PUBLIC MATTER

FILED

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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	Case No. 16-O-13071-MC
JOHN KEVIN CROWLEY,	DECISION AND ORDER
State Bar No. 88189.	

Introduction

In this contested disciplinary matter, Respondent John Kevin Crowley is charged with three counts of misconduct stemming from a single client matter. The alleged misconduct includes failing to deposit client funds in a trust account, misappropriation, and failing to maintain records of client funds. The court finds Respondent culpable on one of the three counts. Based on the limited scope and the nature of the misconduct, this court orders, among other things, that Respondent be publicly reproved.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges (NDC) against Respondent on September 24, 2018. On October 2, OCTC filed an amended NDC. Respondent filed a response to the amended NDC on October 29.

On December 28, 2018, the parties filed a Stipulation as to Facts and Admission of Documents. A three-day hearing was held before this court on January 22, January 28, and

February 20, 2019. On March 6, the parties filed their closing argument briefs. The court took this matter under submission that same day.

Findings of Fact and Conclusions of Law

Facts

Respondent has been a California attorney since 1979. He is a generalist trial lawyer and has tried over 30 cases to verdict. He has also served as a family law pro tem judge, a small claims judge, and a family law mediator.

Respondent represented Leticia Villegas (Leticia) in several matters when, in early 2012, she approached Respondent about representing her mother, Susie Villegas (Susie), in a personal injury matter. Leticia lived with Susie, who was then in her early eighties. Leticia handled the majority of communications for her mother including scheduling appointments.

On February 29, 2012, Respondent and Susie signed a contingency fee agreement stating that Respondent's fees would be 33.3 percent of any pre-trial recovery. Leticia delivered the agreement to Susie, who signed it, and Leticia returned it to Respondent. At no time did Respondent meet Susie in person. Leticia acted as the agent for Susie and, while Respondent understood that Susie was his client, he communicated primarily with Leticia about the case.

On September 7, 2012, Respondent filed a civil complaint on Susie's behalf. Respondent performed work on the case, including propounding discovery to the defendants and negotiating a settlement. He also kept Susie apprised of the case through letters. On October 25, Respondent sent Susie a letter, notifying her that the defendants wanted to depose her and included detailed deposition instructions.

Around this same time, Respondent was representing Leticia in a separate civil matter (IPXC litigation). Respondent and Leticia's relationship deteriorated during the IPXC litigation. On November 7, 2012, Respondent filed a motion to be relieved as counsel for Leticia due to a

fundamental disagreement between them. That same day, after receiving the motion, Leticia came to Respondent's office and was very upset that he had filed the motion. Leticia threatened Respondent with a lawsuit and "going to the State Bar." Respondent called security, but Leticia calmed down once they arrived. Respondent and Leticia continued their conversation. Respondent agreed to withdraw his motion and continue representing Leticia until she could find another attorney.

While Leticia was in Respondent's office on November 7, 2012, they also discussed Susie's case. Leticia told Respondent that Susie did not want to have her deposition taken and wanted to settle the case.[1] Respondent asserts that he spoke to Susie on the phone that day to confirm that she wanted to settle the case and agreed to the distribution of the settlement funds.[2] Respondent and Susie (either directly or through Leticia) agreed to settle the case for $20,000.

It was further agreed that Susie would take $15,000 while Respondent would get $5,000 and take care of Susie's Humana and Medicare health insurance liens. That same day, on November 7, 2012, Respondent sent Susie a one-sentence letter stating: "This is to affirm that as soon as practicable, I will obtain a settlement of this case and waive my fees, costs and advancements, holding back sufficient funds to resolve the medical liens." (Exh. 4, p. 137.) Respondent prepared this letter while Leticia was in his office.

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[1] At trial, Leticia denied that Susie did not want her deposition taken. On this point, the court finds Respondent's testimony to be credible and consistent. Moreover, Leticia's testimony was, for the most part, not credible. She was hostile and did not answer questions directly or clearly. Her animosity towards Respondent was evident at trial – the source of which appeared to be her own litigation, rather than the present matter. She also inexplicably wore dark sunglasses while testifying, making it difficult for the court to fully evaluate her demeanor.

