

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| In the Matter of                  | ) | Case No.: <b>12-O-11131-RAH</b> |
|                                   | ) |                                 |
| <b>JONATHAN GRANT GABRIEL,</b>    | ) | <b>DECISION</b>                 |
|                                   | ) |                                 |
| <b>Member No. 140381,</b>         | ) |                                 |
|                                   | ) |                                 |
| <u>A Member of the State Bar.</u> | ) |                                 |

**Introduction**<sup>1</sup>

At the direction of his trustee client, respondent Jonathan Grant Gabriel used approximately \$48,000 in surplus funds from a homeowners' association foreclosure to pay his attorney's fees in successfully defending an unmeritorious lawsuit brought by the former owner to, *inter alia*, cancel the sale and recover the property sold at foreclosure. Thereafter, the unsuccessful former homeowner filed a second action in Los Angeles Superior Court for violation of statutory duties and breach of fiduciary duties against the trustee and respondent. The superior court found in favor of the former homeowner, and awarded damages and interest. The court of appeal affirmed the judgment.

After the judgment, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a Notice of Disciplinary Charges (NDC) alleging moral turpitude for

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

misappropriation in violation of a fiduciary duty, moral turpitude for misrepresentation by omission to opposing counsel, seeking to mislead a judge, and failing to report a judgment.

As is set forth in more detail below, the court finds no culpability for the two moral turpitude counts, but does find culpability for seeking to mislead a judge (section 6068, subdivision (d)) and failing to report a judgment (section 6068, subdivision (o)(2)).

### **Significant Procedural History**

The Notice of Disciplinary Charges (NDC) was filed on February 1, 2013. Respondent filed a response to the NDC on March 11, 2013. Trial commenced on September 3, 2013. The State Bar was represented by Deputy Trial Counsel Ashod Mooradian. Respondent was represented by David A. Clare. After trial, the matter was submitted for decision on September 18, 2013.

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

Respondent was admitted to the practice of law in California on June 6, 1989, and has been a member of the State Bar of California at all times since that date.

### **Facts**

In 1996, Nancy Register (Register) purchased a condominium in the Casa Gateway community for \$70,000 in cash. In early 2004, Register stopped paying her homeowners' association dues. In late 2004, the Casa Gateway Homeowners' Association (HOA) commenced non-judicial foreclosure proceedings on Register's condominium to satisfy the debt. The HOA hired California Association Lien Collections, LLC (CALC) to serve as the trustee to conduct a non-judicial foreclosure sale of the property. To initiate the foreclosure process, on September 16, 2004, CALC recorded a "Notice of Delinquent Assessment Lien." On June 2, 2005, CALC conducted a foreclosure sale of Register's condominium to recover past due HOA fees from Register.

Register's condominium sold for \$59,100. After CALC distributed the \$7,214 to the HOA, \$51,886 remained. CALC then applied \$3,566.94 toward other costs associated with the foreclosure sale. Thereafter, a balance of \$49,523.50 remained. In August 2005, CALC sent the surplus funds, along with a copy of the Title Report, to the law firm of McCarthy & Holthus.

### **The Unmeritorious First Action**

On July 15, 2005, Register filed a lawsuit against the HOA and CALC to set aside the foreclosure sale, in an action entitled *Register v. Gateway Homeowners Association, et al.*, Los Angeles Superior Court Case No. SC086284 (the first action).

Around July 15, 2005, CALC employed respondent to defend it in the first action.

On December 5, 2005, CALC instructed McCarthy & Holthus to transfer the surplus funds to respondent's client trust account. On December 20, 2005, McCarthy & Holthus wired the remaining surplus funds, in the amount of \$48,319.06, to respondent's client trust account.

At the time respondent received the surplus funds, he was informed that the surplus funds were from the sale of Register's property. Respondent was instructed by his client, CALC, to use the funds he had received to "defend the sale" against the challenge by the first action.<sup>2</sup> Respondent actively litigated the matter by successfully challenging the initial complaint and at least eight amended complaints until the court denied leave to amend.<sup>3</sup> In most of these complaints, Register was represented by the Jones Day firm and Public Counsel.<sup>4</sup>

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<sup>2</sup> It is significant that the action brought by Register was not to recover the funds. Rather, she named the purchaser at the foreclosure sale and sought to *cancel* the sale. As such, if she were successful, she would have taken back the property. By February 24, 2007, respondent had applied at least \$46,000 of the surplus funds to CALC's attorney fees. In October 2007, (after most, if not all, of these funds had been depleted), the purchaser's demurrer was sustained without leave to amend. Accordingly, the causes of action for cancellation of the sale were dismissed.

