

FILED

AUG 17 2018



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SAN FRANCISCO

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No. 14-O-06057-LMA
	)	
ARCHIBALD ROBERT CUNNINGHAM,	)	
	)	DECISION AND ORDER OF
A Member of the State Bar, No. 210625.	)	INVOLUNTARY INACTIVE
	)	ENROLLMENT
_____	)	

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

Respondent Archibald Robert Cunningham was declared a vexatious litigant in two separate matters in 2009 and 2015. He led a protracted litigious warfare in more than 50 actions against his ex-wife and against the joint owner of a tenants-in-common property. He shows no sign of stopping and conforming to his ethical duties as a member of the State Bar of California. Respondent has no intentions of curbing his behavior and repeatedly said so and demonstrated so. He has total disdain for the judicial process and refuses to accept the validity of court orders. Respondent files lawsuits against judges, agents of the court, government employees, and people just tangentially connected to his matters just to harass people that he disagrees with.

Consequently, the Office of Chief Trial Counsel of the State Bar of California (OCTC) charged respondent with six counts of misconduct in this contested disciplinary proceeding,

<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.

including: (1) maintaining unjust actions or proceedings; (2) committing acts of moral turpitude; and (3) commencing and continuing actions based on a corrupt motive.

This court finds, by clear and convincing evidence, that Respondent is culpable of the alleged misconduct. Based upon the serious nature and extent of culpability and the evidence in aggravation, the court recommends that Respondent be disbarred from the practice of law – the only solution for public protection.

### **Significant Procedural History**

OCTC initiated this proceeding by filing a notice of disciplinary charges (NDC) on December 11, 2017. Respondent filed a response on January 22, 2018.

A six-day hearing was held on April 3, 5, 6, and 9, June 29, and July 3, 2018. Senior Trial Counsel Erica L. M. Dennings and Deputy Trial Counsel Duncan Carling represented the OCTC. Respondent represented himself.

On July 10, 2018, following the filing of closing briefs, the court took this matter under submission.

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

Respondent was admitted to the practice of law in California on December 5, 2000, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on Respondent's response to the NDC and the testimony and evidence presented at trial, involving two matters: the San Francisco property matter and the marital dissolution/custody matter.

#### **1. The San Francisco Property Matter**

In April 2011, Michael Coombs (Coombs) obtained a judgment for monetary damages and an order requiring the sale of Respondent's condominium (Coombs judgment), resulting from the joint ownership of a property in San Francisco (San Francisco property), in an action

entitled *Michael Coombs and Tamara Woods v. Archibald Cunningham*, San Francisco County Superior Court, case No. CPF-10-510760.

Thereafter, Respondent filed at least 22 frivolous actions concerning the San Francisco property. Respondent sued several of the state court judges who adjudicated his prior claims, as well as non-judicial officers, such as Kevin Singer, the receiver who was court-appointed to enforce the Coombs judgment.

On January 8, 2015, the United States District Court for the Northern District of California, in *Cunningham v. Coombs, Singer, et al.*, case No. 3:14-cv-03250 WHA, declared Respondent a vexatious litigant for filing at least 20 frivolous actions concerning the San Francisco property (federal case) between 2011 and 2014.

After being declared a vexatious litigant in January 2015, Respondent filed two additional frivolous actions and submitted one frivolous lawsuit:

(1) On January 29, 2015, Respondent filed a frivolous appeal in the United States Court of Appeals, Ninth Circuit, in *Cunningham v. Singer*, case No. 15-15166.

(2) On September 14, 2017, Respondent filed another frivolous complaint in *Cunningham v. Singer*, Los Angeles County Superior Court, case No. BC675963 regarding the San Francisco property. Singer requested the court to stay the proceedings because Respondent has been designated a vexatious litigant and needs court permission to file the lawsuit. Singer declared that Respondent was filing this action to venue shop and to harass him; he was already discharged as the court receiver in October 2016 in the San Francisco property case.

Despite losing appellate challenges where the courts issued long and detailed opinions that show the courts considered and rejected Respondent's claims, Respondent continually tries to re-litigate the validity of the court order forcing the sale of his San Francisco property.

(3) On May 25, 2018, Respondent submitted another similar frivolous complaint, seeking \$5 million in damages, in *Cunningham v. Singer, Coombs et al.*, in United States District Court for the Northern District of California, case No. CV-18-80085.

