PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **LYNN HUBBARD, III,** **Member No. 69773,** A Member of the State Bar.	**Case Nos.: 11-O-14081, 13-J-11204, 13-O-17118-DFM** **DECISION**

INTRODUCTION

Respondent **Lynn Hubbard, III** (Respondent) is charged here with misconduct in three separate matters. One of the matters involves discipline imposed by another jurisdiction. The other two matters entail six counts of misconduct, including allegations of willful violations of Business and Professions Code[1] section 6068, subdivision (o)(3) (failure to report judicial sanctions) [two counts]; section 6068, subdivision (d) (seeking to mislead judge); section 6106 (misrepresentations - moral turpitude); section 6068, subdivision (i) (failure to cooperate in disciplinary investigation); and Rules of Professional Conduct[2] rule 1-300(A) (aiding the unauthorized practice of law). The court finds culpability and recommends discipline as set forth below.

[1] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.
[2] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in case No. 11-O-14081 was filed by the State Bar of California on May 15, 2014. A separate NDC, in case No. 13-J-11204, was also filed on May 15, 2014. On June 16, 2014, Respondent filed his response to these cases.

The NDC in case No. 13-O-17118 was filed on July 11, 2014. On August 4, 2014, Respondent filed his response to this case.

The above three cases were consolidated by this court on August 25, 2014.

Trial was commenced on September 29, 2014, and ran until October 3, 2014. At that time, the matter was recessed in response to a request by the State Bar to file an amended NDC in case No. 13-O-17118, in order to add the count alleging a violation of rule 1-300(A). After a break in the trial sufficient to allow the parties to prepare for that additional count, the trial was reconvened and completed on November 10, 2014, followed by a period of post-trial briefing. The State Bar was represented at trial by Senior Trial Counsel Erica M. Dennings. Respondent was represented at trial by Samuel C. Bellicini of Fishkin & Slatter, LLP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the NDCs, the stipulation of undisputed facts filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on September 20, 1976, and has been a member of the State Bar at all relevant times.

Case No. 11-O-14081 (*Bhullar Matter*)

On April 4, 2011, the United States District Court for the Central District of California sanctioned Respondent $1,100 for missing a court-ordered scheduling conference on March 21,

2011, in the case entitled *Kohler v. Bhullar Investments, LLC*. The sanctions order directed the clerk of the court to notify the State Bar of the sanctions order "per California Business & Professions Code § 6086.7(a)(3)." Respondent was present when this order was issued.

Respondent, aware of the order but believing that the order directing the court's clerk to notify the State Bar of the order satisfied Respondent's own duty to notify the State Bar, failed to report the order to the State Bar within the 30-day window to do so. Instead, he notified the State Bar of the sanction order on June 14, 2011, 71 days after the order had been issued.

Count 1 – Section 6068, subd. (o)(3) [Failure to Report Judicial Sanctions]

Respondent stipulated on the first day of trial, and this court finds, that Respondent's failure to report timely the above sanctions order constituted a willful violation by him of section 6068, subdivision (o)(3).

Case No. 13-J-11204 (Plaza Bonita Matter)

This disciplinary proceeding is based on discipline imposed on Respondent by the United States District Court for the Southern District of California on February 4, 2013. That discipline included actual suspension of Respondent for one year from the practice of law in that court. As is discussed in greater detail below, the discipline arose out of an action filed by Respondent in that court on behalf of his mother, Barbara Hubbard.

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).)

Facts Underlying Discipline of Respondent by U.S. District Court

On July 22, 2009, Respondent filed a complaint in the United States District Court for the Southern District of California on behalf of Barbara Hubbard, Respondent's mother, against Plaza Bonita Shopping Center and a number of the shopping center's tenants, alleging violations of the Americans with Disabilities Act. The action was entitled *Hubbard v. Plaza Bonita, L.P.*, Civ. No. 09-1581-JLS (WVG) (the *Plaza Bonita* suit). On or about that same day, Barbara Hubbard (Mrs. Hubbard) signed an authorization for Disabled Advocacy Group[3] to sign settlement agreements and checks for her in the *Plaza Bonita* suit.

On November 11, 2009, Respondent met with Mrs. Hubbard in the hospital where she was a patient. Mrs. Hubbard, who was terminally ill, told Respondent to settle the *Plaza Bonita* case as quickly as possible and for whatever he could get. Respondent, who was leaving for a brief trip to China, then left a voicemail instruction for his paralegal to send settlement proposals to the defendants in the action. Written settlement proposals were sent on November 12, 2009.

[3] At all times relevant hereto, Respondent was employed by Disabled Advocacy Group, a professional law corporation wholly owned by Respondent's son, also an attorney.

On November 13, 2009 at 12:55 p.m., Mrs. Hubbard passed away. As of the time of Mrs. Hubbard's death, Respondent had secured settlements from all of the named defendants except Hot Topic and Flava Enterprises (Flava).

On December 8, 2009, nearly a month after Mrs. Hubbard's death, Respondent caused a settlement agreement, purportedly signed by Mrs. Hubbard, to be faxed to counsel for Hot Topic. The signature of "Barbara Hubbard" on the settlement agreement was not by her own hand.

