and consequent disqualification to act as an attorney effective October 17, 2009, and file a copy of the notice with the agency, court, or tribunal before which the litigation is pending for inclusion in the respective file or files. All notices required by this order must be given by registered or certified mail, return receipt requested, and must contain an address where communications may be directed to respondent.

In addition, respondent was ordered to file an affidavit with the State Bar Court showing that he fully complied with the requirements set forth above (9.20 declaration). The 9.20 declaration was due on November 27, 2009, 40 days after the effective date of his inactive enrollment.

On December 8, 2009, respondent filed his 9.20 declaration with the State Bar Court. In his declaration, respondent checked box four which indicated that he had notified all opposing counsel in matters that were pending on the date upon which the order to comply with rule 9.20 was filed and filed a copy of his notice to opposing counsel with the court before which litigation was pending. Although signed by

respondent under penalty of perjury, respondent's 9.20 declaration, as illustrated below, was false and misleading.

Prior to October 7, 2009, respondent represented Mireya Perez in a dissolution matter, *Mireya Perez v. Harold Perez*, Fresno County Superior Court case no. 08CEFL 00478 (the Perez matter). Kathleen Bakergumprecht-Davies (Bakergumprecht-Davies) represented Harold Perez. The Perez matter was still pending as of November 17, 2009. Respondent filed a substitution of attorney in the Perez matter on February 5, 2010, but did not file a copy of the notice of involuntary inactive enrollment to opposing counsel with the court.<sup>2</sup> Respondent also did not notify Bakergumprecht-Davies that he was suspended from the practice of law until April 2010.

Prior to October 7, 2009, respondent also represented Lucio Oropeza in a matter entitled *Lucio Oropeza v. Sandra Zazueta-Diaz; et al.*, Fresno County Superior Court case no. 09CECG01815 (the Oropeza matter). Respondent did not notify defense counsel, Daniel Bruce (Bruce), that he was suspended until May 2010. Respondent also failed to file a copy of the notice to opposing counsel with the court in the Oropeza matter. The court ultimately became aware of respondent's inactive enrollment in late May 2010.

### **Conclusions of Law**

#### ***1. Count One – (Bus. & Prof. Code, § 6103<sup>3</sup> [Failure to Obey a Court Order]***

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.” By not timely notifying Bakergumprecht-Davies of his involuntary inactive enrollment pursuant to section 6233, and by not filing a copy of said notice with the court in which the Perez matter was pending, respondent

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<sup>2</sup> Respondent blamed his paralegal for much of his failure to properly notify the courts of his inactive enrollment. The court found respondent's testimony on this subject to be disingenuous and lacking credibility.

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

willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

**2. Count 2 – (§ 6103 [Failure to Obey a Court Order])**

By not timely notifying Bruce of his involuntary inactive enrollment pursuant to section 6233, and by not filing a copy of the notice with the court in which the Oropeza matter was pending, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

**3. Count Three – (§ 6106 [Moral Turpitude])**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. By filing a declaration with the State Bar Court in which he falsely represented that he had notified opposing counsel and the courts of his suspension, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

**B. Case No. 09-O-19433 – The Ontiveros Matter**

**Facts**

On March 2, 2007, respondent filed a complaint against Nicholas Dueck on behalf of his client, Martha Ontiveros, entitled *Martha Ontiveros v. Nicholas M. Dueck*, Fresno County Superior Court case no. 07CECL01649.

On October 3, 2008, the court set a hearing for an order to show cause (OSC) re: dismissal of the proceeding due to respondent's failure to serve the defendant. The OSC hearing was set for November 21, 2008. Respondent was present at the October 3, 2008 hearing and received notice of the November 21, 2008 hearing. Respondent was required to attend the November 21, 2008 hearing.

On November 21, 2008, a hearing was held on the OSC re: dismissal. Respondent failed to appear. The court set another OSC hearing re: dismissal for January 9, 2009. Respondent received notice of the January 9, 2009 hearing and was required to attend.

On January 9, 2009, there was a hearing on the OSC re: dismissal. Respondent again failed to appear at the hearing. The court dismissed the action.

### **Conclusions of Law**

#### ***1. Count Four – (§ 6103 [Failure to Obey a Court Order])***

By failing to appear at the November 21, 2008 and January 9, 2009 OSC hearings resulting in his client's action being dismissed, respondent willfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

### **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

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

#### **A. Mitigation**

The court found two factors in mitigation. (Std. 1.2(e).)

##### ***1. Good Character***

Four attorneys, two LAP staffers, an investigator, and a judge testified on respondent's behalf. These witnesses detailed respondent's sobriety, road to recovery, and general good character. Although some of these witnesses were not aware of the full extent of respondent's

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<sup>4</sup>All further references to standards are to this source.

misconduct, the court finds that respondent's character evidence warrants some consideration in mitigation. (Std. 1.2(e)(vi).)

