

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of )  
 )  
JAMES H. LI, )  
 )  
Member No. 176662, )  
 )  
A Member of the State Bar. )

Case Nos.: 11-O-14430, 11-O-17550-DFM  
DECISION

INTRODUCTION

Respondent **James H. Li** (Respondent) is charged here with thirteen counts of misconduct, involving two different client matters. The counts include allegations that Respondent willfully violated (1) Business and Professions Code section 6106 (moral turpitude)<sup>1</sup>; (2) section 6068, subdivision (g) (encouraging unjust action); (3) section 6068, subdivision (c) (maintaining unjust action); (4) section 6068, subdivision (a) (failure to support laws); (5) section 6068, subdivision (d) (employing means inconsistent with truth); (6) rule 3-700 (D)(2) of the Rules of Professional Conduct<sup>2</sup> (failure to refund unearned fees); (7) rule 4-100(A) (failure to deposit client funds in trust account); (8) section 6106 (moral turpitude – overreaching and coercion to collect fees); (9) rule 4-200(A) (unconscionable fee); rule 4-200(A) (illegal fee);

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<sup>1</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

<sup>2</sup> Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

(11) rule 3-300 (acquiring interest adverse to client); (12) rule 3-310(C)(2) (actual conflict – representing conflicting clients); and (13) section 6068, subdivision (a) (failure to comply with laws – breach of common law duty of loyalty). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

### **PERTINENT PROCEDURAL HISTORY**

On February 13, 2012, Judge Richard Honn of this court filed an order approving and recommending a Stipulation Re Facts, Conclusions of Law and Disposition, executed by the parties in Case No. 11-O-14430. This stipulation was filed with this court prior to the filing of any formal charges against Respondent.

On August 27, 2012, the Supreme Court issued an order returning that stipulation to this court for further consideration of the recommended discipline in light of the applicable attorney discipline standards.

On August 31, 2012, this court filed a Notice of In-Person Status Conference and set the status conference for September 20, 2012, to address the Supreme Court's order.

On September 21, 2012, the parties executed and filed a stipulation to withdraw the prior stipulation in its entirety without prejudice to the filing of a Notice of Disciplinary Charges against Respondent or to Respondent's ability to contest the charges. That stipulation was approved by an order of Judge Honn on that same date. In his order, he assigned future handling of the matter to the undersigned.

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on September 28, 2012.

An initial status conference was held in the matter on November 1, 2012. At that time the case was given a trial date of January 29, 2013, with a five-day trial estimate.

On November 13, 2012, Respondent filed his response to the NDC.

Trial was commenced as scheduled on January 29, 2013, and was initially completed on February 13, 2013, followed by a period of post-trial briefing. Trial briefs were submitted on February 22, 2013, and the matter was then submitted that day for decision. The State Bar was represented at trial by Senior Trial Counsel Kimberly G. Anderson. Respondent acted as counsel for himself.

After the case was initially submitted for decision, Respondent filed a motion to re-open the record on April 16, 2013. On April 18, 2013, the State Bar filed a “partial opposition” to the motion that did not object to the record being re-opened for certain limited purposes. On April 25, 2013, this court issued an order granting the motion to re-open the record, vacating the prior submission of the matter for decision, and scheduling a status conference on May 13, 2013, to set the matter for an additional trial date. In that same court order, the parties were ordered to meet-and-confer to determine whether the need for an additional trial session could be avoided by a stipulation as to facts.

On May 10, 2013, Respondent filed a second motion to re-open the record in order to call additional witnesses in the trial. On May 13, 2013, Respondent filed a supplemental declaration in support of that motion.

On May 13, 2013, the status conference was held to discuss whether there was a need for an additional day of trial. At that time, the parties submitted a stipulation regarding proposed exhibit 2260. At the hearing, the parties agreed to the admission into evidence of that exhibit, which was then received in evidence by the court. After then arguing the effect of the new

evidence, both sides then again rested and the matter was again submitted for decision, effective that date, but subject to the still pending May 10 motion to re-open. Resolution of that second motion was deferred by the court until the State Bar had an opportunity to review the papers filed in conjunction with the motion and to file a response, in any, to the motion.

On May 15, 2013, the State Bar filed an opposition to the second motion to re-open the record, arguing that the proffered new evidence would be largely irrelevant and, if relevant to any issue, cumulative. On May 24, 2013, this court filed an order, agreeing with the State Bar's assessment of the proposed new evidence and denying the motion to re-open.

On June 14, 2013, Respondent filed a third motion to reopen the record in this matter, accompanied by a request for judicial notice. In that motion he attached (1) a tentative decision by the Los Angeles County Superior Court to set aside the fraud verdict and judgment against Respondent in the civil action giving rise to one of these two pending matters; and (2) a declaration of Ching Wang, a complaining witness in the instant proceeding, which declaration Respondent argued is inconsistent with Wang's testimony in the instant proceeding. On June 14, 2013, the State Bar filed an opposition to the motion, arguing that the proffered evidence is cumulative and would not affect the outcome of the case.

On July 1, 2013, Respondent filed a motion to dismiss Count 1 "in part" and Count 6 or, in the alternative, to stay resolution of those counts. On July 2, 2013, the State Bar filed an opposition to the motion. On July 11, 2013, Respondent filed a reply to the opposition.

On July 26, 2013, Respondent filed a motion to dismiss counts 4 and 10 of the NDC, based on an unpublished federal decision. On July 29, 2013, the State Bar filed an opposition to the motion. On August 2, 2013, Respondent filed a reply to the opposition.

On August 7, 2013, this court issued an order finding that the proffered evidence is relevant to the proceeding, was not available at the time of trial, and should be made part of the record. Accordingly, the motion to re-open was granted to that limited extent and the prior order of submission was vacated. A status conference was scheduled for August 26, 2013, to set a renewed trial date in the matter, if necessary. In the interim, the parties were ordered to meet-and-confer regarding both the additional evidence to be offered and the possibility that such evidence may be included in the record by stipulation.

In that same order of August 7, 2013, the court also denied Respondent's two motions to dismiss.

At the status conference on August 26, 2013, the State Bar indicated that it wanted an opportunity to examine under oath the complaining witness regarding the subsequent declaration by that individual. Accordingly, a new trial date of October 23, 2013 was scheduled for that purpose, with a limitation of one day.

Just prior to the scheduled new trial date, the State Bar notified this court that it no longer desired an opportunity to examine the witness under oath. A status conference was held on October 21, 2013, during which both sides stipulated to the vacating of the new trial date and the submission of the matter. The case was then re-submitted for decision on that same day.