Hot Topic was subsequently dismissed from the action on or about January 11, 2010.

On December 9, 2009, Respondent faxed a settlement agreement to Flava's counsel with Mrs. Hubbard's purported signature without informing Flava's counsel that Barbara Hubbard had died and the signature on the document had not been written by her. Again, the signature of "Barbara Hubbard" on the settlement agreement was not by her own hand. Instead it had been signed by Respondent's paralegal at Respondent's instruction. (Ex. 1024, p. 3.)

On February 25, 2010, Magistrate Judge William Gallo conducted a settlement conference with Respondent and defense counsel. At the February 25,2010 settlement conference, Respondent informed the court for the first time that Mrs. Hubbard had passed away on November 13, 2009.

After the conference, the Court directed Respondent to file a Notice of Death pertaining to Plaintiff Mrs. Hubbard, pursuant to Federal Rule of Civil Procedure 25. On March 17, 2010, Respondent filed the Notice of Death of Plaintiff.

On March 29, 2010, plaintiff's counsel filed a Motion to Substitute Mrs. Hubbard with Respondent's father, Lynn J. Hubbard, II. However, the father then died two days later, on March 31, 2010, and Respondent promptly gave notice to the court and all remaining parties of that fact.

On May 12, 2010, Respondent filed an Ex Parte Motion to Dismiss the *Plaza Bonita* action as to the remaining defendant, Flava. On June 1, 2010, Flava filed an Opposition to the Motion to Dismiss and requested that an Order To Show Cause(OSC) issue regarding possible fabricated documents and an award of sanctions against Respondent.

On June 23, 2010, Flava's motion for an OSC was granted.

On June 28, 2010, the U.S. District Court judge assigned to the *Plaza Bonita* case referred the OSC to the magistrate judge, Judge Gallo, for resolution.

Beginning on October 12, 2010, the court held a series of hearings on the OSC, extending well into 2011.

On June 13, 2011, Judge Gallo issued an order, finding that Respondent had submitted proposed settlement documents in the matter, bearing purported signatures of "Barbara Hubbard" signed after she had died by someone other than her. The court also found that Respondent, recklessly and in bad faith, had mislead and concealed facts regarding his mother's death and the origin of the purported signatures from both the parties and the court. As a result, the court ordered Respondent to pay sanctions, referred the matter to the court's Standing Committee on Discipline, and directed the court's staff to report Respondent's misconduct to the State Bar.

Respondent then filed objections to this order with the U.S. District Court judge assigned to the matter. On November 29, 2011, the judge overruled those objections in a 12-page order.

On August 8, 2012, the Standing Committee on Discipline for the Southern District of California ("Standing Committee") commenced a disciplinary action against Respondent for alleged professional misconduct. On December 18, 2012, a bench trial was held, resulting in the U.S. District Court making the following pertinent factual findings on February 4, 2013:

> Donna Gin, counsel for Hot Topic, Inc., believed that Barbara Hubbard had in fact signed the settlement agreement that Mr. Hubbard's office transmitted on December 8, 2009.

Ms. Gin had her client sign the settlement agreement transmitted on December 8 2009, unaware that Barbara Hubbard had died on November 13, 2009, and thus could not have signed the settlement agreement.

Had Ms. Gin known about Barbara Hubbard's death - as a named plaintiff in the underlying action, an obviously material fact - at any time during the negotiation of the settlement, she would have immediately halted settlement discussions and notified her client of the development.

By transmitting the settlement agreement to Ms. Gin on December 8, 2009, which was purportedly signed by Barbara Hubbard, Mr. Hubbard attempted to mislead opposing counsel into believing that Barbara Hubbard was alive. Foremost, during Mr. Hubbard's testimony, when asked what his intention was in approving the settlement agreements, he was non-responsive. That is, he neither confirmed nor denied that it was his intention to mislead opposing counsel. Aside from his non-responsiveness, the Court finds that Mr. Hubbard's testimony lacks credibility, primarily because of Mr. Hubbard's pattern of inconsistent statements as well as his inability to adequately explain his failure to inform opposing counsel of Barbara Hubbard's death in a reasonably timely manner.

For example, Mr. Hubbard testified that he did not inform United States Magistrate Judge William V. Gallo that Barbara Hubbard was "gravely ill" during the February 25, 2010 settlement conference, but in an objection to an order to show cause ("OSC Objection") submitted to United States District Judge Janis L. Sammartino, he stated that "Attorney Hubbard told Magistrate Gallo on February 25, 2010, that he had heard that his mother [Barbara Hubbard] was 'gravely ill.'" Similarly, during his testimony, Mr. Hubbard denied telling Judge Gallo that he had Barbara Hubbard sign numerous blank settlement agreements before her death, but in the same aforementioned objection, he stated that "Attorney Hubbard told Magistrate Gallo on February 25, 2010, that his mother, Barbara, had signed numerous blanks [sic] settlement agreements, which the parties and court agree were never used. These are not exclusive examples of Mr. Hubbard's inconsistencies.

