

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: <b>13-J-10041-RAH</b>
	)	
<b>MICHAEL WARREN COOPET,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 111063,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

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

On July 31, 2006, the Supreme Court of the State of Minnesota issued a final disciplinary order (the July 31, 2006 order) based on a stipulated resolution between Michael Warren Coopet (respondent) and the Director of the Office of Lawyers Professional Responsibility in Minnesota, arising out of professional misconduct that respondent committed in matters pending before that office. As a result of that discipline, respondent was actually suspended indefinitely and shall not be eligible to apply for reinstatement for a minimum of 36 months. He was also ordered to comply with additional conditions, including compliance with rules regarding notice to clients, other lawyers, and tribunals; payment of \$900 in costs and \$1,224.22 in related disbursements;<sup>2</sup> filing of a petition prior to reinstatement; completion and passage of a professional responsibility examination; and completion of continuing legal education requirements.

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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.

<sup>2</sup> Respondent has paid these costs and disbursements.

The State Bar Court admitted into evidence certified copies of the relevant Minnesota exhibits, including: the June 14, 2005 Petition for Disciplinary Action; the September 9, 2005 Supplementary Petition for Disciplinary Action which attached a prior California disciplinary stipulation; and the March 8, 2006 Stipulation for Discipline. The court takes judicial notice of the Minnesota Supreme Court's July 31, 2006 order attached to the Notice of Disciplinary charges in this matter.

Business and Professions Code section 6049.1, subdivision (a), provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction, shall be conclusive evidence that the member is culpable of professional misconduct in this state. As a result, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated the above-entitled proceeding pursuant to Business and Professions Code section 6049.1, subdivision (b), and Rules of Procedure of the State Bar, rules 5.350-5.354.

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon respondent in California; (2) whether, as a matter of law, respondent's culpability in the Minnesota proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Minnesota; and (3) whether the Minnesota proceeding lacked fundamental constitutional protection. (Section 6049.1, subdivision (b).)

Pursuant to section 6049.1, subdivision (b), respondent bears the burden of establishing either: (1) that the conduct for which he was disciplined in Minnesota would not warrant the imposition of discipline in California; or (2) that the Minnesota proceedings lacked fundamental constitutional protection. Respondent, however, did not establish either of these factors. Consequently, the court recommends that respondent be disbarred.

### **Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated these proceedings by filing a Notice of Disciplinary Charges on March 4, 2013. The State Bar was represented by Elizabeth Stine and respondent was represented by Edward Lear of Century Law Group.

The parties stipulated orally to culpability, but the court ordered the parties to file a written stipulation as to facts by August 13, 2013. Trial commenced on July 30, 2013, and the matter was submitted for decision on August 13, 2013. No stipulation was filed as ordered, and by an order dated October 24, 2013, the court rejected the parties' unilateral decision not to file a written stipulation, vacated the submission date, and ordered a stipulation to be filed within 14 days.

On November 8, 2013, the parties filed a stipulation, as ordered. The matter was submitted for decision that same day.

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

Respondent was admitted to the practice of law in the State of California on December 12, 1983, and since that time has been a member of the State Bar of California.

#### **Violations of the Rules Regulating Practitioners in Minnesota**

On about March 8, 2006, respondent entered into a stipulation with the Director of the Office of Lawyers Professional Responsibility in Minnesota in which respondent unconditionally admitted the allegations of the petitions, and the Director and respondent jointly recommended that the appropriate discipline be suspension from the practice of law for a period of 36 months. In the Stipulation, respondent stipulated to engaging in conduct, as laid out below, constituting grounds for imposition of discipline by violating Minnesota Rules of Professional Conduct, rules 1.1, 1.3, 1.4, 1.15, 1.16(d), 5.5, 8.1(a)(1), 8.1(a)(3), 8.4(c), and 8.4(d).

On July 31, 2006, the Minnesota Supreme Court filed an Order in case no. A05-1659 that respondent be suspended from the practice of law indefinitely. The Minnesota Supreme Court independently reviewed the file and approved the jointly recommended disposition with the exception that respondent be suspended indefinitely and shall not be eligible to apply for reinstatement for a minimum of 36 months plus certain conditions, including payment of \$900 in costs and \$1,224.22 in related disbursements. Respondent has since paid these costs and disbursements.

Based on the evidence before the court, it has not been established that the Minnesota proceedings lacked fundamental constitutional protection

#### **The Minnesota Department of Commerce Matter**

On October 16, 1992, the Minnesota Department of Commerce (Commerce Department) issued an insurance agent's license to respondent. Respondent was licensed to sell three lines of insurance: "life/accident/health" (LH); "property/casualty" (PC); and "variable annuity" (VA). Thereafter, to keep his insurance license current, respondent was to renew his license and pay the renewal fee for each line by October 31 of alternating years. On November 24, 1994, and November 22, 1996, respondent paid the \$170 renewal fee and renewed his license for all three lines. However, in 1998 respondent failed to pay the renewal fee and, as of November 1, 1998, he was no longer licensed to sell insurance in Minnesota.

In early 1999, respondent met with Michael Cardinal (Cardinal) regarding the purchase of an annuity. Cardinal told respondent that he needed \$10,000 in cash up front, and a monthly income of \$5,000 from the annuity. Respondent told Cardinal that an annuity from Transamerica Life Insurance & Annuity Company (Transamerica) would enable him to do that. On February 19, 1999, Cardinal completed an annuity application that respondent submitted to Transamerica.

However, in order to sell Cardinal the annuity, respondent had to be appointed as an agent for Legacy Marketing Group (Legacy).

On March 2, 1999, respondent completed an appointment application for Legacy in which he falsely indicated he was licensed as a Minnesota insurance agent. In fact, respondent's license lapsed when he failed to pay the October 31, 1998 renewal fee. With the application, respondent, or someone acting on his behalf, submitted a copy of an earlier insurance license that had been altered to indicate that respondent's license was valid until October 31, 1999.

On March 16, 1999, Transamerica completed an "insurance agent company appointment" indicating that respondent was appointed to conduct business on behalf of Transamerica. Transamerica submitted the application to the Commerce Department, which processed the appointment without realizing that respondent's insurance license had lapsed. On March 22, 1999, Legacy wrote to respondent indicating that his appointment had been completed and he was permitted to sell Legacy products for Transamerica.

