

1 MARK N. ZANIDES, Cal. Bar. No. 58717  
2 LAW OFFICE OF MARK ZANIDES  
3 34145 Pacific Coast Highway #216  
4 Laguna Niguel, CA 92677  
5 Telephone: (949) 545-6526  
6 Facsimile: (888) 422-8816

7 Attorneys for Respondent  
8 ROBERT G. SCURRAH, JR.

**FILED**

**APR 28 2014**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT- LOS ANGELES

9  
10 **In the Matter of:** ) **Case No.: 13-0-16884 RAH et. al.**  
11 )  
12 **ROBERT G. SCURRAH, JR.,** ) **RESPONSE TO NOTICE OF**  
13 **State Bar Number 82766,** ) **DISCIPLINARY CHARGES**  
14 ) **13-0-16884**  
15 **A Member of the State Bar.** )  
16 ) **[Rule of Procedure 5.43]**  
17 )

18 **Address for Service**

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

kwiktag® 048 622 140



21 **Response to Allegations**

22 1. Respondent admits the allegations of paragraph 1.

23 **Count 1 - Case No. 13-O-16884 (Bus. & Prof. Code §6106.3)**

24 2. Respondent denies the allegations of paragraph 2.

25 **First Affirmative Defense**

26  
27 The Notice of Disciplinary Charges (NDC) fails to plead a disciplinable offense.  
28

1 **Second Affirmative Defense**

2  
3 Imposition of Discipline would violate Respondent's Procedural Due Process  
4 rights because he had no notice that his conduct was actionable.

5 **Third Affirmative Defense**

6  
7 The State Bar of California is judicially estopped from contending that Civil Code  
8 section 2944.7 applies to "loan modification services" which precede negotiation with the  
9 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,  
10 United States District Court, Northern District of California (attached document 1, 63:14-  
11 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.

12  
13 **Fourth Affirmative Defense**

14  
15 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil  
16 Code § 2944.7 will deprive him of a liberty interest without substantive due process  
17 because; 1) Respondent has a constitutionally protected liberty interest in pursuing his  
18 profession free from unreasonable government interference and 2) the State Bar's current  
19 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan  
20 modifications to save their homes.

21  
22 **Fifth Affirmative Defense**

23  
24 The State Bar's interpretation of § 2944.7 lacks a rational basis because it  
25 contradicts the statute's text and, far from being rationally related to a proper legislative  
26 goal, actively thwarts it.  
27  
28

1 **Second Affirmative Defense**

2  
3 Imposition of Discipline would violate Respondent's Procedural Due Process  
4 rights because he had no notice that his conduct was actionable.

5 **Third Affirmative Defense**

6  
7 The State Bar of California is judicially estopped from contending that Civil Code  
8 section 2944.7 applies to "loan modification services" which precede negotiation with the  
9 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,  
10 United States District Court, Northern District of California (attached document 1, 63:14-  
11 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.

12  
13 **Fourth Affirmative Defense**

14  
15 Disciplining Respondent under the State Bar's current interpretation of Cal. Civil  
16 Code § 2944.7 will deprive him of a liberty interest without substantive due process  
17 because; 1) Respondent has a constitutionally protected liberty interest in pursuing his  
18 profession free from unreasonable government interference and 2) the State Bar's current  
19 interpretation of § 2944.7 prevents Respondent from representing clients seeking loan  
20 modifications to save their homes.  
21

22 **Fifth Affirmative Defense**

23  
24 The State Bar's interpretation of § 2944.7 lacks a rational basis because it  
25 contradicts the statute's text and, far from being rationally related to a proper legislative  
26 goal, actively thwarts it.  
27  
28

1 **Sixth Affirmative Defense**

2  
3 Even if § 2944.7 prohibits separation of legal services, the Bar's own actions  
4 rendered the statute unclear and highly debatable, thus precluding discipline.

5 **Seventh Affirmative Defense**

6  
7 The State Bar of California is barred from prosecuting Mr. Scurrah by its  
8 inequitable conduct including, but not limited to:

9  
10 (1) adopting a construction of Civil Code section 2944.7 for disciplinary purposes  
11 completely inconsistent with its position in *Duenas*;

12  
13 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with  
14 applicable rules by closing several complaints (the Dise, Franjic and Fields matters)  
15 raising the identical issues as those in the NDC on the grounds that "this matter does not  
16 warrant further action" and then choosing to charge 2944.7 on the basis of taking phased  
17 fee payments pursuant to contracts that are identical in material respects;

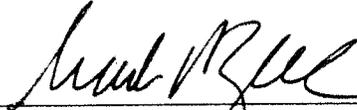
18  
19 (3) refusing to negotiate in good faith during the Early Neutral Evaluation  
20 Conference (ENEC) held in September 2012 in retaliation for Mr. Scurrah's filing of a  
21 civil action against the State Bar and Jayne Kim personally seeking a judicial  
22 interpretation of Civil Code section 2944.7 and challenging the constitutionality of  
23 2944.7 as applied by the State Bar;

24  
25 (4) disclosing confidential information concerning Mr. Scurrah to a former State  
26 Bar employee who had a been a client of CDA and encouraging her to file a complaint.  
27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: April 24, 2014

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

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to this  
3 action.

4 On April 24, 2014, I served a copy of the foregoing document in entitled:  
5

6 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**  
7 **13-0-16884**

8 on all interested parties in said case as follows:

9 STATE BAR OF CALIFORNIA  
10 OFFICE OF THE CHIEF TRIAL COUNSEL  
11 ANTHONY J, GARCIA, No 171419  
12 SENIOR TRIAL COUNSEL  
13 8545 South Figueroa Street  
14 Los Angeles, California 90017-2515

15 **[X] BY MAIL: [ CCP sections 1013 and 1013(a)**

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

19 I declare under penalty of perjury under the laws of the State of California the foregoing  
20 is true and correct. This declaration is executed in Dana Point, California, on April 24,  
21 2014.

22   
23 Yanel Zandres