

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case Nos.: **10-O-08958-RAP**  
) **11-O-15158; 11-O-16248 (Cons.)**  
**CURTIS GEORGE MUCK,** )  
) **DECISION**  
) **Member No. 190328,** )  
)  
A Member of the State Bar. )  
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**Introduction**<sup>1</sup>

This matter involves a Stipulation Re Facts, Conclusions of Law and Disposition (stipulation) executed by the State Bar of California (State Bar) and respondent Curtis George Muck, and approved by the State Bar Court which was later returned by the California Supreme Court for further consideration.

**Significant Procedural History**

On July 6, 2011, the State Bar filed a notice of disciplinary charges (NDC) in this matter. Respondent filed a response to the NDC on August 11, 2011.

On October 18, 2011, the State Bar and respondent signed a stipulation which was approved by the State Bar Court on October 28, 2011 and filed on November 3, 2011. The stipulation included the matter which was the subject of the NDC and two additional investigation matters which were consolidated when the stipulation was filed.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

On June 21, 2012, the Supreme Court issued order no. S199033 returning the stipulation “for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (*In re Silvertan* (2005) 36 Cal.4th 81, 89-94; see *In re Brown* (1995) 12 Cal.4th 205, 220.)”

On September 11, 2012, the court denied the State Bar’s motion to permit the introduction of facts to supplement the returned stipulation, or withdrawal from same, and to file a notice of disciplinary charges.

On September 12, 2012, the court denied the State Bar’s motion to stay proceedings until the Review Department resolved the State Bar’s petition for interlocutory review of the court’s September 11, 2012, order.

On September 13, 2012, the court denied the State Bar’s oral motions: (1) attempting to admit into evidence the victim witness statement of Sara Leon-Perez, even though the State Bar was not in possession of the victim witness statement; and (2) requesting that Ruth Wilke and Adam Sacks be permitted to testify at trial.

Trial in this matter was held on September 13, 2012 and the case was submitted for decision on that same date.

The State Bar was represented by Deputy Trial Counsel Mia Ellis. Respondent represented himself at trial.

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

Respondent was admitted to the practice of law in California on December 1, 1997, and has been a member of the State Bar of California at all times since that date.

**Case No. 10-O-08958 – Ruth Wilke Matter**

**Facts**

On December 3, 2009, Ruth Wilke met with David Tabibi, who is not a California attorney. Wilke was seeking legal advice and representation concerning her claim to real property owned by her husband prior to his death. During the meeting, Tabibi discussed Wilke's legal matter with her and advised her she would be able to obtain rights to the property.

Tabibi also quoted Wilke a fee of \$5,000 to handle her matter and provided Wilke with a fee agreement to employ respondent's law office. Wilke assumed that Tabibi was an associate lawyer in respondent's law firm. Wilke and respondent never executed the fee agreement.

On December 14, 2009, Wilke paid the \$5,000 advanced fees by check. The check was made payable to Advanced Paralegal Services, with whom Tabibi is affiliated, and it was cashed.

On December 28, 2009, respondent filed a substitution of attorney in the case entitled Estate of Ernest Gognavec (Riverside County Superior Court, case no. RIP093710).

Respondent and Tabibi shared the \$5,000 in fees received from Wilke.

In June 2010, respondent sent Wilke a letter acknowledging receipt of the \$5,000 and informed her that he could no longer represent her in the case. On October 15, 2010, respondent filed a substitution of attorney signed by Wilke, placing her in pro per.

On October 20, 2010 and November 3, 2011, an investigator for the State Bar mailed letters to respondent at his membership records address requesting that he provide a written response to the allegations raised by Wilke's complaint. Respondent received the investigator's letters but did not respond to them or otherwise cooperate in the investigation of Wilke's complaint.

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## **Conclusions**

### ***Count One - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])***

Rule 1-300(A) provides that an attorney must not aid any person or entity in the unauthorized practice of law.

By allowing Tabibi to hold himself out as an attorney to Wilke by giving her legal advice, respondent willfully violated rule 1-300(A).

### ***Count Two - (Rule 1-320(A) [Sharing Fees with Non-Lawyers])***

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a non-lawyer.

By sharing with Tabibi the \$5,000 received from Wilke as advanced fees for legal services, respondent willfully violated rule 1-320(A).

### ***Count Four<sup>2</sup> - (§ 6068, subd. (i) [Failure to Cooperate])***

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

By not responding in writing to Wilke's allegations of misconduct as requested by the State Bar investigator, respondent willfully violated section 6068, subdivision (i).