<sup>3</sup> CALC also filed a cross-complaint for indemnity against the HOA pursuant to an indemnity clause in the contract between CALC and the HOA. This clause provided for attorney's fees that CALC might incur in connection with its conduct as trustee of the foreclosure sale. This claim was later settled in November 2008 (after the surplus funds were exhausted) by the HOA paying \$30,000 to CALC.

<sup>4</sup> Some of the versions of the complaint were what may be charitably referred to as rather "creative." An example was the inclusion of a count for "elder abuse."

On February 7, 2007, Register's attorney sent respondent a letter requesting that respondent confirm he held the surplus funds in trust, that respondent inform Register's attorney what was required to release the surplus funds, and that respondent state when he could release the surplus funds to Register's attorney. Respondent received the letter, but did not respond.

By or before March 2007, respondent had depleted the entire amount of the surplus funds by applying them to CALC's legal bills incurred in the first action.

In March 2007, during a conversation at the courthouse with respondent after a hearing in the first action, Register's attorney requested that respondent release the surplus funds to them. Respondent refused this request, but did not tell Register's attorney that the funds had been already depleted. On August 15, 2007, Register's attorney sent respondent a second letter requesting that respondent confirm in writing that he held the surplus funds. Respondent received the letter, but did not respond.

Prior to September 2008, CALC filed a request for summary judgment in the first action. On September 29, 2008, the court granted CALC's motion for summary judgment, terminating the first action.

### **The Successful Second Action**

On September 23, 2008, Register filed a lawsuit against respondent and CALC, entitled *Register v. Gabriel et al.*, Los Angeles Superior Court Case No. BC398674 (the second action). In the second action, Register alleged causes of action against respondent for conversion, breach of fiduciary duty, and constructive fraud. Again, she was represented by Jones Day.

On July 14, 2010, the court entered judgment against respondent in the second action, finding respondent liable for conversion of the surplus funds, and breach of respondent's fiduciary duty to Register for failing to protect and properly dispose of the surplus funds. Respondent subsequently filed a timely notice of appeal.

On July 14, 2010, respondent had actual knowledge of the judgment entered against him in the second action. Respondent failed to report the judgment to the State Bar, in writing,

within 30 days of his knowledge of the judgment entered against him in the second action.<sup>5</sup> On December 12, 2011, the California Court of Appeal upheld the July 14, 2010 judgment entered by the trial court in the second action. On December 13, 2011, respondent reported the judgment for breach of fiduciary duty to the State Bar.

### **Respondent's Good Faith Belief He Did Not Breach Any Fiduciary Duties**

Throughout the period of time respondent held the surplus funds and used them to “defend the sale,” respondent held a good faith belief that his use of the funds was permitted by law. Put differently, he was honestly unaware that he owed Register a fiduciary duty, or, if owed, that he may be violating that duty. He based this belief not only on his experience in his long tenure as an attorney in this field, but also his specific reading of the statute in question and his reliance on both his client’s expertise as a trustee and case law with which he was familiar.

The statute which states the proper procedures for handling foreclosures like Register’s is very complicated. Civil Code section 2924 and its subparts covers multiple pages of the code and, while broken down into sections 2924.1 through 2924.20 and 2924a through 2924I, it is really a single statutory scheme. Given its complexity, and the complexity of the cases interpreting it, it is not surprising that there may be differing opinions as to the meaning of some of its provisions. In that regard, both the State Bar and respondent presented expert witnesses with extensive credentials in this area of law. Neither agreed on the propriety of the use of surplus funds for attorney’s fees incurred in defending the sale. Even one of the leading treatises on the subject, *California Mortgages, Deeds of Trust, and Foreclosure Litigation*, 4<sup>th</sup> ed., Bernhardt and Hansen, Continuing Education of the Bar, 2013, acknowledges that the attorney’s fee provisions of section 2924c do not address all situations, including “whether ... any surplus from the sale may be applied to attorney’s fees.” (*Id.*, section 8.85.)

While the Superior Court and the Court of Appeal in the second action found that respondent owed Register a fiduciary duty and violated that duty, the law is not crystal clear on

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<sup>5</sup> After the appeal was resolved against him, respondent reported the judgment. Respondent mistakenly believed that he did not have to report the judgment until all avenues of appeal were exhausted.

this subject. Certainly, it is not the norm that an attorney owes a fiduciary duty to non-clients. (*Gilman v. Dalby* (2009) 176 Cal.App.4<sup>th</sup> 606, 613-615.)