At the February 25, 2010 settlement conference, Mr. Hubbard told Judge Gallo that he had heard Barbara Hubbard was ill. Mr. Hubbard also failed to disclose that he had personally observed Barbara Hubbard's deteriorating condition just before her death.

By transmitting the settlement agreement to David Peters, counsel for Flava Enterprises, Inc. ("Flava") on December 9,2009, which was purportedly signed by Barbara Hubbard, Mr. Hubbard attempted to mislead opposing counsel into believing that Barbara Hubbard was alive.

The Court makes this finding for the same reasons that it found above that Mr. Hubbard attempted to mislead counsel for Hot Topic.

At the February 25, 2010 settlement conference, Mr. Hubbard informed Judge Gallo that he was considering Chris Kohler, one of Mr. Hubbard's other clients, to substitute in as the plaintiff in place of Barbara Hubbard in the underlying action.

At the February 25, 2010 settlement conference, Mr. Hubbard intended to mislead the court that he had not observed firsthand Barbara Hubbard's deteriorating condition in the days before her death. On this factual issue, Mr. Hubbard once again took contradictory positions. In the OSC Objection, Mr. Hubbard unequivocally admits that "Attorney Hubbard told Magistrate Gallo on February 25, 2010 that he had heard his mother was 'gravely ill.'" However, Mr. Hubbard testified that that never happened. Stating that Mr. Hubbard merely "had heard" Barbara Hubbard was gravely ill strongly suggests that he did not personally observe her physical condition, but rather heard about her physical condition through a third person.

Before the February 25, 2010 settlement conference, the decision had been made that Mr. Hubbard's father, and not some other client of Mr. Hubbard's, would assume the role of plaintiff in the underlying action at the time of Barbara Hubbard's death. In a declaration, Mr. Hubbard stated that after being informed of Barbara Hubbard's death, he called his father. At that time, Mr. Hubbard concluded that his father inherited Barbara Hubbard's causes of action, and based on that conclusion, Mr. Hubbard asked his father "what he wanted to do." He informed his father that previous settlements needed to be finalized, and received instruction from his father to "go ahead and 'finish up' the lawsuit." Mr. Hubbard stated in the declaration that he and his father "agreed" that Mr. Hubbard would represent his father's interest in the underlying action, and thereafter, Mr. Hubbard's father went on to ratify and consent to Mr. Hubbard's office signing settlement agreements. The declaration does not mention Chris Kohler. This leads the Court to find that Mr. Hubbard decided that his father would assume the role of plaintiff in the underlying action months before the February 25, 2010 settlement conference.

At the February 25, 2010 settlement conference, Mr. Hubbard intended to mislead the court that no decision had been made as to who would assume control of the underlying action following Barbara Hubbard's death. Mr. Peters testified that Mr. Hubbard represented that either Chris Kohler or Mr. Hubbard's father would replace Barbara Hubbard in the underlying action during the settlement conference. Mr. Hubbard also testified that when Judge Gallo asked what his intentions were regarding substituting the plaintiff in the underlying action, he answered that he might substitute Chris Kohler. However, in light of the

factual findings above, Mr. Hubbard's representations during the settlement conference were misleading. Taking into account the discussion and agreement between Mr. Hubbard and his father following Barbara Hubbard's death, there was no other evident purpose to mention Chris Kohler during the settlement conference other than to mislead the court and the other participants.

At the February 25, 2010 settlement conference, Mr. Hubbard represented that Barbara Hubbard had signed numerous blank settlement agreements before her death, but failed to disclose the "signed" settlement agreements sent to opposing counsel did not bear Barbara Hubbard's actual signature, but rather someone else's. Mr. Hubbard testified that he did not tell Judge Gallo that Barbara Hubbard had signed numerous settlement agreements before her death. Rather, he explained that he told Judge Gallo that Barbara Hubbard had signed three documents before her death, two of which involved other cases and the other involved a banking natter. However, in the OSC Objection, Mr. Hubbard unequivocally took the position that he "told Magistrate Gallo on February 25, 2010, that his mother, Barbara, had signed numerous blanks [sic] settlement agreements, which the parties and court agree were never used." Furthermore, Mr. Peters and Ms. Gin both testified that they had no reason to suspect that the signatures on the settlement agreements were not actually Barbara Hubbard's, and that they believed that the signatures on the settlement agreements were actually Barbara Hubbard's.

In sum, the Court finds that Mr. Hubbard represented that Barbara Hubbard had signed numerous blank settlement agreements before her death. Additionally, the Court finds that Mr. Hubbard failed to disclose to the court, Mr. Peters, and Ms. Gin the material fact that the signature in the settlement agreements did not bear Barbara Hubbard's actual signature prior to or at the February 25, 2010 settlement conference.