## **Case No. 11-O-15158 – The Adam Sacks Matter**

### **Facts**

On March 1, 2011, David Tabibi sent a letter to attorney Adam Sacks written on respondent's letterhead and signed by Tabibi "c/o Curtis Muck."

The letter urged Sacks to dismiss his complaint in bankruptcy court against respondent's client, Amy Fithian. It further stated that if Sacks did not comply, they would litigate the case

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<sup>2</sup> Count Three of the NDC, which alleged a violation of rule 4-100(B)(3), was dismissed by agreement of the parties and with the court's approval.

and ask for attorney's fees. Tabibi also stated that the client was about to file a complaint against Sacks with the State Bar.

### **Conclusions**

#### ***Count One - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])***

By allowing Tabibi to hold himself out as an attorney by sending a letter on respondent's letterhead which communicated the legal theory and direction of the case and advised that Fithian would file a State Bar complaint against opposing counsel, respondent willfully violated rule 1-300(A).

### **Case No. 11-O-16248 – The Sara Leon-Perez Matter**

#### **Facts**

On March 5, 2010, Sara Leon-Perez retained respondent for a fee of \$4,500 to handle dissolution of marriage.

On March 5, 2010, Leon-Perez initially met with David Tabibi and signed a "purchase order" with Advanced Paralegal Services to complete a "response and attorney representation 'Curtis Muck.'"

Since Leon-Perez was referred to Tabibi, she primarily dealt with him. Although Tabibi never said he was an attorney, Leon-Perez believed he was an attorney and he gave her legal advice.

From March 5 through 26, 2010, Leon-Perez met with Tabibi about her case.

In May 2010, Leon-Perez learned that Tabibi was not an attorney.

In June 2010, Leon-Perez decided to retain a new attorney, John Sibbison.

In June 2010, Sibbison requested an itemized accounting.

On July 27, 2010, respondent sent Leon-Perez an accounting of services and a refund check of \$308.70.

On August 16, 2010, Sibbison returned the check as he questioned the accounting. Sibbison suggested the appropriate refund of \$3,500 for the work performed.

### **Conclusions**

#### ***Count One - (Rule 1-300(A) [Aiding the Unauthorized Practice of Law])***

By allowing Tabibi to hold himself out as an attorney to Leon-Perez by giving her legal advice regarding her case, respondent willfully violated rule 1-300(A).

### **Aggravation**

There were no aggravating circumstances.

### **Mitigation<sup>3</sup>**

#### **No Prior Record (Std. 1.2(e)(i).)**

Though the misconduct is serious, respondent has no prior record of discipline in the 14 years he has practiced law.

#### **Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent has been cooperative to the extent that he has stipulated to facts, conclusions of law and discipline.

### **Other**

Respondent contends that he did not know Tabibi was holding himself out giving legal advice. Although Tabibi did not specifically tell Wilke and Leon-Perez that he was an attorney, the clients had the impression that he was an attorney because he was giving them legal advice. Respondent acknowledges that this is improper.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest

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<sup>3</sup> All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.6(a) and 2.10 apply in this matter. The most severe sanction is found at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

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

Respondent has been found culpable, in three client matters, of aiding the unauthorized practice of law (three counts); and one count each of not participating in a State Bar investigation and sharing fees with a non-lawyer. There were no aggravating factors. Mitigating circumstances included no prior discipline in 14 years of practice; candor and cooperation; and insight.

The State Bar recommends six months’ actual suspension. Respondent believes that the original 60-day actual suspension should be recommended to the Supreme Court.

The court found instructive *In the Matter of Nelson*, (Review Dept. 1993) 1 Cal. State Bar

Ct. Rptr. 178. Six months' actual suspension was imposed for misconduct including forming a law partnership with a non-lawyer; dividing legal fees between them; using the non-lawyer as a "runner" and "capper"; not notifying clients of the receipt of funds; improperly withdrawing from employment; and not promptly communicating a written settlement offer to a client, among other things. Because respondent's involvement in capping was pervasive and his law practice was built entirely on this illegal practice, the court found that respondent's conduct involved moral turpitude. Respondent presented substantial, impressive mitigation, including remorse, rehabilitation, restitution and extreme candor and cooperation during the State Bar investigation and proceedings. "But for respondent's strong mitigating evidence," the court "would have recommended considerably greater discipline for what is demonstrably very serious misconduct." *Id.* at 182.