Richard Witkin credibly testified as an expert in this matter. Witkin has had extensive experience in the foreclosure of trust deeds and assessment liens. He has also written many articles and lectured on the subject, both to trade groups and law schools. He opined that CALC and respondent acted properly in their use of surplus funds. He also noted that there are very few cases or other authority on this subject, and certainly no published opinion to guide practitioners. He also noted that, while an interpleader action may have solved the problem, an interpleader is only used where there are *conflicting claims*. In this case, no written claim was filed by Register or anyone else.<sup>6</sup> Witkin testified that respondent acted reasonably, given that his instructions came from an established California trustee.

David Stone, the owner of CALC, stated emphatically that it was his position that he and respondent owed no fiduciary duty. Further, even if such a duty existed, he felt that “defending the sale” was a proper “cost of sale” within the meaning of Civil Code section 2924 et seq., allowing those costs to be drawn from the surplus funds. Before purchasing CALC in 1996-97, Stone had experience in collecting homeowner dues. The firm he worked for also conducted non-judicial foreclosure sales to collect these dues. In these cases, there were occasions where surplus funds from the sale were used to defend claims by the former owner seeking to cancel the sale.<sup>7</sup>

Respondent was also aware of case law that supported his position. Although unpublished, and therefore not citable as precedent, respondent became aware of a relevant Second District Court of Appeal case. (*Sterling v. First Federal Bank of California* (June 7,

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<sup>6</sup> Richard Witkin testified that the filing of a written claim is mandatory under Civil Code section 2924k and 2924j.

<sup>7</sup> Respondent also credibly testified that he had no reason to attempt to “secure” the surplus funds in his account to assure payment of his fees. He had represented CALC for years and had never had any problems with payment of any of the bills he sent to CALC. As such, the court does not find that respondent acted out of greed or a fear of not getting paid when he used the funds as directed by his client.

2006 B181491) [nonpub. opn.].) In that case, the appellate court interpreted Civil Code 2924k to uphold the trial court, and found as follows:

“Next the buyer asserts there is simply no authority for the proposition a trust deed beneficiary can have a post foreclosure lien against surplus generated by the sale for debts arising after the sale. ... There is authority for the proposition costs and attorney’s fees incurred on collateral matters pre foreclosure to defend the security interest become a part of the secured debt where the contractual terms so provide. Thus, for example, courts have permitted recovery of attorney’s fees and costs incurred in defending suits by trustors or mortgagors attempting to enjoin an impending foreclosure sale. ... *We see no legally cognizable difference in incurring costs to defend a suit to enjoin a foreclosure to protect security recoverable as a lien against the property and costs and fees incurred in defending a suit seeking to invalidate a just concluded foreclosure sale.*”

(See Exhibit V, page 3931, emphasis added.)

This case was decided during the period in which respondent was using the surplus funds. There are no other reported cases on this precise subject. While certainly not citable as precedent, this case, and those analogous to it, were relied upon by respondent in deciding the propriety of using surplus funds to “defend the sale.”

Based on the above, the court finds that respondent held a good faith belief, based on reasonable and reliable sources, that he did not owe a fiduciary duty and, if he did, he was not in violation of that duty.

**Even if Respondent Breached a Fiduciary Duty, His Actions Did Not Constitute Moral Turpitude.**

A finding of a breach of fiduciary duty does not automatically result in a finding of moral turpitude. “Moral turpitude” is an act that is contrary to honesty and good morals. (*In re Scott* (1991) 52 Cal.3d 968, 978.) It is any “act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. [Citation.]” (*In re Craig* (1938) 12 Cal.2d 93, 97.) “[T]here is no moral turpitude where the attorney acts upon beliefs

and understandings which, although mistaken and unreasonable, are *sincerely and honestly* held.” (*California Practice Guide: Professional Responsibility* (Rutter Group) Vapnek, Tuft, Peck, and Wiener, sec. 11:110, citing *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10-11.)

For this same proposition, the court in *In the Matter of Klein*, cited *Sternlieb v. State Bar* (1990) 52 Cal.3d 317. The Supreme Court in *Sternlieb* found that the attorney’s actions in that case were not only mistaken, but unreasonable. Nevertheless, because of his honest belief in the correctness of his actions, he did not commit acts involving moral turpitude.