On January 6, 2014, Respondent made a new motion to re-open the case. On January 10, 2014, the State Bar filed an opposition to that motion. The court agrees with that opposition. The new motion is hereby denied.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 12, 1995, and has been a member of the State Bar at all relevant times.

### **Case No. 11-O-14430 (Wang Matter)**

On August 2, 2007, Ching Wang (Wang) and JCR, Inc. employed Respondent to represent them in a case entitled *Silvia Hu v. Ching Wang, Hsiu Chin Wang, and JCR, Inc.*, pending in the San Bernardino County Superior Court (the *Hu* case). In that lawsuit, plaintiff Hu was seeking to set aside certain transfers made by the Wangs with respect to their two real properties. Hu claimed that the transfers were fraudulent and made solely to frustrate her ability to collect on a \$118,000 judgment that she had been awarded in a prior lawsuit against Wang.

At the time of employing Respondent in the *Hu* case, Wang and JCR, Inc. entered into a retainer agreement with Respondent, whereby they agreed to pay a \$2,000 "non-refundable retainer" and, thereafter, to pay Respondent at an hourly rate of \$100 per hour. Contained within this fee agreement was a paragraph entitled "Client's Duties." That paragraph provided as follows:

Client agrees to be truthful with Attorney, to cooperate, to keep Attorney informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Attorney's bills on time, and to keep Attorney advised of Client's address, telephone number and whereabouts. Client will assist Attorney in providing necessary information and documents and will appear when necessary at legal proceedings.

On August 5, 2007, Respondent and Wang entered into an “Amendment to Contract,” amending the original fee agreement. This amended retainer agreement required Wang to pay an additional \$10,000 to Respondent as a non-refundable retainer and an additional advanced fee of \$30,000. However, the \$30,000 advanced fee was stated to be “refundable when the guarantee by Attorney is not met.”

The amendment defined the pertinent portion of the referenced “guarantee” by Respondent as follows:

Contingent upon clients’ meeting its [sic] full obligations and duties enumerated in the contract of August 2, 2007 and this amendment, Attorney guarantees that he will prosecute the case to a favorable outcome for the named defendants, which is defined as (1) a judgment or verdict in favor of all defendants, (2) a dismissal with or without prejudice of the case in favor [of] all defendants, or (3) a resolution of the case in a way that the Clients [sic] choose to accept. . . . Under this guarantee, Attorney will not charge additional fee for post-trial motion or appeal, and if the guarantee is not met, the client will refund the \$30,000 advance made pursuant to this Amendment; moreover, Attorney will not charge any other clients in this case additional fee.

On or about January 15, 2008, a judgment in the *Hu* case was entered in favor of Hu and against Wang. On learning that an adverse outcome had been received from the court in the *Hu* matter, Respondent first sent an email to Wang, expressing the view that the court had made the wrong decision and recommending that Wang appeal. The email included an offer that Respondent would handle the appeal without any additional fee. Four days later, however, Respondent retracted that offer with the following email:

I need to retract the following email. I will have to charge you for appeal in this case because at trial, you did not cooperate with my presentation of this case. I repeatedly warned you not to act out of what you think to be smart. At trial, you discredited your testimony by giving a completely off-the-point monologue about why you lost your case at Pasadena court when I asked you a simple question “Why did you think you did not owe the [sic] Ms. Hu any money?”

On February 6, 2008, Respondent sent Wang a follow-up email, in which he again recommended that his clients both appeal the adverse ruling by the court. In that email, Respondent made clear his position that the guarantee in the contract amendment had been voided by Wang's conduct as a witness:

As I indicated before, you made a very foolish decision of straying from my question in the courtroom, and accusing a previous judge of making a wrong decision and even more foolishly accusing Ms. Hu's attorney of fabricating evidence in your Pasadena trial. I had previously warned against you [sic] of guessing what to do. You ignored my advice, and materially failed to cooperate with me in prosecuting the case.

Let me give you an analogy as to why your conduct was utterly stupid. If I accuse your wife of cheating on you, do you think I am a liar. [sic] Of course you do, because you know your wife to be an honest person. Similarly if La Cues had impressed the judge as an honest person, your accusation of La Cues' cheating only caused the judge to think you are a liar. Moreover, because the Pasadena judge had ruled against you, the judge is required by law to think you were lying. Your conduct not only discredit yourself, but also caused the judge to think you are vengeful toward Ms. Hu. That is why the judge found your testimony incredible, even though I tried my best to document your claim. I advise you seek an attorney to find out if my analysis is correct.

There is, however, a possibility that JCR can will on appeal.

I must tell you upfront again that my guarantee made to you is void because a fundamental condition, your full cooperation was not met. I will attempt to do an appeal on this case only if I am paid upfront \$6,600. I can also agree to do on a contingency basis, but need to be agreed to be paid \$30k [sic] if successful and the payment is secured against your properties with priority over JCR. Of course, a new contract for service by you is an affirmation that my initial guarantee was void because the conditions for the guarantee failed.

On January 7, 2009, Respondent's former clients, Wang and JCR, Inc., filed in the Los Angeles County Superior Court a lawsuit against Respondent for breach of contract and fraud, among other theories.

On May 2 and 4, 2011, Respondent appeared at the trial, representing himself, and attorney Sally Chan appeared on behalf of the plaintiffs. At the conclusion of the May 4, 2011, session, the court advised the parties that the trial would reconvene on the next day, May 5, 2011, at 10:30 a.m., with a trial estimate of two to three weeks, and that a jury panel of approximately 50 prospective jurors would be present so that the parties could begin picking a jury.

On May 5, 2011, at 9:58 a.m., Respondent filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court in Santa Ana, resulting in an automatic stay of the pending litigation being issued. Respondent then immediately filed the notice of the bankruptcy filing and resulting stay with the superior court when the suit against him was called by the court on May 5, 2011, for trial. As a result of the bankruptcy stay order, the superior court continued the trial until June 27, 2011.

When Respondent filed his Chapter 7 bankruptcy petition, he executed under penalty of perjury the required form "Exhibit D - Individual Debtor's Statement of Compliance with Credit Counseling Requirement." In doing so, Respondent checked box 2 on the form, which stated in pertinent part, "Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me." In fact, Respondent had not yet taken the credit counseling course. In addition, Respondent also stated under penalty of perjury that his assets were then worth "between \$0 to \$50,000."