On April 1, 1999, Transamerica informed Cardinal that it had requested the transfer of his Asbestos Workers Local 34 pension (in the amount of \$574,552.67) to Transamerica for the purchase of the annuity. On April 7, 1999, Transamerica issued the annuity to respondent to deliver to Cardinal. Respondent delivered the annuity to Cardinal on April 27, 1999. The sale of the annuity resulted in a commission to respondent of \$40,218.69. Although Cardinal had \$574,552.67 in his pension, which he used to purchase the annuity, the immediate surrender value of the annuity (i.e., the amount Cardinal would receive if he were to cancel the contract) was only \$538,528.

On December 7, 1999, respondent prepared an application to the Commerce Department to "reactivate" his insurance agent license. Respondent applied to again be licensed in each of

the three lines he had been licensed previously, LH, PC, and VA. Respondent did not pay the required fee, however, until February 24, 2000.

Cardinal was planning on using income from the annuity to cover his living expenses, as he had done with his pension. Cardinal requested that he receive monthly income payments of \$5,000. However, under the terms of the annuity, Transamerica imposed penalties on withdrawals if his “systematic income payments” exceed 10% of the value of his annuity. On March 3, 2000, Transamerica wrote to Cardinal informing him that the amount of his payment was being reduced because his scheduled withdrawal would result in his exceeding the 10% that he could withdraw on an annual basis without penalty.

On July 12, 2000, Cardinal wrote to Transamerica complaining that respondent had not explained the true nature of the annuity to him. On August 23, 2000, Cardinal again wrote to Transamerica. In that letter, Cardinal alleged that when he discussed the fact that he needed an immediate \$10,000 and monthly income of \$5,000, respondent should have told him that this would put him above the 10% maximum withdrawal amount. On October 20, 2000, Cardinal filed a complaint with the Commerce Department alleging, among other things, that the annuity respondent sold him was not a “suitable” product because he could not receive \$10,000 “up front” and \$5,000 per month, as he had told respondent he needed.

The Commerce Department initiated an investigation into Cardinal’s complaint. During the course of that investigation, respondent prepared a letter for Cardinal’s signature on Cardinal’s letterhead. In that letter respondent wrote (on behalf of Cardinal) that Cardinal was withdrawing his complaint against respondent, that Cardinal was not alleging any wrongdoing on the part of the respondent, that it was clear to Cardinal that respondent had done nothing wrong, that Cardinal did not want any action taken against respondent personally, and that Cardinal did not want the Commerce Department to conduct any investigation as to respondent’s part of the

transaction. Respondent presented the letter to Cardinal with the request that he sign it. Cardinal refused to sign the letter and turned it over to the Commerce Department.

In the course of investigating Cardinal's complaint, the Commerce Department discovered that respondent did not possess a valid insurance agent's license when he sold Cardinal the annuity in April of 1999. The Commerce Department contacted respondent regarding this unlicensed activity.

On April 11, 2001, in response to the Commerce Department's investigation, respondent wrote to investigator Lonnie Johnson. Despite knowing that his insurance license had lapsed in November 1998, and that he had not renewed it until December 1999, respondent wrote that he had attached "checks totaling \$160.00 which represent evidence of insurance licensure for the period in question." However, respondent did not attach copies of checks to his letter.

The Commerce Department requested that respondent provide copies of the checks. On April 16, 2001, respondent delivered copies of three checks to the Commerce Department. The checks, totaling \$120, were made payable to the Minnesota Department of Commerce. Despite knowing that at least two of the checks represented payment for notary commissions, respondent contended that the checks proved that he had paid his 1998 insurance license fee. Respondent's insurance license renewal fee, due on October 31, 1998, was \$170. Check number 5627, in amount of \$40, was issued on December 30, 1998. Check number 5664, in the amount of \$40, was issued on February 5, 1999. Check number 5757, in the amount of \$40, was issued on April 3, 1999. Neither the dates nor the amounts of the checks supported respondent's contention that the checks evidenced payment of his 1998 insurance renewal fee.

In copying the checks submitted to the Commerce Department, respondent covered up the "memo" portion of the checks so that the annotations on the checks could not be read. In fact, the annotations on two of the checks contained the word "Notary." The Commerce

Department was able to trace the checks and discovered that the checks were not, as respondent had claimed, to pay respondent's insurance license, but rather to pay notary public commissions.

After discovering the actual reason the checks had been issued, a representative of the Commerce Department wrote to respondent requesting additional copies of the checks. The Commerce Department did not inform respondent that it knew why the checks had been issued. Respondent indicated he would provide a "better copy" of the checks, but did not do so.

On April 25, 2001, respondent entered into a consent order for the revocation of his insurance agent license based on the allegations that he had "sold an annuity policy to a Minnesota resident without first obtaining an insurance agent license in violation of Minn. Stat. § 60K.02 (2000). The consent to entry of order signed by respondent specifically provided that the consent order "constitutes the entire settlement between the parties, there being no other promises or agreements, either express or implied."

Based upon respondent's conduct in the Cardinal matter, on August 27, 2001, respondent was sent a notice of investigation by the Office of Lawyers Professional Responsibility in Minnesota, requiring his reply within 14 days. Respondent did not reply.

On September 19, 2001, the Director of the Office of Lawyers Professional Responsibility in Minnesota (the Director) wrote respondent scheduling a meeting to discuss the allegations against him. On September 20, 2001, respondent provided a preliminary response indicating that the only thing he had received from the Director was "a copy of the letter you sent to Mr. Johnson acknowledging receipt of his initial complaint letter." However, "the letter" to Mr. Johnson was the notice of investigation.

On October 2, 2001, respondent replied to the notice of investigation. In his letter, respondent denied any wrongdoing and alleged that the Department of Commerce's action was based upon "an apparent ulterior motive or out of some type of personal vendetta, or in [sic]



attempt to smear me or ruin my legal career....” Despite knowing that he had not been licensed when he sold Cardinal the annuity, respondent reiterated his contention that he had paid to renew his insurance license. “In retrospect, I can only imagine that if in fact Mr. Johnson and the Department are correct that my insurance license did not expire because of failing to pay my renewal fee, then why would I have cancelled checks made out to the Department? I had not in the past and still do not do regular business with the Department; therefore, what else could the checks be for?”