### **Conclusions of Law**

#### ***Count 1 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])***

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense.

“[A]s officers of the court, attorneys ... have a duty to judicial system to assert only legal claims or defenses that are warranted by the law or are supported by a good faith belief in their correctness.” (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591.)

The purpose of the vexatious litigant statutes “is to address the problem created by the persistent and obsessive litigant who constantly has pending a number of groundless actions and whose conduct causes serious financial results to the unfortunate objects of his or her attacks and places an unreasonable burden on the courts.” (*Morton v. Wagner* (2007) 156 Cal.App.4th 963, 970–971.)

“The constant suer ... becomes a serious problem to others than the defendant he dogs. By clogging court calendars, he causes real detriment to those who have legitimate controversies to be determined and to the taxpayers who must provide the courts. Arguably, one who has repeatedly relitigated groundless claims against one defendant could be required to give security before pressing to trial an apparently unfounded claim against a new victim.” (*Taliaferro v. Hoogs* (1965) 237 Cal.App.2d 73, 74.)

Here, after Respondent filed 20 frivolous actions concerning the San Francisco property between 2011 and 2014, the U.S. District Court determined Respondent to be a vexatious litigant in the federal case in January 2015. Thereafter, he filed an appeal in January 2015 with the Ninth Circuit and another lawsuit against Singer in Los Angeles County Superior Court regarding the San Francisco property in September 2017. And in May 2018, he submitted another lawsuit against Singer in U.S. District Court.

All of Respondent's filings were not only frivolous but done in bad faith with intent to harass all of the defendants. He had no legal claims against any of the defendants regarding the San Francisco property. After filing at least 22 lawsuits concerning the San Francisco property and losing multiple appeals, in which the courts had repeatedly chastised him for filing unmeritorious papers, Respondent continued to assert that his civil rights were violated and that the judicial defendants violated the separation of powers clause in his May 2018 pleading that was not filed, but received by the U.S. District Court. He unreasonably believes that he had the right to continue litigating until he gets the result he wanted regardless of the law or the facts.

Therefore, by repeatedly filing 22 actions concerning the San Francisco property without merit, by refusing to comply with court rules and procedures, and by engaging in abusive litigation tactics resulting in an order declaring him a vexatious litigant in 2015, for the purpose of harassment and intimidation, Respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, in willful violation of section 6068, subdivision (c).

***Count 2 - (§ 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.

"[S]erious and fundamental obstructions of the judicial system the member has sworn to uphold, committed willfully and in bad faith, suggest a lapse of character and a disrespect for the legal system which bear directly on the attorney's fitness to practice law." (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 951.) Here, Respondent's repeated behavior of asserting 22 frivolous claims were meant to harass the defendants. His intentional harassment was serious and fundamental enough to support a finding of moral turpitude.

Therefore, Respondent's pursuit of the 22 frivolous actions, concerning the San Francisco property, was made in bad faith for the purpose of harassment and intimidation, and constituted acts of moral turpitude in willful violation of section 6106. (See *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, 186 [Serious, habitual abuse of the judicial system constitutes moral turpitude].)

***Count 3 - (§ 6068, subd. (g) [Duty Not to Encourage Action Based on Corrupt Motive]***

Section 6068, subdivision (g), provides that an attorney has a duty not to encourage either the commencement or the continuance of an action from any corrupt motive of passion or interest.

OCTC alleged that by pursuing 22 lawsuits and actions regarding the San Francisco property with bad intent and for the purpose of harassment, Respondent commenced or continued an action or proceeding from a corrupt motive of passion or interest, in willful violation of section 6068, subdivision (g).

However, because count 3 is based in large part on the same misconduct as alleged in count 2 (moral turpitude), the court hereby dismisses this count 3 with prejudice as duplicative of the section 6106 charge. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060 [Little, if any, purpose is served by duplicative allegations of misconduct].)

## **2. The Marital Dissolution/Custody Matter**

On May 20, 2003, in *Wang v. Cunningham*, San Francisco County Superior Court, case No. FDI-03-753770, Respondent's former wife initiated a marital dissolution matter (marital dissolution matter). Thereafter, Respondent filed at least 30 frivolous actions in the custody dispute regarding their young daughter. He filed multiple cases in the San Francisco County Superior Court, writs and appeals with the Court of Appeal, First Appellate District Court, and petitions with the California Supreme Court. He repeatedly relitigated issues that were repeatedly rejected by the court.