At the time that the petition was filed with the bankruptcy court, an order was issued by the court that Respondent comply with bankruptcy rule 1007 by filing the schedules required for such a petition within 14 days. The order stated that, if Respondent did not comply with the requirement, the petition would be dismissed.

On May 13, 2011, Respondent met with an attorney at the County Law Center in Carlsbad, California, and received advice regarding the continuation of his bankruptcy petition.

On May 19, 2011, Respondent filed with the superior court a notice of his intent to abandon his bankruptcy petition and to allow it to be dismissed through not filing the required forms. This notice stated that this decision was “upon the advice of counsel.”

On May 24, 2011, the court dismissed the petition due to Respondent’s failure to file the required schedules, and Respondent gave notice of that dismissal to the parties in the pending superior court action on May 28, 2011.

The superior court matter was then called for trial on June 27, 2011, but was then trailed by the court.

On October 17, 2011, the jury entered a verdict in the civil case in favor of Wang and against Li for fraud, breach of contract, negligent misrepresentation, conversion, breach of fiduciary duty, and breach of the implied covenant of good faith and fair dealing. The jury awarded general damages against Respondent and in favor of Wang of at least \$44,000 and punitive damages of \$200,000.

The above damages were eventually reduced by the court, and on January 5, 2012, the court entered an amended judgment against Respondent for \$44,000 in general damages and \$44,000 in punitive damages.

On October 25, 2011, after Respondent had been found liable to Wang for breach of contract and fraud, Respondent deposited for the first time after the fee dispute arose the \$30,000 of previously-advanced legal fees into his Bank of America client trust account.

On or about August 16, 2012, after this disciplinary proceeding had been initiated, Wang and Li agreed to set aside the judgment against Respondent if certain conditions were met. The conditions included Li's agreement not to move to have the judgment set aside, not to file an appeal, but instead to pay the sum of \$30,000 to Wang. Although Li complied with these conditions, Wang then failed to have the judgment set aside. As a result, Li eventually filed a successful motion in the superior court to enforce the settlement agreement, resulting in the above judgment being set aside and the Wang's action against Respondent being dismissed with prejudice in or about May 29, 2013.

**Count 1 –Section 6106 [Moral Turpitude]**

In this count, the State Bar alleges Respondent committed acts of moral turpitude by (1) filing a bankruptcy case on May 5, 2011, for the purpose of delaying Wang's trial against him; (2) maintaining an untenable legal position that the guarantee in the amended retainer agreement is now void; and (3) refusing to refund the \$30,000 to Wang despite his written promise to do so.

As discussed more fully in Count 6 below, the court agrees that Respondent's actions in refusing to refund \$30,000 to his clients, based on his fabrication of an unjustified legal claim that the guarantee he had provided was voided by a breach of cooperation, constituted an act of moral turpitude in willful violation of section 6106. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 959-960; *In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 242-244 [and cases cited therein].)

As discussed more fully in Counts 3 and 4 below, the evidence fails to provide clear and convincing proof that Respondent's decision to file, and subsequently dismiss, his bankruptcy petition was an act of moral turpitude. That portion of this count is dismissed with prejudice.

**Count 2 – Section 6068, subd. (g) [Encouraging Unjust Action]**

In this count, the State Bar alleges: “By filing a bankruptcy case on May 5, 2011 for the purpose of delaying the fraud trial, Respondent encouraged either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest” in willful violation of section 6068, subdivision (g).

The evidence fails to provide clear and convincing proof that Respondent “encouraged” anyone to file or maintain an improper bankruptcy action. He filed it himself. Accordingly, if the filing was inappropriate, it is addressed more properly in Count 3 below.

This count is dismissed with prejudice.

**Count 3 –Section 6068, subd. (g) [Maintaining Unjust Action]**  
**Count 4 – Section 6068, subd. (a) [Failure to Support Laws]**

In Count 3, the State Bar alleges: “By filing a bankruptcy case on May 5, 2011 for the purpose of delaying the fraud trial, Respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just” in willful violation of section 6068, subdivision (c).

In Count 4, the State Bar alleges that Respondent violated 11 U.S.C. section 707(b) by filing his Chapter 7 bankruptcy petition for an improper purpose, in willful violation of his obligation under section 6068, subdivision (a) to support the laws of the United States.

The evidence fails to provide clear and convincing proof that Respondent's action in filing his bankruptcy petition was unjust, illegal, a violation of section 6068, subdivisions (a) or (c), or for any improper purpose. At the time that the bankruptcy petition was filed, Respondent

was being sued by his creditors. The lawsuit included claims for unspecified compensatory and punitive damages and eventually resulted in a jury verdict awarding compensatory damages of at least \$44,000 and punitive damages of \$200,000. There is ample evidence that such an award would have rendered Respondent financially insolvent and a dearth of any evidence to the contrary. Then, after discussing the implications of the filed petition with a bankruptcy attorney, Respondent concluded that he did not wish to go forward with the bankruptcy action. He then promptly notified all parties of that fact and then allowed the pending matter to be dismissed. Under such circumstances, this court does not conclude that the decision of Respondent, as a debtor, to seek relief through the bankruptcy court was improper, illegal, unjust, or for any improper purpose.

These counts are dismissed with prejudice.

**Count 5 – Section 6068, subd. (d) [Employing Means Inconsistent with Truth]**

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 this count, the State Bar alleges that Respondent violated section 6068, subdivision (d), by filing the sworn statements that (1) his assets were then valued in the range of \$0 to \$50,000 and (2) he had completed the credit counseling requirement prior to filing for bankruptcy. In its post-trial closing brief, the State Bar moved to dismiss the first of these two allegations (falsely estimating the value of his assets) due to the insufficiency of the evidence at trial to support that allegation. That motion is granted and that portion of the count is dismissed with prejudice.

With regard to Respondent's certification that he had completed the credit counseling requirement prior to filing his bankruptcy petition, this court finds that Respondent had not

completed the course prior to the filing of his petition and that Respondent's certification was knowingly false.

In his response to an inquiry by a State Bar investigator, Respondent argued that he was allowed to file his bankruptcy petition without first taking the class and then take the required class within the following two weeks. He stated that this was the procedure that he had elected to follow. (See Ex. 23, p. 3, ¶ 5 and p. 4, ¶ 3.) His contention is both legally incorrect and inconsistent with the language of the certification itself. (See 11 U.S.C. § 109, subd. (h).) While Respondent eventually did take the required class, he did so only on August 21, 2011, after receiving the inquiry from the State Bar investigator and long after the bankruptcy petition had been dismissed. (See Ex. 23, p. 14.)