Mr. Hubbard intended to mislead the court about who had signed the December 9, 2009 settlement agreement faxed to Mr. Peters. Mr. Hubbard testified that the fee agreement with Barbara Hubbard authorized him and possibly his firm to simulate Barbara Hubbard's signature. A declaration of Mr. Hubbard's also states that he received authorization from his father shortly after Barbara Hubbard's death to sign settlement agreements on Barbara Hubbard s behalf. However, as discussed above, Mr. Hubbard nonetheless represented to the court that Barbara Hubbard actually signed numerous blank settlement agreements before her death. The totality of the evidence compels the Court to find that Mr. Hubbard intended to mislead the court as well as the other parties involved in the underlying action as to who actually signed the settlement agreements, including the one faxed to Mr. Peters on December 9, 2009.

(Ex. 6, pp. 3-7 [citations to record omitted].)

After making the above factual findings, the court concluded that Respondent's conduct violated, inter alia, the California Rules of Professional Conduct, rules 5-200 and 5-220, and Business and Professions Code sections 6106;[4] 6068, subdivision (b); and 6068, subdivision (d). As a result of those findings, the court issued a judgment suspending Respondent for one year from the practice of law in that court.

Discussion

No contention is made by Respondent in this proceeding that the disciplinary proceedings and resulting decision by the U.S. District Court, discussed above, lacked due process. Instead, the only issues before this court are (1) whether, as a matter of law, Respondent's culpability in that proceeding would not warrant the imposition of discipline in California under applicable California laws and rules; and (2) the degree of discipline to be imposed on the respondent in California.

Respondent contends that his culpability in that proceeding would not warrant the imposition of discipline under applicable California laws and rules. This court disagrees. Instead, this court concludes, as did the U.S. District Court, that Respondent's conduct violated, at a minimum, the prohibitions of section 6106; section 6068, subdivision (d); and rules 5-200 and 5-220.

With regard to the degree of discipline to be imposed, that issue will be discussed below in conjunction with the other two cases decided herein.

Case No. 13-O-17118 (Vogel Matter)

On January 8, 2013, Respondent and a female companion conducted an inspection of the McDonald's facility in Bellflower, California. There, Respondent observed and photographed

[4] The court's decision accurately quotes section 6106, but mistakenly refers to it as section "6101."

aspects of the facility which violated regulations issued under the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.). While there, the female companion purchased a soft drink at the facility, for which she secured a receipt. Respondent subsequently returned that receipt to his office in Northern California, where it was filed at some point by his staff in the file opened in what became the *Vogel* matter.

On January 23, 2013, Respondent filed a complaint on behalf of Martin Vogel in the United States District Court for the Central District of California, entitled *Vogel v. Tulaphorn, Inc., dba McDonald's #10746; McDonald's Corporation*, case No. CV 13-00464 (the *Vogel* matter). The complaint alleged, inter alia, that Vogel, a disabled person, had visited the McDonald's facility in Bellflower, operated by or on behalf of the defendants, and that he had there encountered barriers to his use and enjoyment of the facility that violated the Americans with Disabilities Act. The complaint did not allege the date that Vogel had visited the facility.

Unbeknownst to Respondent at the time the *Vogel* matter was filed, the Bellflower McDonald's facility maintained a videotape record of persons patronizing the facility. After the *Vogel* matter litigation was begun, counsel for defendant Tulaphorn sought information from Respondent's office on April 9, 2013, regarding "any documents and/or other documents supporting Mr. Vogel's claims that he visited" the Bellflower facility. (Ex. 1040.) In response, on April 10, 2013, Tulaphorn's counsel was provided with a copy of the January 8, 2013 receipt and copies of the photographs taken by Respondent on that same date. The accompanying email message indicated these documents were "for *the* visit" to that facility [emphasis added]. There was no indication in the email that Vogel had made any other visits to the facility. (Ex. 1041.) Although Vogel subsequently testified in deposition that he had kept a receipt from his visit to McDonald's on the date when he claimed he had encountered problems there with the facility, no

receipt from any visit by anyone prior to the filing of the lawsuit, other than the January 8, 2013 receipt, was ever produced by Respondent or Vogel.

The produced receipt showed a purchase at the facility on January 8, 2013, at 12:22 p.m. When defendant's counsel viewed the videotape record for that date, the videotape showed that it was Respondent and his companion who had been at the facility that day, not Vogel.

Defendant's counsel did not immediately notify Respondent of this videotape evidence. Instead, when Respondent sought discovery of all photographs and videotapes, defendant's counsel made numerous objections to the request and produced nothing.

On May 30, 2013, Vogel's deposition was noticed by Tulaphorn's counsel. That deposition was eventually taken on June 25, 2013. During the deposition, Vogel authenticated the January 8, 2013 receipt as being from his own visit to McDonald's on January 8, 2013, and he stated that he had given the receipt to his attorney. He also testified that he had taken the January 8, 2013 photographs of the facility. Although Vogel was never specifically asked during his deposition whether he had ever visited that McDonald's prior to January 8, 2013, Vogel referred in passing to the January 8th visit as his "first visit" there during the course of describing his other visits to the facility. (Ex. 12, p. 656 [Deposition, p. 64, lines 15-16.].)