[2] While Respondent's testimony was credible on the whole, his memory of this purported conversation with Susie was vague and inconsistent with his representations prior to trial that all communication between Respondent and Susie went through Leticia. As such, it is unclear when, or even if, the conversation took place. That said, Susie did not testify in these proceedings, and Leticia – OCTC's only witness – was not credible on this subject.

Considering the deterioration of his relationship with Leticia, Respondent was attempting to walk away from Susie's and Leticia's cases. Respondent believed that Leticia was vindictive against him and he wanted to avoid her at all costs. Accordingly, his proposal to waive his fees in Susie's matter was based on Leticia's threats to sue him and go to the State Bar.[3]

On December 14, 2012, Respondent settled Susie's personal injury matter for $20,001. On December 20, Respondent and Susie signed a Settlement Agreement, which set forth that the costs and attorney's fees were waived. It went on to state that $5,000 would be applied to "LIENS AND REIMBURSEMENT" and that the "BALANCE DUE CLIENT" was $15,000. The Settlement Agreement specifically stated: "I [(Susie)] will receive from [Respondent] the sum of FIFTEEN THOUSAND DOLLARS and NO CENTS ($15,000) in accordance with the above statement. I hereby approve of the distribution of funds as herein-above set forth pursuant to the letter of November 7, 2012." (Exh. 4, p. 134.)

On January 2, 2013, Respondent received a settlement check for $20,001. Two days later, Respondent deposited the settlement check into a bank account he held at Comerica Bank (Comerica Account). The Comerica Account was not a client trust account. On January 10, Respondent withdrew $5,000 from the Comerica Account in the form of a cashier's check made payable to himself. That same day, Respondent withdrew $15,001 from the Comerica Account in the form of a cashier's check made payable to Susie and sent it to her. The check included a letter that stated: "Enclosed you will find a cashier's check in the amount of $15,001.00 in regards to your personal injury case of October 25, 2011. [¶] We will inform you of when the

[3] As noted above, the retainer agreement stated that Respondent would receive 33.3% of any settlement. On a $20,001 settlement, Respondent would have been entitled to $6,660.33.

Medicare and Humana medical liens are resolved." (Exh. 1026.) Respondent did not discuss with Susie that he would negotiate down the lien amounts.[4]

On January 14, 2013, Respondent deposited the $5,000 cashier's check payable to himself into a bank account he held at Heritage Bank (Heritage Account).[5] The Heritage Account, used for Respondent's personal and business expenses, was not a client trust account.

On August 7, 2013, Respondent remitted payment to Humana in the amount of $385.32 to satisfy Humana's lien on Susie's personal injury settlement. Unlike the Humana lien, the Medicare lien was a statutory lien and the amount would not be determined until after the case settled. On April 9, 2013, Medicare sent Respondent and Susie a notice that identified the lien amount as $803.61, but the notice explicitly stated not to send payment at this time.

Respondent moved offices in 2014. On February 23, 2016, Medicare sent Respondent a letter requesting a payment of $803.61 for the lien. This letter was sent to Respondent's former address. He does not recall if he or his secretary informed Medicare that Susie's case had settled. He also has no recollection whether he told Medicare about his change of address. Despite making initial attempts to resolve the Medicare lien, Respondent concedes that he "dropped the ball."

On April 22, 2016, Susie sent Respondent a letter requesting $5,000. Leticia helped Susie prepare this letter. At the time Respondent received this letter, he had not communicated with Leticia or Susie for nearly three years. Susie was no longer his client and he considered this letter to be an attempt by Leticia to exhort money from him. Respondent did not contact Susie or Leticia after receiving this letter.

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[4] After Susie's case settled, Respondent continued working on Leticia's case until July 2013.

[5] Leticia testified that Respondent told her the $5,000 would be held in a trust account. As stated above, the court generally did not find Leticia's testimony to be credible and this testimony was no exception.

On April 26, 2016, Susie filed a State Bar complaint against Respondent. That same day, Respondent remitted payment to Medicare in the amount of $803.61 to satisfy the lien. On May 16, Susie sent Respondent a letter requesting the return of $3,811.07, the remainder of the $5,000 that Respondent had kept from the settlement minus the amount of the two liens. Leticia helped Susie prepare this letter as well. Again, Respondent did not contact Susie or Leticia after receiving this letter.