Respondent's false certification under penalty of perjury to the bankruptcy court constituted a willful violation of his obligations under section 6068, subdivision (d).

**Count 6 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]**

In this count, the State Bar alleges that Respondent violated rule 3-700(D)(2) by failing to refund to Wang the \$30,000 to which Respondent was not entitled as a fee due to the failure of his guarantee. This court agrees. Respondent agreed to refund the \$30,000 of advanced legal fees if his client did not prevail at trial. He did not. As a result of what was essentially a reverse contingency fee arrangement, Respondent was no longer entitled to retain the \$30,000 advanced fee and was obligated to refund it promptly. He did not do so.

There is no factual or legal justification for Respondent's claim that he was entitled to keep the fee due to a breach of the cooperation condition by his client. The burden to present proof of a breach of a cooperation clause is on the party claiming the breach. The only justification offered by Respondent on this issue was Respondent's complaint that Wang, at trial,

had answered poorly a question regarding why Wang had felt in the past that he did not owe Ms. Hu any money. Respondent's complaint is that Wang had included in his answer testimony that Wang had felt that Hu lied in the prior trial. There was no evidence that this answer was untrue. Respondent's complaint is that he had advised his client not to express thoughts while testifying.

Such evidence does not provide a basis for finding a breach of the contractual condition to cooperate. Respondent, having asked his client to state under oath all of the reasons why he had previously believed that he did not owe Ms. Hu money, cannot complain that his client gave a truthful answer to the question. That is especially true when Respondent was aware of Wang's beliefs at the time that he asked the question. (*Pacific Venture Corp. v. Huey* (1940) 15 Cal.2d 711, 717; see generally 1 Witkin, Summary of California Law (10<sup>th</sup> Ed. 2005) Contracts, §§ 821-822, pp. 910-913, and cases cited therein.) Moreover, even if Wang's conduct did violate some instruction given to him by Respondent, the evidence was insufficient to demonstrate that there was any substantial likelihood that substantial prejudice resulted from Wang's conduct. (Cf. *Billington v. Interinsurance Exchange of Southern California* (1969) 71 Cal.2d 728, 737-738.)

Respondent had an obligation to refund to Wang the \$30,000 that had been advanced as a fee but was subject to the "guarantee." His failure and refusal to do so was a willful violation of rule 3-700(D)(2). However, because that misconduct has already been the basis for a finding of a violation of section 6106, the court finds no need to assess any additional discipline as a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

**Count 7 – Rule 4-100(A) [Failure to Deposit Client Funds in Trust Account]**

In this count, the State Bar alleges that Respondent violated rule 4-100(A) by failing to deposit the \$30,000 of advance fees into his client trust account after learning that Wang was disputing his entitlement to retain those fees. This court agrees.

As noted above, Respondent did not immediately deposit the \$30,000 in funds into a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import after having been made aware that Wang was disputing Respondent's retention of the \$30,000. This continued to be true even after his clients sued to recover those funds in January 2009. It was only on October 25, 2011, after Respondent had been found liable to Wang for breach of contract and fraud, that Respondent deposited the \$30,000 into his Bank of America client trust account.

Respondent's failure to safeguard the disputed funds by depositing them into his client trust account constituted a willful violation by him of rule 4-100(A). (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335,349.)

**Case No. 11-O-17550 (Chui Matter)**

In August 2007, Michael Kin Wing Chiu (Chiu) retained Respondent to defend an action brought against Chiu by Chiu's sister and brother-in-law (Plaintiffs). The action had been filed in the Los Angeles County Superior Court in April 2007, and it included allegations that Chui had fraudulently induced Plaintiffs in 1992 to invest \$141,000 to purchase a one-half interest in a residential property in Rosemead, California. As set forth in the complaint, Plaintiffs understood that Chui would rent the property, use the rental income to cover all taxes and expenses, and then share the excess income equally with Plaintiffs. Instead, Chui was living in the property himself and renting another portion of the property to others, but not sharing any of the income with

Plaintiffs. Moreover, the complaint alleged that Chui had fabricated a false quit claim deed, whereby Plaintiffs purported to extinguish in favor of Chui Plaintiffs' ownership interest in the property, and that he had then encumbered the property with liens securing various loans (including a \$250,000 equity line of credit with Washington Mutual) that Chui had taken out for his sole benefit. In addition to Chui, the lawsuit named as defendants the various companies holding security interests in the house. The complaint sought to quiet title to the property, obtain an accounting and equitable relief, and recover both compensatory and punitive damages.

Chiu had originally been represented in the action in 2007 by another attorney, who was billing at \$600 per hour. That attorney advised Chui to settle the action. Instead of following that advice, Chui decided to find another attorney.

Chui hired Respondent based on an advertisement run by Respondent in which Respondent offered a \$100/hour introductory rate. In the fee agreement signed by Chui, Chui agreed to pay "by the hour at Attorney's prevailing rates for all time spent on Client's matter by Attorney's legal personnel. Current hourly rates for legal personnel are as follows: James Li \$100/hour[.]" Chui also agreed to pay Li's bills "on time."

Respondent acted as Chui's attorney in the case from 2007 until after a decision was rendered by the trial judge in September 2010. The underlying facts in the case were heavily disputed and quite complex. In addition to the allegations made by the Plaintiffs, a cross-complaint had been filed by Washington Mutual.

Although Respondent initially began working on the file at a rate of \$100/hour, over time Chui agreed to a number of increases in that rate. In or about January 2008, Respondent increased his hourly fee to \$110/hour for the first 30 hours of work during 2008, and then he

increased his hourly fee to \$250 per hour. By the end of September 2008, Chui had paid costs and fees in the case of approximately \$57,000.

In September 2008, Chui indicated that he no longer had funds available to pay Chui's fees. However, when Respondent, like his predecessor, recommended that Chui seek to settle the action, Chui declined to accept that advice.

Rather than seek to withdraw from the case, Respondent offered to continue to work in exchange for promissory notes, secured by Chui's interest in the disputed property. As part of this ongoing arrangement, Respondent subsequently proposed to increase his hourly rate, given the uncertainty and inherent delay in his receiving any actual payment of his fees. Chui readily agreed to the proposal. Respondent's hourly rate thereafter went to \$325.

Between December 2, 2008 and December 23, 2009, Respondent provided Chui with five deeds of trust and five promissory notes.