## ***2. Efforts to be in Recovery and Maintain Sobriety***

Respondent testified that he has been sober since June 2008. Respondent is currently participating in the LAP and making efforts to maintain his sobriety. While the court applauds respondent's recovery efforts, the majority of the present misconduct took place approximately a year and a half after respondent first obtained sobriety. Respondent did not demonstrate, by clear and convincing evidence, that his emotional or physical difficulties were directly responsible for the bulk of the present misconduct. (See std. 1.2(e)(iv).) The court, therefore, awards respondent's sobriety and recovery little weight in mitigation.

## **B. Aggravation**

The record establishes two factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

### ***1. Prior Record of Discipline***

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).) Respondent has two prior impositions of discipline.

On July 21, 2003, the California Supreme Court issued an order (S115567) suspending respondent from the practice of law for one year, stayed, with three years' probation, and 60 days' actual suspension for nine counts of misconduct. Said misconduct included failing to perform with competence, failing to communicate, failing to refund unearned fees, and failing to render an accounting. In mitigation, respondent took objective steps demonstrating remorse and recognition of wrongdoing. In aggravation, respondent committed multiple acts of misconduct and caused significant harm to his clients.

On December 1, 2010, the Hearing Department of the State Bar Court issued a decision (case nos. 05-O-02161 (08-O-11442)) recommending to the Supreme Court that respondent be suspended from the practice of law for four years, stayed, with four years' probation, and a minimum period of actual suspension of three years and until respondent provides proof of his rehabilitation, fitness to practice, and learning and ability in the general law.<sup>5</sup> In this matter, respondent was found culpable of six counts of misconduct in two client matters, including making misrepresentations constituting moral turpitude, failing to maintain client funds in trust, and misappropriating \$5,000 from his client trust account. In aggravation, respondent's misconduct involved trust funds, was surrounded by dishonesty and concealment, evidenced multiple acts of wrongdoing, and resulted in significant harm. In addition, respondent had a prior record of discipline. In mitigation, respondent had participated in the Lawyers Assistance Program.

## ***2. Multiple Acts***

Respondent was found culpable of four acts of misconduct involving three client matters. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

## **V. DISCUSSION**

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

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<sup>5</sup> This discipline recommendation has been submitted to the Supreme Court, but is not yet final. A record of prior discipline is not made inadmissible by the fact that the discipline has been recommended, but not yet been imposed. (See Rules Proc. of State Bar, rule 5.106(E).)



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

In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.3 and 2.6.) The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for an act of moral turpitude, fraud, or intentional dishonesty toward a court.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that respondent be disbarred. Disbarment is generally considered to be the appropriate sanction for a willful violation of rule 9.20. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) An attorney’s failure to comply with rule 9.20 undermines its prophylactic function in ensuring that all concerned parties learn about an attorney’s suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

The court looked to *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, for instruction. In *Snyder*, the attorney perjured himself in his California Rules of Court, rule 955(c) (now rule 9.20) declaration of compliance by falsely declaring under penalty of perjury that he had notified all clients, courts, and opposing parties of his suspension. The attorney also engaged in the unauthorized practice of law, did not account for or return unearned

fees, and appeared for a client without the client's authority. Aggravating factors included one prior instance of discipline and a lack of candor. Although the attorney presented mitigating evidence of family pressures and misfortune, good character, therapy, community service, and compliance with probation conditions, it was found insufficient to avert disbarment.

Like *Snyder*, the present case involves the filing, under penalty of perjury, of a false 9.20 declaration. By filing a false 9.20 declaration, respondent intentionally side-stepped the deliberate public protection measures set out by the State Bar Court. Although *Snyder* involved additional misconduct, the court finds respondent's misconduct to be extremely serious as it undercut the protection of the public, the courts, and the legal profession.

Therefore, having considered the nature and extent of the misconduct, the aggravating and mitigating circumstances, as well as the case law, the court finds that respondent's disbarment is necessary to protect the public, the courts, and the legal community; to maintain high professional standards; and to preserve public confidence in the legal profession.

## VI. RECOMMENDATIONS

Accordingly, the court recommends that respondent **Juan Manuel Falcon** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.<sup>6</sup>

### A. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>7</sup>

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<sup>6</sup> If the non-final prior discipline recommendation in case nos. 05-O-02161 (08-O-11442) is dismissed or modified by the Supreme Court, this court's recommendation in the present matter remains unchanged. (See Rules Proc. of State Bar, rule 5.106(E).)

<sup>7</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**B. Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 5.111(D) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: July \_\_\_\_, 2011.

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court