In 2009, the San Francisco Superior Court declared Respondent a vexatious litigant for filing numerous frivolous actions concerning the custody dispute in the marital dissolution matter.

In his March 2010 Tentative Statement of Decision (case No. FDI-03-753770), Judge Patrick J. Mahoney of the Superior Court wrote, Respondent's former wife "finds it necessary to seek protective relieve in the form of a domestic violence restraining order, declaring Respondent a vexatious litigant and seeking to hold Respondent in contempt. Each of those steps is taken in response to Respondent irrational and ceaseless attack on the prior custody order both in court filings and an unrelenting barrage of emails." (The Tentative Statement of Decision became Final Decision on April 1, 2010.)

Respondent sued several of the state court judges who adjudicated his prior claims regarding the custody dispute as well as commissioners and California Supreme Court Chief Justice Tani Cantil-Sakauye and former California Supreme Court Chief Justice Ronald George. Respondent also sued the court-appointed custody evaluator, Dr. William Perry.

Despite losing appellate challenges where the courts issued long and detailed opinions that show the courts considered and rejected Respondent's claims, Respondent continually tries to re-litigate the validity of the court orders.

On July 2, 2014, Respondent again filed a complaint against his ex-wife, opposing counsel, judges, and others in federal court in *Cunningham v. Schopp, et al.*, case No. CV-14-30330JCS.

All of Respondent's filings are not only frivolous but done in bad faith with intent to harass all of the defendants.

#### **Conclusions of Law**

##### ***Count 4 - (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses]***

By pursuing at least 30 frivolous actions over a 10-year period concerning the custody dispute in the marital dissolution matter, by refusing to comply with court rules and procedures, and by engaging in abusive litigation tactics resulting in an order declaring him a vexatious litigant in 2009, for the purpose of harassment and intimidation, Respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just, in willful violation of section 6068, subdivision (c).

##### ***Count 5 - (§ 6106 [Moral Turpitude])***

Respondent's actions of filing more than 30 frivolous cases, writs, appeals and petitions and for the purpose of harassment constituted acts of moral turpitude and dishonesty, in willful violation of section 6106.

##### ***Count 6 - (§ 6068, subd. (g) [Duty Not to Encourage Action Based on Corrupt Motive]***

As discussed in count three in the San Francisco property matter, because count 6 is based in large part on the same misconduct as alleged in count 5 (moral turpitude), the court hereby dismisses this count 6 with prejudice as duplicative of the section 6106 charge.

## **Aggravation<sup>2</sup>**

### **Multiple Acts (Std. 1.5(b).)**

Respondent's misconduct constitutes multiple acts of wrongdoing, including committing acts of moral turpitude and maintaining unjust actions in the San Francisco property and custody matters. Such multiple acts of misconduct constitute a serious aggravating factor, which have been ongoing since around 2004. Respondent has yet to cease.

### **Pattern of Misconduct (Std. 1.5(c).)**

Moreover, Respondent demonstrated a pattern of misconduct by repeatedly engaging in vexatious litigation for more than 14 years (since 2004) in the San Francisco property and custody dispute matters. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1149, fn. 14, citing *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1367 [most serious instances of repeated misconduct over prolonged period of time characterized as pattern of misconduct].)

### **Intentional Misconduct/Bad Faith/Dishonesty (Std. 1.5(d).)**

Respondent's intentional misconduct is surrounded by bad faith, but it is not an additional aggravating factor because it was already considered an act of moral turpitude in the underlying case and, therefore, would be duplicative here.

### **Significant Harm to Client/Public/Administration of Justice (Std. 1.5(j).)**

Respondent significantly harmed the public and the administration of justice. His vexatious litigation required the courts to repeatedly rule on meritless lawsuits and motions, wasting valuable judicial time and resources. The cumulative effect of his conduct over the course of at least 14 years of meritless litigation is prejudicial to the administration of justice, taking judicial resources away from other meritorious cases. Moreover, Respondent's

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<sup>2</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.

misconduct caused harm to the legal profession. He used the courts as a means of intimidating and oppressing people by his endless litigations against anyone that became connected to his matters.