On December 2, 2008, Chui signed a Deed of Trust with Assignment of Rents as Additional Security in favor of Respondent. On December 4, 2008, Chui signed the associated promissory note. The promissory note contained the following statement, which Chui initialed: "The undersigned also acknowledge (sic) that it (sic) has been advised to seek independent counsel to review this document as well as the associated DEED OF TRUST WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY, and has been given a reasonable opportunity, 20 days, to seek such counsel."

On June 23, 2009, Chui signed a Deed of Trust with Assignment of Rents as Additional Security in favor of Respondent. The deed of trust referenced a corresponding promissory note dated June 2, 2009.

On September 8, 2009, Chui signed a Deed of Trust with Assignment of Rents as Additional Security in favor of Respondent and a promissory note. The promissory note did contain the following statement, which Chui initialed: “The undersigned also acknowledge (sic) that it (sic) has been advised to seek independent counsel to review this document as well as the associated DEED OF TRUST WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY, and has been given a reasonable opportunity, 20 days, to seek such counsel.”

On December 23, 2009, Chui signed a Deed of Trust with Assignment of Rents as Additional Security in favor of Respondent and a promissory note. The promissory note again contained the following statement, which Chui initialed: “The undersigned also acknowledge (sic) that it (sic) has been advised to seek independent counsel to review this document as well as the associated DEED OF TRUST WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY, and has been given a reasonable opportunity, 20 days, to seek such counsel.”

On December 23, 2009, Chui signed a second Deed of Trust with Assignment of Rents as Additional Security in favor of Respondent and a second promissory note. The promissory note contained the following statement, which Chui initialed: “The undersigned also acknowledge (sic) that it (sic) has been advised to seek independent counsel to review this document as well as the associated DEED OF TRUST WITH ASSIGNMENT OF RENTS AS ADDITIONAL SECURITY, and has been given a reasonable opportunity, 20 days, to seek such counsel.”

The above promissory notes totaled \$170,000. Throughout the above period, Respondent continued to work on the case and to provide billings to his client. For all practical purposes, however, he was not receiving during this time any money from Chui for his work.

While the case was pending, Respondent suggested to Chui not only that he seek to settle it but also that he consider filing for bankruptcy. Despite this advice, Chui persisted in his desire to defend the action.

When Respondent had drafted the promissory notes and deeds of trust, he had used as templates the documents prepared by Washington Mutual for Chui's Homeowners Equity Line of Credit. Just as the documents prepared by the bank included interest rates in excess of 10 percent, the promissory notes prepared by Respondent also had interest rates (13% and 17%) in excess of that amount, which is the maximum rate allowed by the state's usury laws. While Washington Mutual falls within an exception to those usury laws, Respondent does not.

In January 2010, Respondent realized that the interest rates in the promissory notes were above the allowable level and wrote a letter to Chui in which he explained that, because California had a law that allowed only banks and credit card companies to charge interest over 10 percent, he was adjusting the interest rate in his bills and the notes to be 10 percent.<sup>3</sup>

In April 2010, Respondent became concerned that his fees were now exceeding the amount of the promissory notes and that he was not getting paid. In a letter to Chui in April, 2010, Respondent forwarded his most current bills and indicated that Chui either needed to sign another secured promissory note or begin paying the legal fees. In this communication, Respondent indicated that, if Chui did not act on this requirement, Respondent was going to raise

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<sup>3</sup> The related deeds of trust for each of these promissory notes included a "Savings Clause" which provided, in pertinent part: "If a law, which applies to this Deed of Trust or the Promissory Note/Credit Agreement and which sets maximum loan charges, is finally interpreted by a court having jurisdiction so that the interest or other loan charges collected or to be collected in connection with this Deed of Trust or the Promissory Note/Credit Agreement exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Trustor which exceed permitted limit will be refunded to Trustor."

his rate to \$650 per hour. Chui received the notification, but did not take any steps to avoid or object to Respondent's rate going to \$650.

In late-May 2010, Respondent again demanded that Chui either begin to pay his fees or issue another secured promissory note, reminding Chui that Respondent would raise his hourly rate to \$650 if Chui did neither. In response, Chui continued neither paid any of Respondent's fees nor provided any additional promissory note to pay.<sup>4</sup> He also did not object to Respondent's rate going to \$650.

In July 2009 and again in July 2010, Respondent was running out of available funds and needed to borrow money to meet his financial obligations. As a result, he borrowed money from his sister on several occasions, securing the transactions with an assignment to his sister of \$140,000 of the secured promissory notes.<sup>5</sup>

On August 1, 2010, having received no action by Chui in addressing Respondent's outstanding bills and with the case scheduled to go to trial on August 3, 2010, Respondent wrote a letter to Chui, notifying him that he was going to raise his rate to \$650 for the trial.<sup>6</sup> As an alternative, he indicated that, if Chui would agree to continue the trial to November and execute a \$30,000 promissory note to secure future bills, Respondent would reduce his hourly rate to \$130 for the trial. In this letter, Respondent noted that the proposed continuance was a benefit to

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<sup>4</sup> At some time during this process, Chui went to another attorney, who advised him to wait until the Plaintiffs' case was ended and then file a complaint against Respondent with the State Bar regarding the fee arrangement. Chui's failure either to agree or disagree with Respondent's proposed fee arrangements, or to make any objection that would cause Respondent to withdraw from the case, is consistent with his intent to follow that advice.

<sup>5</sup> These notes were assignable by their express terms.

<sup>6</sup> As a partial justification for this rate increase, Respondent pointed out that his having to reserve the time for the scheduled lengthy trial precluded him from accepting other more lucrative work that was then available to him.

Chui, since it would allow Chui to continue to live in the house and give him ample time to find another attorney (if that is what Chui wished to do).

The trial in the lawsuit took place on or about August 3, 4, 5, and 16, 2010. Before the trial was scheduled to commence, Respondent had succeeded in getting the fraud cause of action eliminated by Chui by Chui agreeing to put the Plaintiffs' names back on the title to the property. Respondent had also negotiated a resolution of the cross-complaint by Washington Mutual against both Chui and Plaintiffs by putting together a joint agreement by them with the bank that Chui's indebtedness to the bank would remain secured by the entire property, however the Plaintiffs' case was resolved.

On September 17, 2010, the court issued its Final Statement of Decision, ordering partition of the property by sale and making certain findings as to the distribution of the proceeds, including a finding that, "All sums due to counsel for Chui to satisfy the deed of trust in favor of James Li, chargeable to the share of defendant Chui." In this decision, the court found that Chui was not a credible witness; that the monthly rents received by Chui from his tenants in the property had been \$2,470 per month since June 2006; and that the total rents received through August 2010 totaled \$258,340.