Respondent's misconduct herein, although serious, is not as egregious as that in *Nelson* and does not involve moral turpitude. There are no aggravating factors, but there is less mitigation than in *Nelson*. The court believes that respondent has gained insight into his wrongdoing, which may indicate less likelihood of reoccurrence of misconduct. Accordingly, having considered the evidence and the law, the court believes that six months' actual suspension, among other things, is sufficient to protect the public, the courts and the legal profession from further wrongdoing by respondent.

### **Recommendations**

It is recommended that respondent Curtis George Muck, State Bar Number 190328, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>4</sup> for a period of three years subject to the following conditions:

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<sup>4</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)



1. Respondent Curtis George Muck is suspended from the practice of law for the first six months of probation.
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. It is recommended that respondent comply with the following additional conditions of probation:

### **A. Duty to Notify Individual(s) of Right to Mandatory Fee Arbitration**

No later than 30 days after the effective date of discipline, respondent must send a letter by certified mail, return receipt requested, to the individual(s) set forth below and offer to initiate, pay any costs and fees associated with the fee arbitration, and participate in binding fee arbitration with said individual(s), upon the request of any such individual(s), regarding fees respondent received for representation of the former client(s) set forth below. The letter must include the address and phone number of the Office of Probation along with a statement that the Office of Probation will be monitoring respondent's fee arbitration conditions and may be contacted by the individual(s).

Respondent must offer **Sara Leon-Perez** the option of participating in binding fee arbitration for the attorney's fees.

### **B. Upon Individual's Consent to Mandatory Fee Arbitration, Duty to Initiate Fee Arbitration**

Within 40 days after the effective date of discipline, respondent agrees to provide the Office of Probation with a copy of the letter(s) offering to initiate and participate in fee arbitration with the individual(s) set forth above, along with a copy of the return receipt from the U.S. Postal Service or other proof of mailing.

Respondent must advise the Office of Probation, in writing, of any request to participate in fee arbitration made by any individual set forth above within 15 days after any such request.

Respondent must provide the Office of Probation with any information requested to verify respondent's compliance, including submission of any written request for fee arbitration or the submission of a declaration from any individual setting forth the date arbitration was requested.

Respondent must initiate fee arbitration within 14 days of any request, including making any payment required by the organization conducting the fee arbitration.

Respondent must fully and promptly participate in the fee arbitration as directed by the organization conducting the fee arbitration.

Respondent must not raise the statute of limitations as a defense to the fee arbitration with respect to any of the above individual(s).

Respondent must accept binding arbitration on the arbitration request form.

### **C. Duty to Comply with the Arbitration Award**

Within 30 days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter or within 30 days after respondent's effective date of discipline, whichever is later, respondent

must provide a copy of said award, judgment or stipulated award to the Office of Probation.

Respondent must comply with any award, judgment or stipulated award of any such fee arbitrator and must provide proof thereof to the Office of Probation within 30 days after compliance with any such award, judgment or stipulated award. If the award, judgment or stipulated award does not set forth a deadline for any payment, respondent must make full payment within 30 days of the issuance of any such award, judgment or stipulated award.

To the extent that respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must be given credit for such payment(s) if satisfactory proof of such payment(s) is or has been provided to the Office of Probation.

**D. Obligation to Pay Restitution to the Client Security Fund.**

If the State Bar Client Security Fund has reimbursed any of the above individual(s) for all or any portion of any award, judgment or stipulated award pursuant to fee arbitration, respondent must pay restitution to the Client Security Fund of the amount paid, plus applicable interest and costs, in accordance with Business and Professions Code section 6140.5. To the extent the Client Security Fund has paid only principal amounts, respondent will still be liable for interest payments to such individual(s). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

**E. Waiver of Objections**

If the fee arbitration proceeding results in an award to any of the above individual(s), respondent must waive any objections related to the Office of the Chief Trial Counsel, Client Security Fund or State Bar Court notification to any such individual regarding assistance in obtaining restitution or payment from the Client Security Fund or from respondent. Respondent expressly waives confidentiality for purposes of effectuating this section.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

**Multistate Professional Responsibility Examination**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme

Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

**California Rules of Court, Rule 9.20**

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**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. One-third of the costs must be paid with respondent's membership fees of each of the years 2014, 2015 and 2016. If respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

**Order**

The Stipulation Re Facts, Conclusions of Law and Disposition filed on November 3, 2011 is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition filed on November 3, 2011 from the State Bar's website.

Dated: October 10, 2012

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RICHARD A. PLATEL  
Judge of the State Bar Court