The inaccuracy of Vogel's deposition testimony is apparent merely by looking at the photographs. While Vogel testified that he was alone when he visited McDonald's on January 8, 2013, one of the January 8, 2013 photographs, falsely authenticated by Vogel, shows a portion Respondent's female companion's foot. More obvious, while Vogel testified during the deposition that he did not take any measurements of the slope of the parking lot on January 8, 2013, because he did not have a "Smarttool" level with him that day, several of the photographs authenticated by Vogel as being taken by him on January 8, 2013, showed measurements of the parking lot's slope being taken that day with a Smarttool level.

On August 5, 2013, Respondent filed a motion for summary judgment on behalf of Vogel in the case. Attached to that motion was a declaration from Vogel, stating that he had visited the facility on January 8, 2013, and authenticating the January 8, 2013 receipt as resulting from his visit that day. (Ex. 1046.)

Also on August 5, 2013, Respondent's office executed a supplemental response to a production of documents, in which it was again represented both that Vogel had visited the Bellflower McDonald's on January 8, 2013, and that the receipt bearing that date had been issued there to him. (Ex. 1048, p. 3.)

On August 8, 2013, Tulaphorn's counsel gave Respondent written notice of the fact that there was videotape evidence that Vogel had not been at the McDonald's on January 8, 2013, and that the January 8, 2013, had been secured by Respondent, rather than Vogel.

On August 12, 2013, Respondent acknowledged that the January 8, 2013, had resulted from his visit to McDonald's, requested a copy of any videotapes, stated that Vogel's prior deposition answers would be amended, and informed Tulaphorn's counsel that the existing summary judgment would be withdraw, modified, and re-filed. On that same day, Respondent formally withdrew the pending summary judgment motion.

On the next day, August 13, 2013, Respondent filed an amended motion for summary judgment.

On August 14, 2013, Vogel, aided by Respondent's office, made more than 100 changes to the answers given during his prior deposition. These changes so drastically modified his prior responses as to render his amended answers meaningless and/or non-responsive.

On September 5, 2013, defendant Tulaphorn filed a motion for terminating sanctions and a request for an award of attorney's fees. It subsequently also sought to extend its time to file an

opposition to the pending summary judgment motion, but that request was successfully opposed by Respondent.

On October 2, 2013, the court issued an order denying Vogel's motion for summary judgment, concluding that it was unclear and disputed whether Vogel had visited the McDonald's prior to the filing of his lawsuit.

On November 4, 2013, after position papers and supporting documents had been filed by the parties, a hearing on the motion for terminating sanctions and attorney's fees was held. On the following day, November 5, 2013, the court granted the motion for terminating sanctions and denied without prejudice the request for attorney's fees. In granting the request for terminating sanctions, the court, in a 23-page order, concluded that both Vogel and his counsel had acted in bad faith and had participated in a pattern of deception throughout the case. It also expressly discussed and rejected Respondent's contention that the many misrepresentations made during the case were merely the result of an honest mistake. (Ex. 12, pp. 1684-1706.)

On November 18, 2013, defendant Tulaphorn filed a new motion for an award of attorney's fees, which Respondent then opposed.

On January 30, 2014, the U.S. District Court issued an order awarding defendant Tulaphorn attorney's fees of $68,239.22,[5] recoverable against Vogel and Disabled Advocacy Group, jointly and severally. (Ex. 12, p. 1979.) The award was based on Vogel and his counsel's "bad faith litigation tactics."

///

///

///

///

[5] This award was subsequently increased by an additional $7,097.50. (Ex. 12, p. 2077.)

Count 1 – Section 6068, subd. (d) [Seeking to Mislead Judge]
Count 2 – Section 6106 [Moral Turpitude]

Section 6068, subdivision (d), makes it a duty of an attorney never to seek to mislead a judge by an artifice or false statement of fact or law. In Count 1, the State Bar alleges that Respondent made false or misleading statements in the complaint and the initial summary judgment motion in the *Vogel* lawsuit by stating that Vogel visited the Bellflower McDonald's restaurant on January 8, 2013, when, in fact, Vogel had not; and that Respondent knew these statements were false and thereby sought to mislead the judge or judicial officer by an artifice or false statement of fact or law, in willful violation of section 6068, subdivision (d).

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. In Count 2, the State Bar alleges that Respondent made false or misleading statements in the complaint and the initial summary judgment motion in the *Vogel* lawsuit by stating that Vogel visited the Bellflower McDonald's restaurant on January 8, 2013, when, in fact, Vogel had not; and that Respondent knew or was grossly negligent in not knowing these statement were false, and thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

Counts 1 and 2 are duplicative of one another. If this court finds culpability for either, the other is dismissed as duplicative. (See *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787 [dismissing section 6068, subd. (d) count on finding of violation of section 6106]; *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 175 [dismissing section 6106 count on finding of violation of section 6068, subd. (d)].)

In assessing whether Respondent's conduct constituted an act of moral turpitude in violation of section 6106, it is well established that acts of moral turpitude include an attorney's

false or misleading statements to a court or tribunal. (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at p. 786; *Bach v. State Bar* (1987) 43 Cal.3d 848, 855; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 124.) The actual intent to deceive is not necessary and a finding of gross negligence in creating a false impression is sufficient for violation of section 6106. (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91.) Acts of moral turpitude include concealment as well as affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) Indeed, " no distinction can . . . be drawn among concealment, half-truth, and false statement of fact. [Citations omitted]" (*In the Matter of Chesnut, supra,* 4 Cal. State Bar Ct. Rptr. at p. 174.) Also, it is not necessary that the respondent actually succeeded in perpetrating a fraud on the court. (See, e.g., *Bach v. State Bar, supra*, 43 Cal.3d 848, 852-853, 855.)