For example, attorney Mary Schopp, opposing counsel in the custody matter for more than 10 years, testified that the ongoing frivolous litigation was extremely stressful for her client and for herself. Respondent engaged in intimidating tactics, such as suing her and serving her at home with legal papers, instead of at her office address. Attorney Schopp believed that Respondent was making it clear to her that he knew where she lived. She was angry and scared. She also testified that Respondent's endless, frivolous actions consumed much of her time, limiting her ability to expand her law practice.

Attorney Scott McKay, opposing counsel in the San Francisco property matter, testified that Respondent's refusal to comply with the court order of a forced sale of Respondent's condominium resulted in removing Respondent from the premise by a sheriff. But when Respondent continued to return to the property, security guards had to be hired and security cameras had to be installed. Attorney McKay spent years litigating the frivolous actions brought by Respondent and had to waive a large portion of the legal fees because Michael Coombs, the joint owner, could not afford to pay the entire fees.

Michael Coombs testified that Respondent's actions caused him significant emotional and financial harm. He was forced to pay Respondent's share of the mortgage because Respondent stopped paying and he did not want to be in default. Coombs left the country for a few years to get away from Respondent; it was emotionally devastating. He also testified that he incurred about \$1.4 million in legal fees defending himself against Respondent's frivolous actions.

Respondent, on the other hand, "[b]eing a lawyer, he himself did not suffer those expenses." (*In the Matter of Kinney* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 360, 366.)

Kevin Singer testified that, as a court-appointed receiver in more than 300 cases, this case was very challenging and the worst, because of Respondent's ongoing filings, harassment and difficult behavior. When Singer attempted to sell the condo, Respondent returned to the unit and was arrested for criminal trespass multiple times.

Based on his repeated, baseless claims and arguments, Respondent has failed to demonstrate any respect for the process and rule of law. As shown by witness testimony, Respondent's relentless litigation campaigns inflicted serious financial and emotional harm on the witnesses as well as many others. His misconduct also caused serious stress to those who were simply doing their jobs.

"Not only did he force them to spend considerable time and money defending themselves against baseless claims, but he clogged the court system for manifestly improper purposes." (*In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. 360, 368.) Indeed, Respondent's actions constituted an outrageous waste of judicial resources.

**Indifference Toward Rectification/Atonement (Std. 1.5(k).)**

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.)

Respondent expressed no remorse or recognition of the serious consequences of his misbehavior. He was relentless in pursuit of his claims, refusing to acknowledge that his arguments were not supported by the law or fact. Instead, he continued to file lawsuits even while the trial in this disciplinary matter was underway. He still wants to sue McKay, Coombs,

and Singer, as evidenced in his complaint submitted to the federal court in May 2018. He persists in his vendetta against them.

Respondent will not stop and shows no plans of ever stopping his misconduct. Respondent is unapologetic. Indeed, there is no indication that he realized the gravity of his violations. In fact, he "used his legal knowledge to repeatedly abuse the court system through his relentless lawsuits." (*In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. 360, 369.)

Respondent continues to blame others for his problems. Respondent's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered a serious aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.)

### **Mitigation**

#### **No Prior Record (Std. 1. 6(a).)**

Respondent's misconduct began in 2004, only three years after he was admitted to the practice of law. His lack of a prior record is not a mitigating factor. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456 [where attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating].)

### **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 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of

sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 1.7, 2.9, and 2.11 apply.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.7(a) provides that when two or more acts of misconduct are found in a single disciplinary proceeding, and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) states, “If aggravating circumstances are found, they should be considered alone and in balance with any mitigating circumstances, and if the net effect demonstrates that a greater sanction is needed to fulfill the primary purposes of discipline, it is appropriate to impose or recommend a greater sanction than what is otherwise specified in a given Standard. On balance, a greater sanction is appropriate in cases where there is serious harm to the client, the public, the legal system, or the profession and where the record demonstrates that the member is unwilling or unable to conform to ethical responsibilities.”

Standard 2.9(a) provides that, when a member maintains or counsels a frivolous claim or action for an improper purpose, resulting in significant harm to the administration of justice or to an individual, actual suspension is the presumed sanction. If the misconduct demonstrates a pattern, disbarment is appropriate.

Standard 2.11 provides that “[d]isbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent

misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

The State Bar urges disbarment, citing standard 2.9(a) [pattern of misconduct] and *In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. 360 in support of its recommendation.

Respondent contends that he was "passionately defending himself" as a defendant in the two matters and denies that he has filed frivolous or harassing actions.