On October 25, 2016, Respondent sent Susie a check for $5,000 from the Heritage Account. He gave Susie the entire $5,000 because he could see that their distribution agreement was "ill-defined and poorly drafted." He understood how, three years later, the agreement could be misconstrued. Respondent still believes the agreement directed him to keep $5,000, pay the liens, and that he was entitled to the remainder. Respondent concedes, however, that he should have kept the $5,000 in a trust account until the liens were paid.

Conclusions

Count One – Former Rule 4-100(A)[6] [Failure to Deposit Client Funds in Trust]

Former rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions. By failing to deposit and maintain the funds earmarked to pay Susie's lienholders in a client trust account, Respondent willfully violated former rule 4-100(A).

Count Two – Section 6106 [Moral Turpitude – Misappropriation]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Misappropriation

[6] Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct (Rules of Professional Conduct). These rules were revised on November 1, 2018. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

is defined as "[t]he application of another's property or money dishonestly to one's own use." (Black's Law Dict. (8th ed. 2004) p. 1019, col. 1.) "[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation. [Citation.]" (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

While Respondent has been found culpable of failing to deposit and maintain client funds in his trust account, it has not been established by clear and convincing evidence that his conduct rose to the level of misappropriation. The present case is a good example of the adage "no good deed goes unpunished." Respondent was entitled to receive 33.3% of Susie's settlement funds, but after a heated meeting with Leticia, he drafted a one-sentence letter indicating his intention to waive his fees and costs. However, one month later when Susie and Respondent actually executed the Settlement Agreement, it stated that Susie would receive $15,000 and that the remaining $5,000 would be applied to liens and reimbursement.

Respondent credibly testified that he understood the amount remaining after payment of the liens, if any, would go to him. While it is not clear what Susie's expectation of the Settlement Agreement was at the time she signed it, neither Susie nor Leticia asked Respondent for an accounting of the liens or the remainder of the $5,000 over the three years following the execution of the Settlement Agreement.

The court agrees with Respondent's assessment that the Settlement Agreement was poorly drafted and confusing. The term "reimbursements" is subject to multiple interpretations and should have been better defined. That being said, it has not been established by clear and convincing evidence that Respondent misappropriated Susie's funds, intentionally or through gross negligence, as alleged in Count Two. Count Two is dismissed with prejudice.

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Count Three – Former Rule 4-100(B)(3) [Failure to Maintain Records]

Former rule 4-100(B)(3) provides that an attorney must maintain complete records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. In Count Three, OCTC alleged that Respondent failed to maintain complete records of the settlement funds he received in Susie's matter. The evidence relating to this count, however, was sparse and does not rise to the level of clear and convincing. Accordingly, Count Three is dismissed with prejudice.

Aggravation[7]

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

Vulnerability of the Victim (Std. 1.5(n).)

Due to Susie's age, OCTC argued that she was a highly vulnerable victim. However, aside from her age, the court did not receive credible and persuasive evidence regarding Susie's mental and physical health at the time of the misconduct. Moreover, Susie does not fall under the typical definition of the word "victim," as it has not been established that she was significantly harmed by Respondent's failure to deposit and maintain funds in trust. Accordingly, the court assigns this factor nominal weight in aggravation.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with respect to mitigating circumstances.

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[7] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

No Prior Record of Discipline (Std. 1.6(a).)

Respondent was admitted to practice law in California in 1979, and has no prior record of discipline. His more than 33 years of discipline-free conduct prior to the present misconduct warrants highly significant consideration in mitigation. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 245 [more than 20 years of practice with an unblemished record is highly significant mitigation].)

Cooperation with the State Bar (Std. 1.6(e).)

Respondent entered into a comprehensive stipulation regarding facts and the admissibility of evidence. Respondent's cooperation preserved court time and resources and warrants moderate mitigation credit.

Good Character (Std. 1.6(f).)