Although the NDC here alleges that Respondent made a misrepresentations in the complaint that Vogel visited the Bellflower McDonald's on January 8, 2013, the complaint includes no such allegation. Therefore, that portion of Count 1 is unsupported by clear and convincing evidence.

In contrast, the summary judgment motion does contain numerous factual assertions that Vogel visited the McDonald's facility on January 8, 2013, and that this visit was documented by the January 8, 2013 receipt. These representations were false.

The U.S. District Court, in its November 5, 2013 order issuing terminating sanctions, concluded that these misrepresentations to the court by Respondent were acts of "mendacity." After a lengthy written analysis, the court expressly rejected Respondent's efforts to characterize those misrepresentations as being the result of an honest mistake; instead, the court concluded, they reflected an intent to deceive and acts of bad faith. For all of the reasons given by the court

in that analysis, this court also concludes that Respondent's conduct constituted an act of moral turpitude and a willful violation of section 6106.[6]

Count 3 – Section 6068, subd. (o)(3) [Failure to Report Judicial Sanctions]

In this count, the State Bar alleges that Respondent failed to report timely the federal court sanctions order issued on November 5, 2013, in willful violation of section 6068, subdivision (o)(3). Section 6068, subdivision (o)(3), requires an attorney to report to the State Bar, in writing, within 30 days of the time the attorney has knowledge of "the imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars ($1,000)."

The evidence submitted by the State Bar fails to provide clear and convincing proof of this alleged violation. The court's order makes expressly clear that its sanction order is against Vogel's "Counsel," a term expressly defined by the court at the beginning of its order to be "Disabled Advocacy Group." (Ex. 12, p. 1684.) Disabled Advocacy Group is a professional law corporation wholly owned by Respondent's son. Throughout the sanctions order, the court referred to and relied on actions by various people employed by Disabled Advocacy Group as being actions by "Counsel," frequently identifying in footnotes the different people who were performing the particular act. Because many of those actions were by individuals other than Respondent, it cannot be concluded, either factually or legally, that the order of sanctions directed at Disabled Advocacy Group was issued against Respondent personally.

Situations where an award of sanctions is issued against a law partnership or law corporation are addressed by subdivision (o)(8) of section 6068, which provides: "As used in this subdivision, 'against the attorney' includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained

[6] Having concluded that Respondent violated section 6106, Count 1 is dismissed as duplicative.

of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation." Because Respondent was neither a partner in Disabled Advocacy Group nor a shareholder of it, the statutory duty to report the sanctions ordered against that firm fell on others.

This count is dismissed with prejudice.

Count 4 – Section 6068, subd. (i) [Failure to Cooperate in Disciplinary Investigation]

Section 6068, subdivision (i), subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney. In this count, the State Bar alleges that Respondent willfully violated this obligation.

In support of that allegation, the State Bar presented evidence that a letter was sent by a State Bar investigator to Respondent on December 11, 2013, indicating that a complaint had been forwarded to the State Bar about the *Vogel* matter and asking for a written response on or before December 18, 2013. Respondent retained outside counsel experienced in handling State Bar matters to handle this investigation on his behalf and testified credibly that he understood the request for information had been handled by his retained counsel. In fact, documents from the State Bar's investigation file show that this retained outside counsel contacted the investigator on Respondent's behalf on December 18, 2013, prior to the deadline for a response elapsing, and requested an extension of time to provide a response. That extension was granted on December 23, 2013. Thereafter, a second extension of time was requested by this defense counsel and given.

In February, 2014, Respondent's attorney wrote a follow-up email to the investigator, apologizing for failing to provide the written response by the deadline that had now passed and

explaining that the failure resulted from the attorney's being unexpectedly required to undergo surgery. "This is entirely my fault," wrote Respondent's attorney, "Not the client's."

Subsequent documents in the State Bar's file make clear that this defense attorney then began by at least early March 2014 to deal with the prosecuting attorney assigned to the three pending matters and show that he was providing requested information to this attorney. (See, e.g., Ex. 13, p. 16.) There was no evidence offered at trial of any follow-up letter or communication to Respondent from either the investigator or the prosecuting attorney, notifying Respondent of any failure by either Respondent or his attorney to reply to the investigator's earlier letter or otherwise complaining of any failure by either Respondent or his retained counsel to cooperate in the matter. At trial, there was also no testimony by the State Bar's attorney with whom the retained defense counsel had dealt that the retained attorney had not provided all of the information that had been requested by the State Bar. In contrast, a document in the State Bar's file indicates that this attorney was informed early on the morning of May 8, 2014, that no written response to the investigator's prior letter had been received by the investigator. (Ex. 13, p. 18.) Nonetheless, in a letter written to defense counsel that same day, this attorney notified defense counsel that the State Bar's investigation of case No. 13-O-17119 had been completed and that the State Bar, absent a settlement, intended to go forward with an NDC alleging violations of sections 6106; 6068, subdivision (d); and 6068, subdivision (o)(3). Significantly, there was no indication in this letter of any belief by that attorney, who had been dealing directly with Respondent's defense counsel, of any basis for pursuing a claim on non-cooperation by Respondent under section 6068, subdivision (i).