In *In the Matter of Kinney, supra*, 5 Cal. State Bar Ct. Rptr. 360, an attorney with 31 years of discipline-free practice was disbarred for his pursuit of unjust and frivolous actions as a plaintiff and attorney in multiple lawsuits. Like the attorney in *Kinney*, Respondent "used his legal knowledge to repeatedly abuse the court system through his relentless lawsuits. His misconduct goes beyond vexatious litigation as it involves significant aggravation, including a lengthy pattern of wrongdoing, significant harm to others, disregard for the court process, and a total lack of insight into his harmful behavior. At the same time, [Respondent] has failed to establish any mitigation." (*Id.* at p. 369.)

In another disciplinary case involving a vexatious litigant, *In the Matter of Varakin, supra*, 3 Cal. State Bar Ct. Rptr. 179, the attorney was disbarred for filing frivolous motions and appeals in four different cases over 12 years solely for the purpose of delay and harassment of his ex-wife and others who became embroiled in his vendetta against her and was proud of his conduct. He persisted in this pattern of misconduct despite many sanctions. In fact, within four years, he received at least 14 sanctions, totaling \$80,000. He also intentionally refused to report sanctions and to cooperate with the State Bar investigation. Stressing the attorney's abuse of the judicial system, lack of repentance, and obdurate persistence in misconduct, the Review

Department concluded that no discipline less than disbarment was consistent with the goals of maintaining high ethical standards for attorneys and preserving public confidence in the legal profession.

Like *Varakin*, Respondent filed all those lawsuits and multiple appeals in the state and federal courts for the sole purpose of delay or harassment of his ex-wife, joint-owner, and others. He was clearly vengeful and spiteful. Respondent engaged in unmeritorious litigations over 10 years in his custody dispute matter, resulting in his ex-wife having to spend tens of thousands of dollars in litigation fees. He continues to file frivolous actions in the San Francisco property matter, as recently as in May 2018. Coombs spent \$1.4 million in legal fees. Thus, his misconduct is as egregious as the misconduct in *Varakin* and *Kinney*, if not more.

In this matter, respondent's frivolous lawsuits and appeals burdened the court, opposing parties and counsel, causing substantial harm to the administration of justice and the public. The enormous harm to the administration of justice and to the public weighs heavily in assessing the appropriate level of discipline. Respondent seriously abused the judicial system since 2004. The state and federal court's vexatious litigant determinations did not deter him. Respondent is unrepentant, relentless and spiteful. Yet, he is devoid of insight into his misconduct and has shown no remorse. Instead, during the trial in this disciplinary matter, he submitted another complaint involving the San Francisco property against the court-appointed receiver in federal court. Respondent must be disbarred under standard 2.9(a) for his pattern of frivolous litigation.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Respondent's misconduct began only three years after he became a member of the bar. Disbarment is absolutely necessary to protect the public, preserve confidence in the profession, and maintain high professional standards. The total absence of any recognition by Respondent

of his misconduct shows that there is little hope that he would conform his method of practicing law to the professional standards of this state.

Therefore, having considered the egregious nature and extent of the misconduct, the aggravating circumstances, as well as the case law and the standards, the court must recommend that Respondent be disbarred to protect the courts, the public and the profession.

### **Recommendations**

#### **Discipline**

It is recommended that Archibald Robert Cunningham, State Bar Number 210625, be disbarred from the practice of law in California and that his 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 California Rules of Court, rule 9.20, 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 imposing discipline in this matter.<sup>3</sup>

#### **Costs**

It is further 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. Unless the time for

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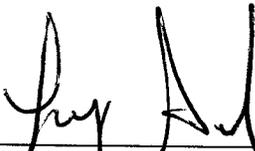
<sup>3</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

**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: August 17, 2018

  
\_\_\_\_\_  
LUCY ARMENDARIZ  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 17, 2018, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

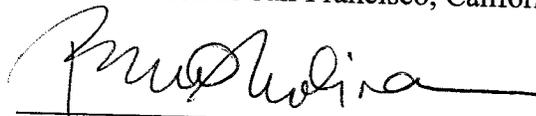
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

ARCHIBALD R. CUNNINGHAM  
PO BOX 393  
MERKELEY AVE.  
WEST SACRAMENTO, CA 95691 - 0393

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2018.



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Bernadette Molina  
Court Specialist  
State Bar Court