At the time respondent made these statements he knew they were false and that the checks had been issued to pay the notary fees. Respondent’s false statements were made to conceal respondent’s misconduct as an insurance agent and his false statements to the Commerce Department.

On October 9, 2001, the Director wrote to respondent requesting copies of the checks forwarded to the Commerce Department. At the time the Director requested these checks, he was unaware that respondent had previously provided altered copies of the checks to the Commerce Department or that the Department had determined the checks were actually for the payment of notary fees. The Director simultaneously requested copies of the checks from the Commerce Department.

On October 14, 2001, respondent wrote to the Director indicating he was unable to locate copies of the checks having recently relocated his office. On October 16, 2001, the Commerce Department provided the Director’s Office with copies of the altered checks, indicating that the checks had been issued to pay the fee for notary licenses.

On December 6, 2001, the Director wrote to respondent, providing him with the information the Director had received from the Commerce Department. Respondent was informed that the Commerce Department’s records showed that the checks were issued for

payment of notary public commissions. The Director reiterated his request for copies of the checks at issue, “including the memo portion of the check.”

On December 17, 2001, more than two months after the Director’s original request for the checks, respondent wrote and indicated that he had “been unable to find the originals” and he would have to attempt to retrieve copies from the microfiche. On December 21, 2001, the Director wrote to respondent requesting that he provide the promised copies. When copies were not received by January 14, 2002, the Director again wrote respondent.

On January 17, 2002, respondent wrote the Director indicating that he had “just received today two (2) of the three copies of checks you requested.” However, respondent did not include the checks, but stated that he would send them shortly. Finally, on January 23, 2002, respondent provided copies of two of the requested checks. While there was clearly a notation on the “for” line of check number 5627, the quality of the copy was so poor that it was impossible to read. Therefore, on January 28, 2002, the Director wrote to respondent requesting the “original” copies of the checks.

On January 28, 2002, respondent sent a copy of the third check, number 5757. The check, which was dated April 3, 1999, indicated that it was for “notary.” Although this notation demonstrated that respondent clearly had not issued the check to pay for his insurance license, respondent wrote that the notary notation “does not mitigate my claim and position that I did not know at that specific time that my insurance license may have expired.”

On July 22, 2002, respondent provided new copies of checks 5627 and 5664. Check number 5627 had written in the “for” portion of the check that it was for “notary.” The second check, number 5664, contained no information in the “for” portion.

Respondent sold Michael Cardinal an annuity that was not appropriate for Cardinal and respondent sold the annuity knowing that he was not licensed to do so, and then misled the Commerce Department and the Director in an effort to conceal his misconduct.

### **Conclusions of Law**

#### *Violations of the Minnesota Bar Rules*

The Minnesota Supreme Court found that respondent's aforementioned conduct constituted violations of Minnesota Bar Rules, rules 8.4(c) and 8.1(a)(1) and (3).<sup>3</sup>

Minnesota Bar rule 8.4(c) states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Minnesota Bar rule 8.1(a)(1) and (3) states, in part, that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact or fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority.

#### *Violations of California Laws*

The court finds, as a matter of law, that respondent's culpability on the aforementioned conduct in the Minnesota proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Minnesota, as follows.

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<sup>3</sup> Minnesota Bar Rules, rules 8.1(a)(1) and (3) were revised in 2005. While the numbering of the rules were altered, the relevant portions of the rules remained unchanged. The State Bar failed to attach a copy of former rule 8.1. Accordingly, the court takes judicial notice of former rule 8.1.

***Section 6106 [Moral Turpitude]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Respondent willfully violated section 6106 by: misrepresenting the nature of the annuity he sold to Cardinal and whether the annuity was appropriate for Cardinal's needs; claiming to have a valid insurance agent's license and attempting to conceal the fact that he did not have a valid license; and altering documents and making misrepresentations to the Commerce Department and the Director of the Office of Lawyers Professional Responsibility in Minnesota about the checks issued to the Commerce Department.

***Section 6068, subd. (i) [Failure to Cooperate]***

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. Respondent willfully violated section 6068, subdivision (i), by failing to provide timely and accurate responses to inquiries of the Director.

**The DJW Painting, Cryer, Havlisch, Jungbauer, and Alford Matters**

**The DJW Painting Representation**

On June 1, 2001, Douglas Janu (Janu) and Joseph Wardarski (Wardarski) retained respondent to assist them in the incorporation of their business, DJW Painting. Janu and Wardarski paid respondent \$535. Respondent was to file Subchapter S-Corporation papers with the State of Minnesota and obtain tax identification numbers.

Respondent failed to deposit his clients' funds into his trust account. Respondent also failed to complete the work that he had been retained to perform.

After their initial meeting with respondent, Janu and Wardarski heard nothing further from respondent. After numerous attempts to reach respondent by telephone, Janu and

Wardarski went to his office. They discovered that the office was vacant and when they contacted the leasing agent, they were told there was an unlawful detainer action pending against respondent.

Janu and Wardarski subsequently paid the \$135 filing fee themselves to incorporate their business.

On October 8, 2002, Janu and Wardarski filed an ethics complaint with the Director's Office. On October 15, 2002, the Director issued a notice of investigations concerning the Janu/Wardarski complaint, instructing respondent to provide a written response within 14 days. Respondent did not reply within the required time.

Before responding to the complaint, respondent met with Janu and Wardarski and offered to return the \$535 if they withdrew their ethics complaint. They refused respondent's offer, however, respondent then refunded the \$535, plus an additional \$15.

When respondent did not reply to the notice of investigation, the Director sent respondent a follow-up letter on November 13, 2002. Finally, on November 28, 2002, respondent provided his response to the complaint.

Respondent acknowledged receipt of the \$535 and stated that \$135 of the \$535 represented the filing fee with the Secretary of State's office. Respondent stated that "without them even asking for a return of money, I immediately refunded the entire fee they had originally paid ... plus \$15.00 as sort of an 'extension-of-the-olive-branch' if you will (for a total refund of \$550.00 refunded in cash)." Respondent did not indicate that the payment was offered in exchange for Janu and Wardarski dropping their complaint.