Further, it is clear that even where there is a breach of fiduciary duty, it is not necessarily the case that that breach is accompanied by moral turpitude. In *Hartford v. State Bar* (1990) 50 Cal.3d 1139, 1153 (footnote 12), the Supreme Court stated as follows:

“We do not decide whether petitioner’s conduct necessarily involved moral turpitude within the meaning of section 6106. The hearing panel, which was in the best position to judge matters of credibility, specifically found petitioner did not intend to defraud [...], but was merely mistaken in his interpretation of the pledge agreement.”

The court went on to find a violation of section 6068, subdivision (a), but not moral turpitude. Here, the State Bar did not allege a section 6068, subdivision (a) violation.

The superior court in the second action found a breach of fiduciary duty, but the court clearly backed away from finding respondent’s actions were evil or malicious with respect to the conversion count. In its decision (exhibit 16) at page 1634, the court found as follows:

“The Court finds insufficient proof to award punitive damages. While this case may involve sharp practices, *it does not rise to the level of oppressive or vexatious*. The evidence establishes that Mr. Stone had no direct contact with the foreclosure sale of the Condo other than owning CALC at the time. *There is not one scintilla of evidence that Mr. Gabriel dealt directly with Plaintiff*. For example, he didn’t contact her over the phone or in person. *There is no evidence that he lied to her, manipulated her, or made misrepresentations to her*. *Accordingly, no punitive damages will be awarded.*”

(Emphasis added.)



This finding was affirmed on appeal. Put simply, the superior court found respondent converted the funds, and ordered him to pay them back with interest.

The court finds that even if respondent breached a fiduciary duty he may have owed, these acts did not involve moral turpitude.

**Respondent's Alleged Misrepresentations by Omission with Regard to the Surplus Funds Were Not Acts of Moral Turpitude**

The State Bar alleges that respondent committed further acts of moral turpitude by his alleged actions in failing to inform Register's counsel that he was using the surplus funds to defend the sale. Normally, attorneys have no duty to speak with or correspond with opposing counsel, short of a court order to do so, a rule or statute requiring such contact, or another duty imposed by law. The State Bar argues that, given respondent's fiduciary duty owed to his opposing counsel's client, Register, he had a duty to respond completely without omissions when he was asked about the status of the surplus funds. Such an analysis may, indeed, be correct, given the findings of the superior court and court of appeal with regard to respondent's fiduciary duty owed to Register. However, as analyzed above, respondent held an honest belief that he owed no such fiduciary duty to Register and therefore, to her attorneys. Given this honest belief, while arguably a breach of fiduciary duty, it is not an act of moral turpitude.<sup>8</sup>

The court finds that there was no moral turpitude in respondent omitting references to his use of the surplus funds in defense of the sale.

**Respondent Sought to Mislead the Judge in his Declaration Filed March 5, 2008.**

In a declaration under penalty of perjury filed with the court on March 5, 2008, respondent stated that he had advised Register's counsel "as early as March 2007" of the fact that he had "applied the [surplus] funds to the cost of its defense." This statement was false.

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<sup>8</sup> Again, the State Bar did not plead a violation of section 6068, subdivision (a), but rather only plead the more serious moral turpitude charge.

The credible testimony of Geoffrey Forgione and Samantha Eisner revealed that respondent never advised them of the use of the funds. This testimony was consistent with the fact that these attorneys repeatedly requested information about the status of the funds *after the March 2007 period*, and either did not hear anything in response, or were advised that the funds were being withheld because Register was seeking a cancellation of the trustee's sale and a return of the property to her. (See exhibits 14, 15, and 16.)<sup>9</sup>

## **Conclusions**

### ***Count One - (§ 6106 [Moral Turpitude–Misappropriation of Third Party Funds])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. The State Bar has failed to present clear and convincing evidence that the acts alleged in this count constituted moral turpitude. As such, Count One is dismissed with prejudice.

### ***Count Two - (§ 6106 [Moral Turpitude–Misrepresentation])***

The State Bar has failed to present clear and convincing evidence that the acts alleged in this count constituted moral turpitude. As such, Count Two is dismissed with prejudice.

### ***Count Three - (§ 6068, Subd. (d) [Misleading a Judicial Officer])***

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact. It has been established, by clear and convincing evidence, that: (1) respondent's statement in his March 5, 2008 declaration regarding his

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<sup>9</sup> Respondent asserts in his closing brief that the declarations of Forgione and Eisner are not to be believed because they were prepared a long time after the events and are identical in form. Regardless of their declarations, the live testimony of these two witnesses in court was credible. Further, even though identical language was used in each declaration and memories would likely differ over time, the essence of what was conveyed in the declarations was that they were never told of respondent's use of the funds – something each would clearly remember.

communication with Register's attorney was false; and (2) respondent knowingly made this statement in an effort to mislead the superior court. Therefore, respondent is culpable of the willful violation of section 6068, subdivision (d).