Both Chui and Respondent were unhappy with the final decision. Chui wanted to continue to live in the house and the decision required that it be sold. Respondent was concerned that the court had not accepted his proposal that the property be partitioned by allowing Chui to continue to live in it and pay money to his sister over time. Further, because the order provided that the proceeds of the required sale would go to the Plaintiffs and Washington Mutual before any funds would be subject to Respondent's deeds of trust, it resulted in the security for Respondent's prior legal fees being effectively extinguished.

On the same day that the above statement of decision was filed, September 17, 2010, Respondent, aware that Chui was already seeking an attorney to sue him, filed a motion to withdraw from representing Chui in the lawsuit. The motion was scheduled for a hearing on October 12, 2012, and an order granting the motion was filed on October 15, 2010.

Respondent felt that the court's decision was in error in a number of respects. He was concerned, however, that Chui had neither the finances nor the intent to do anything to seek relief from it. As a result, on September 20, 2010, while Respondent was still the attorney of record for Chui, Respondent sent to Chui a letter and a draft motion to vacate judgment, which motion was to be filed by Respondent as the attorney representing himself and his sister, Po Shan Li. He described Po Shan Li and himself in the draft motion as "Intervenors" based on their ownership of the deeds of trust on the property. In his letter, Respondent indicated to Chui that he intended to file the motion around October 12, 2010, and that he viewed the motion as benefitting both Chui and himself. Although Chui was then in the process of hiring another attorney, neither Chui or the new attorney ever complained or objected to the steps being taken by Respondent in his own name to set the adverse judgment aside.

On September 29, 2010, while Respondent was still formally attorney of record for Chui, Respondent filed both the motion to vacate the judgment and a Notice of Pendency of Action for Vacating Judgment (Lis Pendens) on the real property on behalf of himself and Po Shan Li as "Aggrieved Persons."

On October 6, 2010, the court issued a judgment in favor of Plaintiffs and against Chui and incorporated the Final Statement of Decision as follows: the court ordered partition of the property by sale and made certain findings as to the distribution of the proceeds, including a

finding that, “All sums due to counsel for Chui to satisfy the deed of trust in favor of James Li, chargeable to the share of defendant Chui.”

The promissory notes became due by their terms on the “100<sup>th</sup> day” after the conclusion of the lawsuit by Plaintiffs against Chui. In September 2011, Respondent sent a letter to Chui, notifying him that the promissory notes were in default and threatening to exercise his rights under the deeds of trust. Notwithstanding this threat, however, no subsequent steps have been taken by Respondent to secure payment of the promissory notes.

Li eventually also sought to appeal the judge’s decision as an intervenor. That appeal, however, was eventually rejected based on Respondent’s lack of standing in the dispute.

At the time of the trial of this disciplinary proceeding, Chui was still living in the property.<sup>7</sup> Although the home had been sold, as ordered by the court, the sale remains in escrow because of Chui’s refusal to sign the necessary documents.

**Count 8 –Section 6106 [Moral Turpitude – Overreaching and Coercion to Collect Fees]**

In this count, the State Bar alleges, “By repeatedly increasing his hourly fees from \$100 to \$650 when he knew his client had exhausted all of his funds in paying him \$57,000 and had no means to hire other counsel, by securing five deeds of trust totaling \$170,000 against Chui’s equity interest in the real property, and by increasing his hourly fee from \$350 [sic] to \$650 one month before the trial date, Respondent committed an act involving moral turpitude, dishonesty or corruption.” (NDC, ¶71.)

The evidence fails to provide clear and convincing proof that any of the above actions by Respondent constituted an act of moral turpitude.

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<sup>7</sup> At the trial of this matter, Chui testified that he stopped paying the mortgage on the property in 2010. It is unknown whether he is continuing to receive the rental income on the property. There was no evidence that he was not.

In large part the State Bar's position regarding this count is dependent on its belief that Chui is an unsophisticated, unemployed, aged, Chinese immigrant, who is ignorant in the ways of the business world, unable to speak or read English, unable to understand a legal document unless it was both explained and translated into Cantonese in writing, and honest to a fault. This is an impression that Chui aggressively seeks to convey, but it is far from being accurate. Instead, Chui is an experienced businessman and real estate investor, who has successfully operated a number of businesses in this country since leaving Hong Kong, his native land, in 1985 and immigrating to this country via Canada. He has purchased and sold real estate in both Hong Kong and the United States, and he has been party to numerous deeds of trust. In his testimony, he differentiated between Plaintiffs as joint tenants and as tenants in common, and he sought to explain his sister's prior status as a joint tenant on the title to the disputed property as being the result of a unilateral effort by him to avoid probate on the property when he dies.

With regard to his ability to read and understand English, he agreed at trial that he is able to do so. In fact, as a product of the Hong Kong schools system while it was still part of the British Empire, Chui studied English throughout grammar school and continued to do so into the equivalent of high school. He also studied English after coming to the United States. He has been involved in many business transactions where all of the legal documents are in English. On cross-examination, he agreed that, in all of his prior professional and personal business transactions, he had never seen a legal document drafted in Chinese.

Chui is "unemployed" by choice and has been since closing down his business in 2004. He lives on the rental income he receives on his property and on the loans he has been able to secure based on the equity in those properties. While he apparently occasionally helps others in

the management of their businesses, his primary outside activity appears to be gambling at the nearby Indian casino.

As did the court in the underlying Plaintiffs' suit against Chui, this court finds that Chui is not a credible witness. By way of examples, during the instant trial Chui denied ever seeing the letter in which Respondent offered to try the case for \$130 per hour, and he sought to avoid answering the question whether that letter had been in the materials he had provided to the State Bar. That obfuscation came to an end when the State Bar volunteered on the record that Chui had provided the State Bar with the document. On another occasion, Chui testified on direct that Respondent had raised his hourly rate from \$250 to \$350. The legal bills sent to him by Respondent, put into evidence by the State Bar, make clear that the new billable rate was only \$325. At another time, Chui testified in response to State Bar questioning that Respondent had never recommended that Chui file bankruptcy. On cross-examination, however, it was developed that Respondent had expressly recommended that Chui consider filing for bankruptcy to resolve the Plaintiffs' case and to end the need to keep incurring legal expense. Respondent also advised Chui to see a bankruptcy attorney for advice. Choi eventually ended up consulting with three different bankruptcy attorneys. Nonetheless, he elected to defend the case and not petition for bankruptcy.

