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Attorneys for Respondent
Charles L. Lindner

FILED

DEC 29 2016

**STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES**

BEFORE THE STATE BAR COURT
OF THE STATE OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)

Case No. 15-O-15400-DFM)

CHARLES LOUIS LINDNER,)

**RESPONSE TO NOTICE OF
DISCIPLINARY CHARGES**)

Member No. 61908,)

A Member of the State Bar.)
_____)

Respondent Charles L. Lindner responds to the Notice of Disciplinary Charges as follows:

Preliminary Statement

1. Mr. Lindner discovered that his son and intermittent assistant, while in the throes of a serious and nearly deadly drug addiction, had engaged in a scheme to forge Mr. Lindner's signature on checks written for small amounts, from a separate, single purpose attorney-client trust account that had been established for one of Mr. Lindner's criminal defense clients. Mr. Lindner did not immediately discover the misappropriation because he was the sole signatory on the account, and, since he reasonably believed that he knew of each and every check written on the

1 account, he had no reason to reconcile the monthly bank statement while little activity was
2 occurring on the file. Mr. Lindner's son had never evidenced any conduct to put Mr. Lindner on
3 inquiry notice that he was surreptitiously accessing the trust account checks. After Mr. Lindner
4 discovered that his son/employee had misappropriated funds from the individual CTA, he
5 erroneously concluded that it would constitute commingling to deposit his personal funds into the
6 account to restore the funds. He was confident that he understood the prohibition against
7 commingling, and he intended to advance his personal funds in an equivalent amount for the benefit
8 of the client, in order to reconcile the trust account fund balance.

9 2. In the summer of 2015, Mr. Lindner was ending his representation of the client at
10 issue, and he then revealed to his co-counsel in the case to his client, the facts relating to his son's
11 prior misappropriation of the CTA funds. Since he had not yet had the opportunity to advance any
12 of his own funds to pay for costs in the client's case, and having consulted with legal ethics counsel,
13 Mr. Lindner realized that he could restore funds to the trust account without committing a
14 commingling violation, and deposited an amount into the single purpose CTA based on his son's
15 estimate of the amount of funds he had misappropriated. Thereafter the court conclusively
16 determined that the amount that aggregate amount of the misappropriated funds totaled \$4,945.00.
17 Mr. Lindner made a comprehensive disclosure of these facts to the criminal court.

18 3. Mr. Lindner had never been the subject of a disciplinary complaint. He was not
19 sanctioned in any way by the criminal court in connection with this or any other case or matter, and
20 he was never charged with any illegal act in connection with these events.

21
22 **Answer to Specific Allegations Contained in the Notice of Disciplinary Charges**

23
24 4. Respondent admits that he was admitted to the practice of law in the State of
25 California on December 16, 1974, and that he has been a member of the State Bar of California
26 since that time.

1 COUNT ONE

2 5. Respondent objects to the allegations of Paragraph 2 of the NDC on the basis that
3 they are conclusory, compound and intertwined with legal conclusions. Without waiving this
4 objection, Respondent admits in part and denies in part. Respondent admits that between July 31,
5 2009 and March 18, 2010, he received on behalf of a criminal defendant client, and deposited into a
6 single purpose client trust account, the sum of \$18,000 advanced by the court for costs to be
7 incurred on behalf of the client and he never personally acted or omitted to act in any manner to
8 improperly disburse any part of such trust funds.

9
10 COUNT TWO

11 6. Respondent objects to the allegations of Paragraph 3 of the NDC on the basis that
12 they are conclusory, compound and intertwined with legal conclusions. Without waiving this
13 objection, Respondent incorporates by reference his answer in Paragraph 5 above as if set forth in
14 full here. Respondent further asserts that, without Respondent's knowledge, his son/intermittent
15 employee secretly forged 21 client trust account checks payable to himself totaling \$4,945.
16 Respondent denies that he was grossly negligent in failing to discover that his son/intermittent
17 employee acted surreptitiously and secretly to misappropriate client funds, and denies that he acted
18 with moral turpitude in willful violation of Business and Professions Code section 6106 or
19 otherwise.

20
21 COUNT THREE

22 7. Respondent objects to the allegations of Paragraph 4 of the NDC on the basis that
23 they are conclusory, compound and intertwined with legal conclusions. Without waiving this
24 objection, Respondent incorporates by reference his answers in Paragraphs 5 and 6 above as if set
25 forth in full herein. Respondent denies that he engaged in any act or omission constituting
26 concealment of his son/intermittent employee's misappropriation, and denies that he committed any
27 act or omission constituting to moral turpitude, dishonesty or corruption in willful violation of
28 Business and Professions Code section 6106 or otherwise.

1 **AFFIRMATIVE DEFENSES**

2
3 **FIRST AFFIRMATIVE DEFENSE**

4 (Failure to State Sufficient Facts)

5 The Notice of Disciplinary Charges, and each of its purported counts, fails to state facts
6 sufficient to state a basis for discipline.

7
8 **SECOND AFFIRMATIVE DEFENSE**

9 (Duplicative Charges)

10 The Notice of Disciplinary Charges contains inappropriate, unnecessary, and immaterial
11 duplicative charges. *Bates v. State Bar* (1990) 51 Cal.3rd 1056, 1060; *In the Matter of Lilley* (Rev.
12 Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 585.

13
14 **THIRD AFFIRMATIVE DEFENSE**

15 (Statute of Limitations)

16 The facts alleged in Counts One and Two of the Notice of Disciplinary Charges establish on
17 the face of the NDC that the action is barred by the period of limitations contained in Rule 5.21 of
18 the Rules of Procedure of the State Bar of California, which provides that a disciplinary proceeding
19 based solely on a complainant's allegations of a disciplinary violation must begin within five years
20 from the date of the alleged violation. *See* Rule 5.21(A).

21
22 **FOURTH AFFIRMATIVE DEFENSE**

23 (Charges Do Not Constitute Willful Misconduct)

24 The facts on which some or all of the Notice of Disciplinary Charges are based constitute
25 mistake, inadvertence, neglect or error and do not rise to the level of willful misconduct.

1 FIFTH AFFIRMATIVE DEFENSE

2 (Lack of Harm)

3 No persons were harmed by the acts alleged to have been committed by respondent in each
4 and every count in the Notice of Disciplinary Charges.

5
6 WHEREFORE, Respondent prays that the Court find that Respondent did not commit acts
7 constituting professional misconduct, and that the Notice of Disciplinary Charges be dismissed.

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10 Dated: December 29, 2016

Respectfully submitted,
PANSKY MARKLE HAM, LLP

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12
13 By: 

14 Ellen A. Pansky
15 Attorney for Respondent
16 Charles L. Lindner
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PROOF OF SERVICE

In the Matter of Charles L. Lindner

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1010 Sycamore Ave., Suite 308, South Pasadena, California 91030.

On December 29, 2016, I served the foregoing document(s) described as:

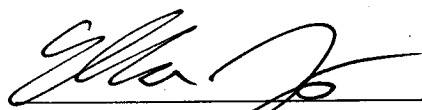
RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

Kimberly Anderson, Senior Trial Counsel
Office of the Chief Trial Counsel
Enforcement
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017

(X) BY PERSONAL SERVICE: I personally delivered such envelope addressed to **Kimberly Anderson** to the California State Bar reception desk, on December 29, 2016.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed December 29, 2016, at Los Angeles, California.



Ella Fishman