On January 16, 2003, the Director wrote to respondent requesting confirmation that he had handled the funds in compliance with the Minnesota Bar Rules. Specifically, the Director requested "the bank statement evidencing the deposit, as well as the relevant portion of

[respondent's] trust account ledger and the subsidiary ledger for the Janu and Wardarski representation.” In a letter dated January 24, 2003, respondent replied that with regard to the bank statement, he had “looked through [his] records and [he did] not have one.” Respondent continued, “[n]onetheless, my bank trust account ledger is what I keep on my computer, and it does reflect the receipt. It is attached hereto for your perusal.” Although the ledger purported to show \$535 deposited on behalf of “Mr. D. Janu/J. Wardarski” into the trust account, the Director later learned respondent had manufactured the ledger and no such deposit had ever been made into the trust account.

On February 5, 2003, the Director wrote to respondent concerning his statement that respondent did not have a bank statement. The Director reminded respondent that he was required to keep such records and, if he no longer had the requested records, he should explain why and obtain duplicate copies from his bank. The Director provided respondent with an authorization to obtain bank records and instructed him to sign and return the authorization (and respond to the complaint) within 14 days. On February 13, 2003, respondent wrote indicating that he would be sending a response, but then failed to do so.

On February 27, 2003, the Director again wrote to respondent reminding him of the request for information and again asking him to return the signed bank authorization. On March 10, 2003, respondent replied that his mother had recently died and he had been dealing with financial and health concerns for the previous eight to ten weeks. Respondent requested additional time to respond, but did not provide the signed authorization.

On March 18, 2003 (in a letter dated March 17, 2003), respondent wrote that he had signed the authorization and would “forward that later today when I get the actual account number for that account.” Respondent did not forward the authorization. In a March 17, 2003 letter, respondent also claimed that the trust account records were “lost or misplaced” and that

respondent “had one important computer damaged.” However, respondent did not think that was “terribly important because [he was] prepared to state that it may be entirely possible that the \$135 filing fee (which [the Director] apparently [sought] to prove [respondent held] in [his] client trust account) was held in [respondent’s] regular attorney business account by mistake (and not by knowing or volitional act) to violate any ethical rule or obligation.”

Respondent’s statement regarding his handling of the funds (i.e., the funds were not placed in his trust account) was in direct contradiction to the representation respondent made on January 24, 2003, when submitting the “trust account ledger” reflecting that the funds were deposited into his trust account. In his March 17, 2003 letter, respondent again asserted that he had “voluntarily refunded the entire \$500 (sic) plus interest,” but did not acknowledge that he had offered to refund the money in exchange for Janu and Wardarski dropping their ethics complaint.

### **The Cryer Representation**

On June 22, 2000, Sterling E. Jones died. He was survived by three adult children, Sterline Cryer (Cryer), Robert Jones (Jones), and Starr Vann. In July 2000, Cryer retained respondent to assist her in her efforts to be appointed personal representative of her father’s estate.

On November 10, 2000, respondent filed an application for informal appointment of personal representative with the Ramsey County District Court, Probate Division. However, respondent failed to file all of the necessary documentation and the court rejected the application. On December 11, 2000, respondent re-filed the application for informal appointment of personal representative with the district court. However, respondent again failed to file all of the necessary documentation and the court again rejected the application.

On January 4, 2001, Curtis Eisenberg (Eisenberg), the attorney for Jones, notified respondent that he was representing Jones and provided respondent with information concerning a Renunciation of Priority for Appointment form that respondent had attempted to obtain from Jones.

On January 15, 2001, after obtaining the executed “Renunciation of Priority for Appointment” form from Jones, respondent again attempted to file the probate documents with the court. However, this time respondent did not pay the \$152 filing fee, stating that it “appears from the documentation returned to us that you retained the \$152.00 check that we had enclosed with our December 11th correspondence to you.” However, the district court had not retained the check and the court once again rejected the Cryer application.

For the next year, respondent did nothing to advance the Cryer representation. Frustrated over lack of progress on the case, Cryer indicated in late 2001 that she wished to terminate respondent’s services. However, Cryer later agreed to allow respondent to complete the matter.

On May 30, 2002, respondent once again attempted to file the application for informal appointment of personal representative with the Ramsey County District Court. As he had a year earlier, respondent again claimed that the check for the filing fee was “still on file” with the district court. The district court rejected the application and, on June 3, 2002, wrote to respondent informing him that the check was not being held and that it was their practice to return the checks.

Finally, on June 8, 2002, respondent successfully filed the required probate documents and paid the filing fee of \$152. However, respondent did not undertake the additional work that needed to be performed. On August 28, September 25, and November 13, 2002, the court sent notices requesting that Cryer file an acceptance and oath in order to qualify for letters of general



administration. Respondent did not notify Cryer of the court's request and did not assist her in complying with the court's request.

On September 4, 2002, Eisenberg wrote respondent and requested that he provide a number of documents concerning the representation. Eisenberg asked respondent to provide a copy of the preliminary accounting, to specify what assets had been gathered, to provide a timeline as to when the estate would be closed, and to state if any liens had been filed against the estate. Respondent did not respond.

On December 17, 2002, the district court issued an order dismissing Cryer's application without prejudice due to respondent's failure to file the acceptance and oath in order to qualify for letters of general administration. On February 22, 2003, two months after the district court dismissed Cryer's application, respondent wrote Cryer to obtain the documentation that should have been filed with the court months earlier. Without telling Cryer her application had been dismissed, respondent wrote "[b]ecause the court needs different forms, I hope you won't mind re-signing the enclosed two forms: Application for Informal Probate of Will and Acceptance of Appointment..." Respondent also requested that Cryer complete another document so that respondent could "represent to the court that every interested party has been contacted as required."

On September 9, 2003, respondent and Cryer appeared in the Ramsey County Court. However, the matter had to be continued because of respondent's failure to file affidavits of mailing.

On October 21, 2003, Cryer filed an ethics complaint against respondent with the Director. On October 29, 2003, the Director issued a notice of investigation concerning the complaint. Respondent then contacted Cryer and told her he would complete the work on the file (which was not yet completed) if Cryer withdrew her complaint.

On November 5, 2003, Cryer wrote the Director stating that “[a]fter careful consideration, I would like to retract” the complaint against respondent. The Director advised Cryer that her complaint could not be withdrawn. On November 18, 2003, Cryer called the Director and said she wanted the investigation to continue because respondent had not kept his promise to work on her case.