At the conclusion of the trial of this matter, this court asked counsel for the State Bar to provide this court with any case authority finding culpability for failure to cooperate in a situation where the respondent had timely hired an attorney to handle the inquiry from the State

Bar, the State Bar had been notified of that fact prior to the deadline for the response elapsing, and the hired attorney had subsequently failed to provide a written response to the State Bar by its stated deadline. In its closing brief, the State Bar pointed to authority supporting a finding of culpability in such a situation. (Cf. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 677-678, 684-685 [no culpability for failure to respond to investigator letters where respondent, within six weeks after letters, had indicated to deputy trial counsel his "willingness to cooperate through his counsel in any and all matters raised by the State Bar"]; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 699 [court declined to find that the respondent had failed to cooperate with the State Bar when the respondent's inaction was based on the advice of counsel].)

This count is dismissed with prejudice.

Count 5 – Rule 1-300(A) [Aiding the Unauthorized Practice of Law]

As previously noted, toward the end of its case, the State Bar sought and received leave to amend its NDC to include a count alleging that Respondent violated rule 1-300(A) by allowing paralegal, Kaina Schukei (Schukei), to draft, sign, and file complaints without attorney review, including but not limited to the complaint in the *Vogel* matter.

Rule 1-300(A) of the Rules of Professional Conduct provides, "A member shall not aid any person or entity in the unauthorized practice of law." Section 6125 of the Business and Professions Code provides, "No person shall practice law in California unless the person is an active member of the State Bar."

The State Bar failed to present clear and convincing evidence supporting this charge.

The State Bar's problems with proving this count begin with its allegation in Count 1, above, that it was Respondent who had made misrepresentations in the complaint. In support of

that allegation, it called Respondent as a witness and had him confirm that he had signed the complaint. This directly contradicts its allegation in Count 5.

Moreover, the State Bar placed in evidence the order of the U.S. District Court in the *Vogel* matter, issuing terminating sanctions against Vogel because of bad faith litigation tactics. As part of that order, the federal court specifically found that it was Respondent who had signed the complaint. (See Ex. 12, p. 1684, fn. 1 ["Lynn Hubbard III, one of the Disabled Advocacy Group's senior attorneys, signed the Complaint."].) This finding subsequently became the very first fact noted by the court in explaining its conclusion that sanctions were appropriate:

> Despite Counsel's familiarity with the requirements of Article III standing and the fact-sensitive nature of proving standing in ADA litigation [footnote appended][7], Plaintiff's Complaint is surprisingly bereft of any allegation as to when Plaintiff specifically visited the restaurant."

(See Ex. 12, p. 1692.)

In the State Bar's closing brief in this matter, it emphasizes that "The factual findings by the [*Vogel*] court are entitled to a presumption of validity since they are supported by both substantial and clear and convincing evidence. [citing *Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947]." (State Bar Closing Brief, p. 6, lines 4-7.) For this court to disregard and dispute one of those findings for the purpose of this one count would be to violate that admonition.

Further, the testimony by Schukei was sufficiently vague and non-specific as to the degree of supervision of her work by the attorneys at her office that it falls short of providing clear and convincing evidence that she had been allowed to practice law. She indicated at several times that the work she did was at the instruction of Respondent and other attorneys in the office. Whether the information she provides in the blanks of the form ADA complaint are merely factual and clerical or, instead, reflect legal analysis or judgment is far from clear.

---

[7] The footnote reads: "Counsel has litigated over 200 disability access lawsuits in the Central District of California alone."

Finally, the fact that her testimony was contradicted by the State Bar's own evidence on the simple issue of who signed the *Vogel* complaint greatly reduces the weight this court affords her testimony. Given her obvious loyalty to Respondent, her testimony, given prior to the requested amendment adding this count, was more likely a misguided effort on her part to divert part of the responsibility for the alleged mishandling of the *Vogel* complaint from him to herself.

This count is dismissed with prejudice.

Aggravating Circumstances

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

Multiple Acts of Misconduct

Respondent has been found culpable of multiple acts of misconduct. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.5(b).)

Significant Harm

Respondent's misconduct significantly harmed the opposing party in both the *Hubbard* and *Vogel* matters and also harmed Respondent's client[9] and the court in the *Vogel* matter . This is an aggravating factor. (Std. 1.5(f).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with respect to alleged mitigating factors.

---

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

[9] In making this finding, the court is not unmindful of the federal court's finding that Vogel was a willing and knowledgeable participant in the bad faith tactics and efforts to deceive.