***Count Four - (§ 6068, Subd. (o)(2) [Failure to Report Judgment])***

Section 6068, subdivision (o)(2), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity. Respondent stipulated to facts constituting a violation of section 6068, subdivision (o)(2).

**Aggravation<sup>10</sup>**

**Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

There were two acts of misconduct. This is an aggravating factor.

**Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)**

The found misconduct did not inflict significant harm on Register. Further, the harm to the administration of justice is inherent in the found misconduct. As such, the court finds no aggravation for significant harm.

**Mitigation**

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

Respondent has no prior record of discipline in nearly 19 years prior to the first act of misconduct. This indicates that his misconduct is likely aberrational, and unlikely to recur. This is a significant mitigating factor.

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<sup>10</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

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

Respondent stipulated to facts resulting in a culpability finding on one of the two found counts. In addition, respondent stipulated to many of the general facts surrounding this entire action. These stipulations saved the court time in trying this case. This is a mitigating factor.

**Good Character (Std. 1.2(e)(vi).)**

Respondent has participated in many pro bono activities, including handling small claims and traffic cases as a temporary judge for Los Angeles County. He has been a referee for the American Youth Soccer Organization (AYSO) and has been a member of its board. He also is on the board of a non-profit which distributes food to the homeless, and is actively involved in fundraising and lobbying on behalf of Israel. Respondent presented several declarations of persons who were very supportive of him and his work as an attorney. Several were attorneys, who had special knowledge of the importance of his obligations as an attorney. Each of the declarants praised respondent's integrity, honesty, and professionalism. Also, respondent had clients testify on his behalf, including Mr. Stone and Boris Zaidman. Both praised his skills as an attorney and his honesty as a person.

Respondent is entitled to substantial mitigation for this favorable character evidence.

**Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

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.) The standards offer a range of sanctions from

suspension to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Standard 2.6.)

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

The court also sought guidance in the case law. A review of similar cases involving misrepresentation or false statement to a court reveals discipline ranging from a public reproof to six months’ actual suspension. (*Grove v. State Bar* (1965) 63 Cal.2d 312 [public reproof where attorney who had previously been privately reproved intentionally misled judge into believing opposing party had defaulted]; *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166 [six months’ actual suspension for attorney who falsely represented to two judges in different states that he had personally served opposing party, and in aggravation attorney displayed lack of candor and had prior discipline record for similar misconduct].)

The court found *Bach v. State Bar* (1987) 43 Cal.3d 848, somewhat instructive. In *Bach*, the attorney intentionally misled a judge regarding whether he was ordered to produce his client at a mediation hearing. In aggravation, the attorney had a prior public reproof. There were no mitigating factors. Finding that his behavior threatened the public and undermined its confidence in the legal profession, the attorney was suspended for one year, execution of the suspension was stayed, and he was placed on probation for three years, with a 60-day actual suspension.

The present matter involves misconduct similar to that found in *Bach*. These two cases, however, are distinguished by mitigation. In *Bach*, the attorney had no mitigation and had a prior record of discipline consisting of a public reproof. Respondent, on the other hand, received mitigation credit for his good character evidence, his stipulation with the State Bar, and his lack of a prior record of discipline over an extended period of practice. Even though the present matter involves an additional charge of misconduct for failing to timely report a judicial sanction, the court finds that the facts and circumstances surrounding that violation warrant little additional weight in culpability.

Therefore, having considered the evidence and the law, the court finds that a 30-day period of actual suspension, among other things, is sufficient to protect the public, the courts, and the legal profession.

### **Recommendations**

It is recommended that respondent **Jonathan Grant Gabriel**, State Bar Number 140381, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years<sup>11</sup> subject to the following conditions:

1. Respondent is suspended from the practice of law for the first 30 days of probation;
2. Respondent must also comply with the following additional conditions of probation:
  - i. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the

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<sup>11</sup> The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, the report must be submitted on the next following quarter date, and cover the extended period.

In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;

- iii. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
  - iv. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California 94105-1639, **and** to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
  - v. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request; and
  - vi. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201).
3. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year will be satisfied and that suspension will be terminated.

### **Multistate Professional Responsibility Examination**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the discipline herein and

provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

**Costs**

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

Dated: January \_\_\_\_\_, 2014

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RICHARD A. HONN  
Judge of the State Bar Court