In a letter dated November 23, 2003 (but faxed to the Director on December 2, 2003), respondent falsely asserted that Cryer’s complaint “simply boils down to this: Mrs. Cryer was upset because we had difficulty reaching each other for a period of approximately 7-9 days.” Respondent claimed that when he was finally able to reach Cryer, “everything was fine with her. She even went so far as to write a letter to your office withdrawing her complaint. Her legal matter (probate) is moving ahead fine now and there is simply no issue outstanding with her vis-a-vis the Lawyers Professional Responsibility Board.”

Respondent’s statements were incomplete and misleading. At the time respondent wrote this letter, he had been representing Cryer for three and one-half years and still had not successfully completed the simple legal matter. Cryer was eventually forced to hire another attorney to complete the representation.

### **The Havlisch Representation**

On May 17, 2001, respondent met with Dorothy Havlisch (Havlisch) concerning a will that Havlisch wished to have prepared. Michael Walsh, an insurance agent with whom Havlisch had done business for a number of years, introduced respondent to Havlisch. After their meeting, respondent prepared a will, a revocable living trust, and a power of attorney form.

On May 25, 2001, respondent returned to Havlisch’s home to have her execute the various documents. Rather than having two witnesses to the execution of the will as required by

Minn. Stat. §524.2-502, only respondent witnessed the will. As a result of this failure, the will was invalid.

In the section of the will concerning the appointment of a testamentary guardian, the language respondent prepared stated that Havlisch nominated, “my friend Licia Landavazo (sic).” Havlisch knew nobody by that name.

Frustrated with respondent’s work on the file, Havlisch subsequently hired another attorney to prepare a new will.

### **The Jungbauer Representation**

In February 2002, Steven and Mary Jungbauer (the Jungbauers) retained respondent to prepare a will and trust. On March 17, 2002, they paid respondent \$1,500. Later the Jungbauers received the will and trust that respondent had prepared. After reviewing the documents, they noticed several deficiencies which they asked respondent to correct. Respondent indicated that he would.

During the course of the next 12 months, Mary Jungbauer was able to reach respondent by telephone on three occasions. Each time she spoke to respondent, he indicated that he would be completing the work. However, respondent never completed the work as promised. In addition, respondent never called or wrote the Jungbauers again. Eventually respondent’s telephone number was disconnected and the Jungbauers were unable to reach him.

On October 13, 2003, the Jungbauers’ new attorney wrote to respondent informing him that his office had prepared a new estate plan for the Jungbauers. On December 23, 2003, the Jungbauers sent a letter to respondent, by certified mail, requesting that respondent refund the \$1,500 they had paid him. Respondent never replied to the letter and never refunded the \$1,500 to the Jungbauers. The Jungbauers then filed a complaint against respondent with the Director’s Office.

On January 28, 2004, the Director issued a notice of investigation requiring respondent's response within 14 days. Respondent did not reply until February 19, 2004, when he faxed a letter to the Director's Office regarding a trust account inquiry and asked that the Jungbauer complaint be "re-sent."

On March 1, 2004, respondent sent the Director a fax in which he indicated that "with regard to the complaint of Steven & Mary Jungbauer (which I became aware of only a couple of weeks ago or so), can you please have it re-sent to me (I cannot locate it) so I may also respond to that matter?" On March 4, 2004, the Director re-sent the notice of investigation. However, another three weeks passed without any reply from respondent. In a letter dated March 24, 2004 (faxed on March 25, 2004), respondent indicated, "I will be sending a response tomorrow." He failed to send the response as promised.

In a letter dated March 27, 2004 (faxed on March 30, 2004), respondent wrote, "[i]n an effort to keep good relations between the Jungbauers and myself, I will offer to refund their fees paid. I normally don't do that, but because there was a sincere misunderstanding as to the nature of the engagement, I will in this case." Respondent's letter did not address any of the specifics of the Jungbauers' complaint and respondent never refunded any funds to the Jungbauers.

On April 9, 2004, the Director wrote to respondent pointing out that his response was "not responsive to the substance of the complaint." Respondent was directed to provide a written response to the substance of the complaint. Several more weeks passed with no response from respondent.

On April 26, 2004, respondent sent a fax apologizing for the delay in responding and indicating that he would be providing a response "no later than 5 PM tomorrow, April 27." Respondent did not send the response as promised.

On April 28, 2004, respondent sent a fax (dated April 27, 2004) in which he wrote, “I don’t have your most recent letter in front of me (I’ve had to move again, so I’m having difficulty locating many things), but I will try to give you a better understanding of this matter.” Respondent did not reply to the specific questions the Director had asked regarding respondent’s representation of the Jungbauers.

On April 30, 2004, the Director faxed a copy of the Jungbauer complaint to respondent. Respondent did not provide a written response to the complaint.

### **The Alford Representation**

On February 23, 2004, Denyce Alford (Alford) retained respondent to handle her mother’s estate. On that date, Alford paid respondent \$995, which she understood was full payment for the work respondent was to perform.

On March 16, 2004, respondent called Alford asking her to pay an additional \$250 to cover Anoka County’s filing fee. Alford initially resisted paying additional funds because of respondent’s statement that the original \$995 was to cover the filing fee. However, Alford acquiesced and wrote respondent a check for \$250. Rather than placing the \$250 in his trust account, respondent cashed the check.

On or about March 23, 2004, respondent filed the petition for appointment of personal representative with Anoka County. Respondent paid the filing fee with a check drawn on his personal checking account at 21<sup>st</sup> Century Bank. However, respondent did not have sufficient funds in the account to cover the check and it was returned to the court administrator as a dishonored check.

On June 1, 2004, Anoka County court administration wrote respondent notifying him of the dishonored check and informing him that payment in the amount of the check plus a \$30 service charge had to be made within five business days from the date of the letter. Alford

received a copy of the notice of dishonored check as well. Upon receiving notice of the dishonored check, Alford contacted respondent who assured her that he would take care of the problem. However, the five-day deadline for paying the filing fee passed without respondent making the required payment.

Finally, on June 16, 2004, ten days after the deadline for making payment to the court, respondent appeared at Anoka County with cash to cover his earlier dishonored check. However, respondent had still failed to file the required affidavit of mailing order or notice. Alford attempted to call respondent several times concerning this failure, but respondent failed to return her calls. Eventually, with the assistance of a friend who worked in the Anoka County probation office, Alford filed the required affidavit and obtained the letters testamentary. Respondent never refunded any portion of the fee Alford paid him.

