

FILED

APR 14 2014

STATE BAR COURT
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8 ROBERT G. SCURRAH, JR.

9
10 **STATE BAR COURT**

11 **HEARING DEPARTMENT- LOS ANGELES**

12 **In the Matter of:**) **Case No.: 13-0-14073 RAH et. al.**
13)
14 **ROBERT G. SCURRAH, JR.,**) **RESPONSE TO NOTICE OF**
15 **State Bar Number 82766,**) **DISCIPLINARY CHARGES**
16) **13-0-14073**
17 **A Member of the State Bar.**)
18) **[Rule of Procedure 5.43]**
19)



22 **Address for Service**

23 All documents in this matter should be served on respondent's counsel at the
24 address above.

25 **Response to Allegations**

26 1. Respondent admits the allegations of paragraph 1.

27 **Count 1 - Case No. 13-O-14073 Nance/Bryant (Bus. & Prof. Code §6106.3)**

28 2. Respondent denies the allegations of paragraph 2.

Count 2 - Case No. 13-O-15642 Buchan (Bus. & Prof. Code §6106.3)

3. Respondent denies the allegations of paragraph 3.

1 **Count 3 - Case No. 13-O-16003 Nikolaou (Bus. & Prof. Code §6106.3)**

2 4. Respondent denies the allegations of paragraph 4.

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4 **Count 4 - Case No. 13-O-16163 Pekrul (Bus. & Prof. Code §6106.3)**

5 5. Respondent denies the allegations of paragraph 5.

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7 **Count 5 - Case No. 13-O-16575 Gunn (Bus. & Prof. Code §6106.3)**

8 6. Respondent denies the allegations of paragraph 6.

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10 **Count 6 - Case No. 13-O-16726 Griswold (Bus. & Prof. Code §6106.3)**

11 7. Respondent denies the allegations of paragraph 7.

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13 **Count 7 - Case No. 13-O-16808 Besirovic (Bus. & Prof. Code §6106.3)**

14 8. Respondent denies the allegations of paragraph 8.

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16 **First Affirmative Defense**

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18 The Notice of Disciplinary Charges (NDC), and every count in it, fails to plead a
19 disciplinable offense.

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21 **Second Affirmative Defense**

22 Imposition of Discipline would violate Respondent's Procedural Due Process
23 rights because he had no notice that his conduct was actionable.

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25 **Third Affirmative Defense**

26 The State Bar of California is judicially estopped from contending that Civil Code
27 section 2944.7 applies to "loan modification services" which precede negotiation with the
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1 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,
2 United States District Court, Northern District of California (attached document 1, 63:14-
3 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.
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5 **Fourth Affirmative Defense**

6 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil
7 Code § 2944.7 will deprive him of a liberty interest without substantive due process
8 because; 1) Respondent has a constitutionally protected liberty interest I pursuing his
9 profession free from unreasonable government interference and 2) the State Bar's current
10 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan
11 modifications to save their homes.
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14 **Fifth Affirmative Defense**

15 The State Bar's interpretation of § 2944.7 lacks a rational basis because it
16 contradicts the statute's text and, far from being rationally related to a proper legislative
17 goal, actively thwarts it.
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20 **Sixth Affirmative Defense**

21 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions
22 rendered the statute unclear and highly debatable, thus precluding discipline.
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24 **Seventh Affirmative Defense**

25 The State Bar of California is barred from prosecuting Mr. Scurrah by its
26 inequitable conduct including, but not limited to:
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(1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes completely inconsistent with its position in *Duenas*;

(2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with applicable rules by closing several complaints (the Dise, Franjic and Fields matters) raising the identical issues as those in the NDC on the grounds that "this matter does not warrant further action" and then choosing to charge 2944.7 on the basis of taking phased fee payments pursuant to contracts that are identical in material respects;

(3) refusing to negotiate in good faith during the Early Neutral Evaluation Conference (ENEC) held in September 2012 in retaliation for Mr. Scurrah's filing of a civil action against the State Bar and Jayne Kim personally seeking a judicial interpretation of Civil Code section 2944.7 and challenging the constitutionality of 2944.7 as applied by the State Bar;

(4) disclosing confidential information concerning Mr. Scurrah to a former State Bar employee who had a been a client of CDA and encouraging her to file a complaint.

Dated: April 9, 2014

By: 
Mark N. Zanides
Attorney for Respondent
ROBERT G. SCURRAH

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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of Laguna Niguel, California; my business address is 34145 Pacific Coast Highway #216, Dana Point, Ca 92629.

On APRIL 9, 2014, I served a copy of the foregoing document in entitled:

RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

CASE NO 13-0-14073 et. al.

on all interested parties in said case as follows:

STATE BAR OF CALIFORNIA
ANTHONY GARCIA
SENIOR TRIAL COUNSEL
845 S. Figueroa Street
Los Angeles, California 90017-2515.

BY OVERNIGHT DELIVERY SERVICE. The documents were placed in sealed, addressed envelopes on the above date and delivered to the UPS office at 30251 Golden Lantern in Laguna Niguel, with delivery charges fully prepaid, in time for collection on that day and for delivery on January 20, 2014.

BY MAIL: I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct. This declaration is executed in Laguna Niguel, California, on April 9, 2014



Yanel Zanides