Turning to the possible misconduct by Respondent alleged above, there is no prohibition against an attorney increasing his or her hourly rate during the course of a representation, where the client is informed of the increase and agrees to it. Such was the case here.

Nor is there any *per se* prohibition against an attorney seeking during the course of the representation to have security from the client regarding the payment of past and future bills.<sup>8</sup> In this instance, this was the only way by which Choi could obtain an attorney to represent him in the case, and the transaction has ultimately resulted in Choi essentially receiving free representation after September 2008.

As is discussed more fully below, the fact that Respondent incurred legal fees and costs of \$170,000 in the case from September 2008 through mid-2010 fails to show any act of dishonesty or moral turpitude. There is no evidence that Respondent billed for any work that he did not do or for any time that he did not spend on Chui's behalf.

Finally, the bare allegation, that Respondent increased his billing rate on the eve of trial in August, ignores the fact that Respondent gave notice in April of his intent to do so unless Chui either began to pay his bills or issued a new secured promissory note. Respondent reminded Chui of the impending rate increase in May and then offered Chui an alternative rate of \$130/hour in August. Chui never refused or objected to the rate increase, but instead impliedly agreed to it by his inaction and continued use of Respondent as his attorney. Given the circumstances of the situation, including inter alia the facts that Chui had previously agreed to hire an attorney on the case who in 2007 was charging \$600 per hour and the fact that it was highly unlikely that Chui would ever pay for any of the work being done by Respondent, Respondent's decision to demand a \$650 per hour fee was not an act of dishonesty or moral turpitude.

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<sup>8</sup> While the attorney is required to comply with rule 3-300 in effecting such a transaction, the issues regarding Respondent's compliance with the rule are not alleged in this count, but instead are raised in subsequent counts, discussed below.

**Count 9 – Rule 4-200(A) [Unconscionable Fee]**  
**Count 10 – Rule 4-200(A) [Illegal Fee]**

Rule 4-200(A) provides, “A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.” In Counts Nine and Ten, the State Bar alleges that Respondent violated rule 4-200(A).

In Count Nine, the State Bar alleges: “By charging Chui usurious rates of interest on each of the promissory notes ranging from 13% to 17%, by advising Chui in July 2010 that he would be billing him at an hourly rate of \$650, and by sending his client a bill in or about October 2010 showing a balance due of \$245,055.10 after having already billed Chui \$57,000 in a case where Respondent knew or should have known that the property was worth approximately \$375,000, Respondent entered into an agreement for, charged, and collected an unconscionable fee.” (NDC, ¶78.)

In Count 10, the State Bar alleges, “By entering into the five promissory notes whereby Respondent contracted to charge Chui between 13% and 17% interest in violation of California’s usury laws, Respondent entered into an agreement for, charging, or collecting an illegal fee.”

As noted above, this court agrees that Respondent prepared and had his client enter into fee agreements entailing promissory notes with interest rates violating California’s usury laws. Prior to January 2010, Respondent also sent bills to Chui setting forth interest charges pursuant to those promissory notes in excess of the allowable legal rate. Such conduct violated the prohibition of rule 4-200(A).

The evidence, however, fails to provide clear and convincing proof that any of the other actions alleged above constituted a violation of the prohibition of rule 4-200(A) against unconscionable fees, especially when one uses the factors set for in the rule itself. Chui was committed to staying in the property that he had purchased with his sister’s money, and he was

committed to keeping the rental income that he had been collecting (but not sharing) for the past many years. He had rejected the advice of both of his attorneys that he settle the case and had declined to petition for bankruptcy, despite the cost, risks, and merits of the Plaintiffs' suit against him. He was at least as sophisticated about deeds of trust and promissory notes as Respondent, and he clearly understood the legal significance and effect of the legal documents he signed to potentially secure Respondent's ability to get paid for his services in the future. Most significantly, he readily agreed to provide them on five separate occasions.

Further, if Chui is and was as financially destitute as he told Respondent (and as the State Bar here alleges), Respondent's prospects after September 2008 of actually ever receiving any financial compensation for his extensive legal work on the case was completely contingent on Respondent securing a successful outcome of the lawsuit. As shown by the ultimate outcome in the action, that was certainly not a sure thing. In addition, contrary to the allegations of the NDC, the economic issues of the lawsuit included far more than the value of the property. The complaint included allegations of fraud, sought recovery of hundreds of thousands of dollars of past rental income, demanded that Chui pay rent for the years that he had used the property as his own residence, and requested an award of both compensatory and punitive damages. There was, in addition, the cross-complaint of Washington Mutual, which included a request for attorneys fees. It was only because of the success of Respondent in successfully resolving various aspects of the case over time that the issues at the time of the trial were as limited as they were. They were still, however, significant.

The fact that the legal expenses and costs of the case were approximately \$300,000 is hardly the basis for any automatic conclusion that the fee was unconscionable. Respondent worked on the case from 2007 to October 2010. The case was scheduled to go to trial many

times before it eventually did go to trial. The issues in the case were complex and highly disputed. Each side hired an expert accountant and Respondent was required to trace and account for funds involving purchases and sales in two different countries, numerous transfers of funds, rental income and expenses over a period of many years, and various refinancing and other security encumbrances. This work was made even more challenging by the fact that many of the underlying records were in Chinese or non-existent. Because Respondent was seeking to accomplish his client's goal of Chui being allowed to retain and live in the property even if his sister was determined to be a co-owner of it, Respondent had researched and was advancing as a proposed potential outcome an uncommon form of partition. During the trial of this disciplinary matter, the opposing attorney in the Plaintiffs' case testified regarding the "fine" work that Respondent had done in the case, including the creative ways that he had resolved certain aspects of the case and had sought to settle the balance. He also testified to the complexity of the case.

At trial, the State Bar presented an expert witness who testified that Respondent's billing rate and cumulative fees were unconscionable. This court concludes, however, that this expert testimony was not persuasive, except to the extent that he opined that the interest rates of the notes violated California law. This expert charged \$425 per hour to opine that it was unconscionable for Respondent to defend the lawsuit against Respondent for an hourly rate in excess of \$325. The expert, however, knew little about either the lawsuit or Respondent. While he agreed that an hourly rate of \$650 is not *per se* unconscionable for any attorney to charge, he expressed the view that it should be limited to attorneys at big firms or working out of Beverly Hills. This court disagrees with that latter opinion.