### **Conclusions of Law**

#### *Violations of the Minnesota Bar Rules*

The Minnesota Supreme Court found that respondent's aforementioned conduct constituted violations of Minnesota Bar Rules, rules 1.1; 1.3; and 1.4.

Minnesota Bar rule 1.1 states that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

Minnesota Bar rule 1.3 states that a lawyer shall act with reasonable diligence and promptness in representing a client.

Minnesota Bar rule 1.4 states, in part, that a lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(f), is required;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;

- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

*Violations of California Laws*

The court finds, as a matter of law, that respondent's culpability on the aforementioned conduct in the Minnesota proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Minnesota, as follows.

***Rule 3-110(A) [Failure to Perform Legal Services with Competence]***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent willfully violated rule 3-110(A) by failing to perform legal services with competence in the DJW Painting, Cryer, Havlich, Jungbauer, and Alford matters.

***Section 6068, subd. (m) [Failure to Communicate]***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent willfully violated section 6068, subdivision (m), by failing to adequately respond to reasonable status inquiries and keep his clients reasonably informed of significant developments in the DJW Painting, Cryer, and Alford matters.<sup>4</sup>

**The Client Trust Account Matter**

Since at least June 2001, respondent has engaged in a pattern of failing to deposit client funds in his trust account and using his trust account as a personal account.

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<sup>4</sup> In the Minnesota proceedings, respondent was not found culpable of a charge equivalent to failing to refund unearned fees.

As indicated above, on June 1, 2001, Janu and Wardarski retained respondent to file Subchapter S-Corporation papers with the State of Minnesota and to obtain tax identification numbers. Janu and Wardarski paid respondent \$535.<sup>5</sup> Respondent indicated that \$135 of this payment was to pay the Secretary of State's filing fee. Respondent was required to place the \$135 into his trust account. Respondent failed to do so.

As indicated above, on February 23, 2004, Alford retained respondent to assist her in being named the personal representative for her mother's estate. Alford paid respondent \$950. In addition, on March 16, 2004, Alford paid respondent an additional \$250 to pay the Anoka County filing fee. Respondent was required to place the \$250 into his trust account. Respondent failed to do so.

On January 5, 2004, respondent appeared at a US Bank branch office in Phoenix, Arizona. Respondent maintained his lawyer trust account with US Bank. Respondent cashed a counter check for "cash" drawn on Valley Bank in the amount of \$100. However, respondent cashed this check knowing that his Valley Bank account was closed. The Valley Bank check was returned and US Bank withdrew \$100 from respondent's trust account causing an overdraft in his trust account.

## **Conclusions of Law**

### *Violations of the Minnesota Bar Rules*

The Minnesota Supreme Court found that respondent's aforementioned conduct constituted violations of Minnesota Bar Rules, rule 1.15.

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<sup>5</sup> In the Minnesota proceedings, it was determined that respondent did not provide clients with a written retainer agreement explaining that any portion of the funds were earned upon payment. Consequently, respondent was required to place the funds in his trust account, which he did not do. California does not have such a requirement, and, consequently, this court does not base any findings of culpability on such conduct.



Minnesota Bar rule 1.15 states, in part, that all funds of clients or third persons held by a lawyer or law firm in connection with a representation must be deposited in one or more identifiable trust accounts. No funds of the lawyer or law firm may be deposited in the lawyer's trust account.<sup>6</sup>

*Violations of California Laws*

The court finds, as a matter of law, that respondent's culpability on the aforementioned conduct in the Minnesota proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Minnesota, as follows.

***Rule 4-100(A) [Failure to Maintain Client Funds in Trust]***

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. "An attorney violates [rule 4-100] when he or she fails to deposit and manage funds in the manner delineated by the rule, even if this failure does not harm the client. [Citation.]" (*Murray v. State Bar* (1985) 40 Cal.3d 575, 584.) Respondent willfully violated rule 4-100(A) by: (1) using his trust account as a personal account; and (2) failing to deposit in his trust account the \$135 he received from Janu and Wardarski to pay the Secretary of State's filing fee and the \$250 he received from Alford to pay the Anoka County filing fee.

**The Minnesota State Bar Investigation Matter**

On January 20, 2004, the Director received an overdraft notice from US Bank indicating respondent's lawyer trust account was overdrawn. On January 21, 2004, respondent was asked for an explanation of the overdraft and to provide various trust account books and records. Respondent failed to respond.

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<sup>6</sup> The Minnesota Bar Rules lay out limited exceptions, none of which are applicable here.

On February 10, 2004, the Director sent respondent a follow-up letter. Respondent was reminded that he had a professional obligation to cooperate with the Director's inquiry.

On February 19, 2004, respondent faxed a letter to the Director (dated February 17, 2004) stating that, "the overdraft can be easily explained." Respondent wrote that, "having no cash upon my person and needing some, I cashed a check from the account in question for \$100." Respondent further indicated that there were no client funds in the account. Respondent did not provide any of the requested books and records, nor did he explain why he was using his trust account for personal purposes.

On February 25, 2004, the Director wrote respondent noting that he had not enclosed the requested statements or ledgers. Respondent was asked to provide his "November 2003 through January 2004 trust account bank statements and subsidiary ledgers for all clients who had balances or activity in [his] trust account during that period." Respondent failed to do so.

On March 19, 2004, the Director again wrote to respondent requesting the information sought previously. On March 25, 2004, respondent wrote apologizing for the delay and indicating that he had "ordered the statements you requested from US Bank and as soon as I receive them, I will immediately forward them to you." Respondent did not provide an explanation for why he was holding personal funds in his trust account.

On March 28, 2004, respondent faxed the Director his bank statement for the period from February 2 through February 29, 2004, but failed to provide the November 2003 through January 2004, trust account bank statements and subsidiary ledgers. Although respondent stated he would "forward the January and December Statements when [he] obtain[ed] them," he did not do so.

On April 21, 2004, the Director wrote respondent pointing out that in "the three months since our initial request, the only document you have provided is a copy of your February 2004

trust account bank statement....” The Director informed respondent that if he failed to produce the materials on a timely basis, he would be expected to appear at the Director’s office on May 3, 2004.

On April 30, 2004, respondent called the Director’s Office and spoke to Senior Assistant Director Patrick Burns. Respondent informed Burns that because the April 21<sup>st</sup> letter had been sent to an address that was merely a “mail drop,” respondent had only that day received the Director’s letter. Respondent further indicated that because it was necessary for him to obtain copies of the requested trust account bank statements from his bank, he would be unable to meet the April 30, 2004 deadline.

