

OCT 08 2014

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STATE BAR COURT CLERK'S OFFICE
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4 Attorney for Respondent
ROBERT G. SCURRAH, JR.
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6 STATE BAR COURT

7 HEARING DEPARTMENT- LOS ANGELES
8

9 In the Matter of) Case No.: 14-O-2017
10)
ROBERT G. SCURRAH, JR.,) RESPONSE TO NOTICE OF
11 State Bar Number 82766) DISCIPLINARY CHARGES
12) 13-0-12543
A Member of the State Bar.)
13) [Rule of Procedure 5.43]
14)

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16 Address for Service

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



19
20 Response to Allegations

21 1. Respondent admits the allegations of paragraph 1.

22 Count 1 - Case No. 14-O-2017 (Pyarali) (Bus. & Prof. Code §6106.3)

23 2. Respondent denies the allegations of paragraph 2.
24

25 First Affirmative Defense

26
27 The Notice of Disciplinary Charges (NDC), and every count in it, fails to plead a
28

1 disciplinable offense.

2
3 **Second Affirmative Defense**

4 Imposition of Discipline would violate Respondent's Procedural Due Process
5 rights because he had no notice that his conduct was actionable.
6

7 **Third Affirmative Defense**

8 The State Bar of California is judicially estopped from contending that Civil Code
9 section 2944.7 applies to "loan modification services" which precede negotiation with the
10 lender servicer because of its position in *Duenas v. Brown*, case no. 10-CV-05884-RS,
11 United States District Court, Northern District of California (attached document 1, 63:14-
12 28, 7:1-5), which it successfully asserted to defeat Federal jurisdiction in that matter.
13
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15 **Fourth Affirmative Defense**

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

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

1 **Sixth Affirmative Defense**

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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**

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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*;

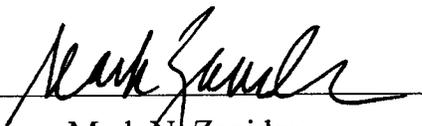
12
13 (2) misleading Mr. Scurrah that CDA's fee agreement was in compliance with
14 applicable rules by closing several complaints (the Dise, Franjic and Fields matters)
15 raising the identical issues as those in the NDC on the grounds that "this matter does not
16 warrant further action" and then choosing 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.
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Dated: September 30, 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. I am employed in the City of Laguna Niguel, California; my business address is 34145 Pacific
4 Coast Highway #216, Dana Point, Ca 92629.

5 On October 1, 2014, I served a copy of the foregoing document in entitled:

6 **RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**
7 **CASE NO 14002017**

8 on all interested parties in said case as follows:

9 STATE BAR OF CALIFORNIA
10 ANTHONY GARCIA
11 SENIOR TRIAL COUNSEL
12 845 S. Figueroa Street
13 Los Angeles, California 90017-2515.

14 **BY OVERNIGHT DELIVERY SERVICE.** The documents were placed in sealed, addressed
15 envelopes on the above date and delivered to the UPS office at 30251 Golden Lantern in Laguna Niguel,
16 with delivery charges fully prepaid, in time for collection on that day and for delivery on January 20,
17 2014.

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

20 I declare under penalty of perjury under the laws of the State of California the foregoing is true and
21 correct. This declaration is executed in Laguna Niguel, California, on October 1, 2014.

22 
23 Yanel Zanides
24 Yanel Zanides