No Prior Discipline

Respondent had practiced law in California for more than 32 years prior to his earliest misconduct set forth above. During that lengthy timespan, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation even though his misconduct here was serious. (Std. 1.6(a); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme Court has repeatedly applied former standard 1.2(e)(1) in cases involving serious misconduct and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Cooperation

Respondent cooperated with the State Bar by entering into a stipulation related to the cases at issue. Although the stipulated facts were limited and not difficult to prove, Respondent admitted culpability only at trial and only for one count. Nonetheless, the stipulation was relevant, covered admissibility of many of the exhibits, and assisted the State Bar's prosecution of the case. The court therefore assigns mitigation, albeit limited, for that cooperation. (Std. 1.6(e); *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185.)

Character Evidence

Respondent presented good character testimony from a number of individuals, including several clients and seven attorneys (three of who regularly oppose Respondent in matters), for which Respondent is entitled to mitigation credit. (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [testimony from members of bench and bar entitled to serious consideration because judges and attorneys have "strong interest in maintaining the honest administration of justice"].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this 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.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) 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; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.7, which provides: "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact. The degree of

sanction depends on the magnitude of the act of misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

This court concludes that discipline including a period of one year of actual suspension from the practice of law is both necessary and appropriate in the case and sufficient to serve the purposes of this disciplinary process. It is also consistent with the standards and prior precedents governing this proceeding.

While the length of the recommended actual suspension is equivalent to that imposed by the U.S. District Court in the *Plaza Bonita* matter, which was based solely on Respondent's misconduct in that matter, that disciplinary decision did not take into consideration any the mitigation factors, as this court is required to do, and it is not binding on this court.

There are several published disciplinary cases involving misconduct comparable to Respondent's misconduct in the *Plaza Bonita* matter. See, e.g., *Hallinan v. State Bar* (1948) 33 Cal.2d 246 [30-day actual suspension imposed where attorney falsely led opposing counsel to believe that client had personally signed the settlement papers; had also obtained an acknowledgment of the signature in an improper manner]; *Aronin v. State Bar* (1990) 52 Cal.3d 276 [9 months actual suspension for multiple acts of misconduct, including violation of section 6106 by improperly signing client's name to verifications]; and *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 [stayed suspension with no actual suspension where attorney concealed the fact that his client had died from judge, but not opposing counsel, at settlement conference]. While the discipline imposed in those cases is less than that imposed by the federal court here and that recommended by this court, the misrepresentations and misconduct by Respondent in the *Plaza Bonita* matter was more extensive than that involved in those matters. The recommendation of discipline by this court is, of course, also based on

Respondent's additional and extensive misconduct in the *Vogel* matter, which took place after he had previously been disciplined in the *Plaza Bonita* matter.

The State Bar contends that Respondent should be disbarred for his misconduct in the three matters addressed in this proceeding. That request is unsupported by any citation to any case supporting such an outcome here. It also is, of course, based on its assumption that this court will find culpability on all counts. Such is not the case.

This court does not conclude that disbarment of Respondent is necessary or appropriate to protect the public, the courts, or the profession. Respondent has practiced law for well more than 30 years. In all of that time, there is no evidence of any complaint against him by any client. That practice that has included thousands of lawsuits. Even in this proceeding, Respondent's impacted client, Vogel, testified on his behalf. While there have now been two cases where Respondent has been found culpable of significant misconduct during his 30+ years of practice, it must be expected that Respondent will take to heart the lessons underlying the imposition here of substantial discipline here and that he will fastidiously avoid any future violations of his professional obligations.

This court is not unaware, and received evidence during the course of this case, that Respondent's practice of frequently suing businesses for violations of the Americans with Disability Act (ADA) is controversial in some quarters. That fact, however, is not a reason to impose or enhance the discipline in this matter. Instead, the evidence is also clear and convincing that such lawsuits, from the perspective of disabled individuals, are critical to having businesses comply with the ADA and are essential to disabled individuals being able to live their lives without the discomforts, impediments, and dangers that are prohibited by the act. In that regard, the evidence was uncontradicted that, while Respondent receives a portion of the

economic proceeds resulting from his filing of such lawsuits, he routinely does not settle those suits without requiring the offending defendant to take remedial measures to comply with the act.

RECOMMENDED DISCIPLINE

Actual Suspension

For all of the above reasons, it is recommended that **Lynn Hubbard, III,** State Bar number 69773, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first one year of probation.
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 thirty (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 and 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. 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).[10] However, if Respondent's probation 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.

[10] 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.

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. Within one year after the effective date of the Supreme Court order in this matter, 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.

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

Multistate Professional Responsibility Examination

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his actual suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

Rule 9.20

The court recommends that Respondent be ordered to comply with rule 9.20 of the California Rules of Court 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.[11]

Costs

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

Dated: February 18, 2015

DONALD F. MILES
Judge of the State Bar Court

[11] 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).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 18, 2015, I deposited a true copy of the following document(s):

DECISION

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

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

SAMUEL C. BELLICINI
FISHKIN & SLATTER, LLP
1575 TREAT BLVD
STE 215
WALNUT CREEK, CA 94598

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

ERICA DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 18, 2015.

Rose M. Luthi
Case Administrator
State Bar Court