**Count 11 – Rule 3-300 [Acquiring Interest Adverse to Client]**

In this count the State Bar alleges that Respondent failed to satisfy the requirements of rule 3-300 when he acquired a security interest in Chui’s property. Rule 3-300 provides:

A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
- (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

The evidence fails to show any violation by Respondent of his obligations under subdivisions (B) and (C) of this rule or under those portions of subdivision (A) requiring the attorney to fully disclose and transmit to the client the terms of the transaction in a manner which should have been understood by the client. Instead, Respondent provided the terms of the transaction to Chui in writing, included language expressly advising Chui of his rights and opportunity to have the transaction reviewed by another attorney, and had Chui sign the agreements and initial that portion of the agreement constituting a disclosure under rule 3-300, explained the transaction to Chui. Chui fully understood the transactions.

The State Bar also contends that Respondent violated the requirement of subdivision (A) of rule 3-300 that the transaction be “fair and reasonable” because the promissory notes

contained usurious interest rates. With that contention, this court agrees. However, the court notes that this misconduct has already been the basis for a finding of a violation of rule 4-200(A).

**Count 12 – Rule 3-310(C)(2) [Actual Conflict – Representing Conflicting Clients]**  
**Count 13 – Section 6068, subd. (a) [Failure to Support Laws – Breach of Common Law Duty of Loyalty]**

Rule 3-310(C)(2) provides that a member shall not, without the informed written consent of each client accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict.

In Count 12, the State Bar alleges that Respondent violated this prohibition by filing the motion on behalf of his sister and himself to intervene in the Plaintiff's lawsuit and set aside the judgment against Chui.

In Count 13, the State Bar points to the same evidence and alleges that the conduct constituted a breach of the common law duty of loyalty.

The evidence, however, fails to show any actual conflict between Respondent, his sister, and the interests of Chui that was created by the filing of the motion to intervene in the Plaintiff's lawsuit and set aside the judgment against Chui. Nor did that effort by Respondent evidence any breach of loyalty owed to Chui. Neither Respondent nor his sister were taking steps in the Plaintiffs' lawsuit, or by that motion, to enforce their rights against Chui in the action. Instead, they were acting to preserve Chui's assets, for the benefit of both Chui and themselves. The judgment that Respondent and his sister were seeking to set aside was adverse to Chui and required him to sell the house in which he was living. It provided that a disproportionate share of the proceeds was to go to the Plaintiffs, and it rejected Chui's contention that an alternate method of partition should be utilized. Respondent notified Chui in advance of his intent to file the motion, and he never received any indication, from either Chui or Chui's new attorney, of any opposition by Chui to it. Significantly, during the trial of this disciplinary matter, there was also no complaint made by Chui about Respondent's efforts to set aside the judgment.

These two counts are 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, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5.)<sup>9</sup> The court finds the following with regard to aggravating factors.

#### **Multiple Acts of Misconduct**

The fact that Respondent is culpable of multiple acts of misconduct, involving two different clients, is an aggravating factor. (Std. 1.5(b).)<sup>10</sup>

#### **Significant Harm**

Respondent's misconduct significantly harmed his client Wang, who was deprived of the use of \$30,000 for a significant period of time and had to incur the expense of a lawsuit to recover it. (Std. 1.5(f).)<sup>11</sup>

#### **Lack of Insight and Remorse**

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct with regard to client Wang. He remains defiant and has no insight regarding his unethical behavior. (Std. 1.5(g).)<sup>12</sup>

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.)<sup>13</sup> The court finds the following with regard to mitigating factors.

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<sup>9</sup> All further references to standard(s) or std. are to this source.

<sup>10</sup> Previously standard 1.2(b)(ii).

<sup>11</sup> Previously standard 1.2(b)(iv).

<sup>12</sup> Previously standard 1.2(b)(v).

<sup>13</sup> Previously standard 1.2(e).

### **No Prior Discipline**

Respondent practiced law in California for over twelve years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.6(a).)<sup>14</sup>

### **Pro Bono/ Community Service**

Respondent presented evidence of his pro bono and community service, including serving as a member of the State Bar's Standing Committee on the Delivery of Legal Services. This is a mitigating factor. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785 [pro bono and community service as mitigating factor]; *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126.) However, Respondent offered only his own testimony to establish these efforts. We therefore assign only modest weight to this mitigation evidence. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

## **DISCUSSION**

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

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<sup>14</sup> Previously standard 1.2(e)(i).

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

Standard 1.7(a) [previously designated standard 1.6(a)] provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standards 2.7 and 2.8. Standard 2.7 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 misconduct and the extent to which the misconduct harmed or misled the victim and related to the member’s practice of law.” Standard 2.8 provides, “Disbarment is appropriate for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business & Professions Code section 6068(a)-(h).”

Also applicable are standards 2.2, 2.3, and 2.4. Standard 2.2 provides that (a) actual suspension of three months is appropriate for commingling or failure to promptly pay out entrusted funds; and (b) suspension or reproof is appropriate for any other violation of Rule 4-100. Standard 2.3 provides that actual suspension of at least six months is appropriate for entering into an agreement for, charging, or collecting an unconscionable fee for legal services, and that suspension or reproof is appropriate for entering into an agreement for, charging, or collecting an illegal fee for legal services. Standard 2.4 provides that suspension is appropriate for improperly entering into a business transaction with a client or knowingly acquiring a pecuniary interest adverse to a client, unless the extent of the misconduct and any harm it caused to the client are minimal, in which case reproof is appropriate. If the transaction or acquisition and its terms are unfair or unreasonable then disbarment or actual suspension is appropriate.

It is the court's conclusion that discipline consisting of a two-year stayed suspension and a two-year probation, on conditions of probation including six months of actual suspension, is appropriate in this matter. Such discipline is consistent with all of the applicable standards and is supported by prior case law. (See *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266.)

## **RECOMMENDED DISCIPLINE**

### **Recommended Suspension/Probation**

For all of the above reasons, it is recommended that **James H. Li** 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 two years, with the following conditions:

1. Respondent must be actually 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 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).<sup>15</sup> 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

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<sup>15</sup> 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.

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.

5. 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.
6. 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 the State Bar's Client Trust Accounting 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.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.
8. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

### **MPRE**

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of his suspension, whichever is longer, and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (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.<sup>16</sup>

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

**Costs**

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

Dated: February \_\_\_\_\_, 2014

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DONALD F. MILES  
Judge of the State Bar Court