Respondent was given an extension until May 5, 2004, to produce the required materials. On May 3, 2004, respondent wrote to the Director stating that he was having difficulty obtaining the required documentation. On May 4, 2004, respondent faxed his bank statements for November 2003, December 2003, and January 2004. From these statements, the Director discovered that the overdraft had been caused by a deposited item being returned. Respondent did not explain, however, that the returned item was the result of his writing a check on a closed account.

On July 1, 2004, US Bank provided the Director with a copy of the check causing the overdraft. It was at that time, as a result of the information provided by US Bank, that the Director first learned that respondent had issued a check on a closed account. As a result of that information, the Director initiated a formal disciplinary investigation. On August 20, 2004, in response to the Director’s January 21, 2004, notice of investigation in the trust account disciplinary matter, respondent falsely asserted that he “simply utilized an improper check book [sic] (that is, thinking it was an active account held).”

After that time respondent continued to use his trust account as a personal checking account and subsequently overdrew the account on several occasions. On October 26, 27, and 29, 2004, and December 13, 2004, the Director received notices of overdrafts on respondent's trust account. On December 16 and 17, 2004, respondent's sworn statement was taken regarding the various pending investigations. On December 17, 2004, respondent stated that as of December 13, 2004, he had \$1,763.61 in his trust account and acknowledged that none of the funds were client funds; rather, it was all "personal money" that he had deposited into the account. Respondent further testified that he had remedied the problems causing the overdraft and from that date (December 17, 2004) forward, he was not going to be using the trust account as a personal account.

Respondent, however, continued to use the trust account as a personal account. On January 18, 19, and 21, 2005, the Director received notices that respondent's trust account was again overdrawn.

### **Conclusions of Law**

#### *Violations of the Minnesota Bar Rules*

The Minnesota Supreme Court found that respondent's aforementioned conduct constituted violations of Minnesota Bar Rules, rules 8.1 and 8.4(c) and (d).

Minnesota Bar rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

#### *Violations of California Laws*

The court finds, as a matter of law, that respondent's culpability on the aforementioned conduct in the Minnesota proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent's misconduct in Minnesota, as follows.

***Section 6106 [Moral Turpitude]***

Respondent willfully violated section 6106 by making false statements to the Director in an effort to conceal his mishandling of client funds.

***Section 6068, subd. (i) [Failure to Cooperate]***

Respondent willfully violated section 6068, subdivision (i), by failing to provide timely and accurate responses to inquiries of the Director.

**The Unauthorized Practice of Law Matter**

Respondent's attorney registration license fee is due on January 1st of each year. On January 1, 2003, respondent failed to pay the attorney registration fee and was fee suspended.

On January 16, 2003, the Director became aware that respondent was suspended for failure to pay fees. On that same day, the Director wrote to respondent asking that he provide proof of payment of the attorney registration fee and an affidavit concerning his practice of law since January 1, 2003. Respondent failed to respond.

On February 5, 2003, the Director again wrote to respondent. The Director included a copy of the January 16, 2003 letter and again requested that respondent reply. Respondent failed to respond. On February 27, 2003, the Director wrote to respondent concerning the status of his practice since he had become suspended for failure to pay fees. Respondent was reminded that failure to cooperate with an investigation by the Director's office could form a separate basis for discipline.

On March 18, 2003, in a letter dated March 17, 2003, respondent replied to the Director's inquiry. However, respondent did not, as he had been requested, provide proof of his payment of the attorney registration fee or an affidavit concerning his practice since January 1, 2003.

Respondent indicated only that the non-payment of fees "was an administrative glitch, so to speak." Respondent indicated that his estranged wife "sent in the payment before [he] signed the

fee statement.” Respondent did not explain that while he had failed to sign the fee statement, the fee statement was sent nearly a month late, being received at the Attorney Registration Office on February 4, 2003.

On March 31, 2003, respondent faxed the Director a letter (dated March 30, 2003). Respondent did not provide proof of payment of the attorney registration fee, indicating that he had to have his “estranged wife” obtain a copy of the canceled check. However, respondent never obtained the canceled check and never provided further evidence of compliance. The Attorney Registration Office confirmed that respondent did pay his attorney registration fee on February 4, 2003.

On January 1, 2004, respondent’s license was again suspended when he failed to pay his attorney registration fee. On January 28, 2004, the Director wrote to respondent concerning his fee suspension. Respondent was again requested to provide an affidavit concerning his practice of law. Respondent failed to reply.

On April 9, 2004, the Director wrote respondent concerning the Jungbauer representation. In that letter, the Director also requested that respondent provide an affidavit concerning his law practice since his attorney fee suspension on January 1, 2004.

On May 1, 2004, respondent provided an “Affidavit of Practice.” In the unnotarized document, respondent stated “[s]ince January 1, 2004, I have learned that my attorney registration has not been paid in a timely fashion; and I will not practice law as long as my attorney registration fee remains unpaid.” Respondent did not provide any of the requested information concerning his practice up to that time.

On May 18, 2004, respondent began work as an attorney for the Benepartum Law Office Group (Benepartum) in Minneapolis, Minnesota. Despite his assurance in his May 1, 2004 affidavit that he would not practice law as long as his attorney registration fee remained unpaid,

respondent worked for Benepartum as a lawyer. Respondent never informed his employer that he was suspended for failure to pay fees and not authorized to practice law.

On July 29, 2004, respondent paid his attorney registration fee. On August 13, 2004, the Director wrote to respondent demanding that he specifically address the question of his practice while suspended for failure to pay fees. On August 20, 2004, respondent submitted an unnotarized document in which he asserted he did “not believe [he had] ‘practiced law’ while [his] license fee had been unpaid.” Respondent made this assertion despite the fact he was clearly holding himself out as an attorney for the Benepartum Law Group.

On January 1, 2005, respondent again allowed his license to lapse for failure to pay his attorney registration fee. Respondent did not pay the fee until February 2, 2005.

### **Conclusions of Law**

#### *Violations of the Minnesota Bar Rules*

The Minnesota Supreme Court found that respondent’s aforementioned conduct constituted violations of Minnesota Bar Rules, rules 5.5; 8.1; and 8.4(c) and (d).

Minnesota Bar rule 5.5 states, in part, that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. And a lawyer that is not admitted to the practice of law in Minnesota must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in Minnesota.

#### *Violations of California Laws*

The court finds, as a matter of law, that respondent’s culpability on the aforementioned conduct in the Minnesota proceeding would warrant the imposition of discipline in California under the laws or rules applicable in this State at the time of respondent’s misconduct in Minnesota, as follows.

***Rule 1-300(B) [Unauthorized Practice of Law in another Jurisdiction]***

Rule 1-300(B) provides that an attorney must not practice law in a jurisdiction where to do so would be in violation of regulations of that jurisdiction's profession. Minnesota State Bar Rules, rule 5.5(b) states, "A lawyer who is not admitted to practice in this jurisdiction shall not: ... hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction." Respondent willfully violated rule 1-300(B) by practicing law in Minnesota while he was fee suspended in that state.

***Section 6106 [Moral Turpitude]***

Respondent willfully violated section 6106 by knowingly making false statements to the Director.

***Section 6068, subd. (i) [Failure to Cooperate]***

Respondent willfully violated section 6068, subdivision (i), by failing to provide timely and accurate responses to inquiries of the Director.

**Misconduct Resulting in Suspension of Respondent's California Law License**

Part of respondent's discipline in Minnesota involved reciprocal discipline from California. Consequently, the court gives no weight to this portion of the Minnesota discipline.

**Aggravation<sup>7</sup>**

**Prior Record of Discipline (Std. 1.5(a))**

Respondent has a prior record of two instances of misconduct in California.

In the first matter, on September 9, 2005, the California Supreme Court in case no. S135175 ordered respondent suspended for one year, stayed, with two years' probation and a minimum actual suspension of 60 days and until he made restitution of \$5,000. In this matter,

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<sup>7</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.



respondent stipulated to misconduct in a single client matter, including failing to perform legal services with competence, practicing law while not an active member, failing to respond to reasonable client inquiries, failing to account, and failing to refund unearned fees. In mitigation, respondent had no prior record of discipline. No aggravating factors were involved.

In the second matter, on December 12, 2006, the California Supreme Court in case no. S147166 ordered respondent suspended for two years, stayed, with three years' probation including a nine-month period of actual suspension. In this matter, respondent stipulated that he failed to comply with probation conditions associated with his first discipline as well as the Supreme Court's rule 9.20 order.<sup>8</sup> In mitigation, respondent was candid and cooperative with the State Bar. In aggravation, respondent had a prior record of discipline.

**Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)**

Respondent's misconduct reflects multiple acts. This is an aggravating factor.

**Mitigation**

**Extreme Emotional/Physical Difficulties (Std. 1.6(d).)**

During the period of misconduct, respondent suffered from serious emotional problems, in part relating to the deaths of his mother and his brother. He also was distracted from his obligations as an attorney by a very contentious divorce. He has since received treatment from this condition and is now committed to focusing on his duties as an attorney. He did not, however, offer any testimony from a medical professional concerning his condition, his treatment, or his recovery. In light of respondent's failure to produce such expert testimony, respondent is only entitled to minimal mitigation for his emotional condition.

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<sup>8</sup> This rule was previously identified as California Rules of Court, rule 955.

**Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent voluntarily entered into a substantial stipulation which saved trial time in this matter. However, the stipulation was simply a copy of the Minnesota charges. Nevertheless, respondent is entitled to some mitigation for his cooperation with the State Bar.

**Good Character (Std. 1.6(f).)**

Respondent presented several witnesses to testify regarding his good character. Many of these witnesses were attorneys, who are particularly aware of the traits of good character necessary to properly practice law. All of the witnesses and declarations filed in support of respondent were very complimentary of his changed attitude and his good character, although some of the witnesses did not display a detailed knowledge of his misconduct. In particular, the court found the declaration of Marc Sommers, and the testimony of Diana Stange, Steven Dillon, and Daniel Willett to be particularly informative. Respondent is entitled to mitigation for his evidence of good character.

**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. 1.1.)

Standard 1.7 provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances.

In this case, the standards provide for the imposition of a minimum sanction ranging from suspension to disbarment. (Standards 2.2(a); 2.5(b), 2.6(b); 2.7; 2.8(b); and 2.15.) Most notably, standard 2.7 states that disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud, corruption, or concealment of a material fact. This standard further

provides that 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 practice of law.

Due to respondent's prior record of discipline, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current suspension: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities.

The standards, however, are guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards. [Citation.]" (*Id.* at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

The State Bar argued that respondent should be disbarred. Respondent, on the other hand, contended that the present misconduct pre-dated respondent's prior discipline and urged that the court recommend, at most, a 60-day period of actual suspension.

While the present matter involves some repetition of offenses found in respondent's prior California disciplines, the court takes into consideration the timing of respondent's prior discipline. Although the present case marks respondent's third discipline, the court gives diminished weight to respondent's prior discipline due to the fact that most of the present misconduct occurred before or at the same time as respondent's two prior California disciplines.

(*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) The court therefore considers the totality of the findings in respondent's present and prior disciplines to determine what the discipline would have been had all the charged misconduct in this period been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Here, respondent's second California discipline was for a violation of rule 9.20. Rule 9.20 violations are deemed a serious ethical breach for which disbarment generally is considered the appropriate discipline. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Discipline short of disbarment has been imposed in rule 9.20 violation matters on occasion where the late filing of a compliance affidavit was the only issue and the attorney has demonstrated good faith, significant mitigation, and little or no aggravation. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; and *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.) Such is not the case here.

Had the present discipline been presented at the same time as respondent's two prior disciplines, the court would have found little justification to recommend any discipline short of disbarment. The magnitude of the egregious misconduct in the present matter involving – among other things – repeated misrepresentations and dishonesty, give the court grave public protection concerns. Respondent's repeated deceptions to multiple regulatory agencies, including lying and manufacturing or altering evidence, demonstrate his unwillingness or inability to conform to the strict ethical requirements of the practice of law.

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

### **Recommendations**

It is recommended that respondent **Michael Warren Coopet**, State Bar Number 111063, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

#### **California Rules of Court, Rule 9.20**

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

#### **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.

#### **Order of Involuntary Inactive Enrollment**

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

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

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RICHARD A. HONN  
Judge of the State Bar Court