Respondent presented evidence of his good character from thirteen character witnesses. As detailed below, Respondent's character witnesses represent a wide range of references and were aware of the alleged misconduct. The court affords Respondent significant mitigation credit for his good character evidence. (See *In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319 [significant consideration given to testimony of attorneys and judges due to their "strong interest in maintaining the honest administration of justice"].)

Nick Lymberis

Nick Lymberis is a retired attorney and has known Respondent since approximately 1980. Respondent is always in service to others and is "absolutely accountable." Lymberis referred a real estate client to Respondent, informing Respondent there was no money in the case. Respondent took the case and went to trial. In Lymberis's opinion, a person's character cannot be better than Respondent's. Lymberis believes the present case is about a technical violation and wonders if he himself may have violated it. If Respondent was found to have

intentionally misappropriated money, it would be a real shock to Lymberis and it would be an aberration to what he knows about Respondent.

Jessica Sewell

Jessica Sewell has been Respondent's pro bono client for over ten years and he still represents her. He assisted Sewell with legal custody of her child, including filing a move away order so she could live in Oregon. As a single mother, the court process was intimidating and Respondent's representation changed her life. Sewell has had to go to court every six months for the last decade and she estimates that the pro bono work Respondent provided was worth $90,000. She trusts Respondent and considers him to be a father figure.

Dennis Macaulay

Dennis Macaulay is a dentist and Respondent represented him in a worker's compensation case many years ago. Since then, Macaulay became Respondent's dentist and they meet twice a year during dental visits. They became friendly over the years and Macaulay has never harbored even the slightest question about Respondent's ethics. Based on his experience with Respondent, Macaulay believes the present case was the result of an innocent mistake.

Timothy Guster

Timothy Guster has been an attorney in California since 1983. He and Respondent were initially friends and Guster then worked for Respondent at two different times. Guster's current position as a general counsel requires him to select trial attorneys, exposing him to hundreds of attorneys around the world. He has referred clients to Respondent and those clients have reported back that they were very satisfied with Respondent's work. Respondent has "tremendous integrity" and is completely honest. Even after reading the charges, Guster referred

a friend to Respondent. Guster's opinion of Respondent has not changed because he has known Respondent for a long time and trusts him.

Robert Flax

Robert Flax has been an attorney in California since 1975. He has known Respondent since 1980 and they have been close friends since. Respondent has a reputation in the legal community for being extremely hard working and diligent. Robert views Respondent as having the highest degree of professionalism, character, and integrity. He has referred many friends to Respondent and has himself hired Respondent.

Susan Flax

Susan Flax, wife of Robert, has been an attorney in California since 1983. She knows Respondent well, though not professionally. She finds Respondent to be a stand up, committed, and honest person.

Mary Fries

Mary Fries is a school teacher and met Respondent approximately seven years ago at the gym where they continue to meet a few times a week. Respondent has become a trusted friend and father figure. She seeks his advice about various work and personal matters. Since 2015, he has volunteered annually as a guest speaker for her sixth grade class, teaching them about the legal profession. Respondent is one of the most honest people she knows and she has seen many instances of his good character.

Le Tisdale

Le Tisdale, a license marriage and family therapist, met Respondent 15 years ago and has referred clients to him. Respondent and Tisdale became friends when he mentored her nephew for a summer. Respondent also mentored Tisdale's daughter. Both her daughter and nephew are now attorneys. Tisdale has trusted Respondent with her children and finds him to be "straightforward, upfront, and a man of integrity."

Charles Mesirow

Charles Mesirow has been an attorney in California since 1971. He shared office space with Respondent many years ago and their practices were associated. He has known Respondent for 35 years and considers Respondent to be an honest attorney. Respondent represented Mesirow's wife in an automobile accident and did not charge a fee. Mesirow refers friends and family to Respondent and has hired Respondent as an expert in criminal matters.

Marc Eisenhart

Marc Eisenhart has been an attorney since 1996. He has known Respondent for 20 years. They share office space and have worked "shoulder to shoulder together." Respondent is a hard worker and dedicated to his clients. Eisenhart describes Respondent's character as impeccable and has never heard anyone say anything negative about Respondent. Eisenhart surmised that while no one is perfect, Respondent is "pretty darn close."

William Gates

William Gates has been an attorney in California since 1973. He has shared office space with Respondent since 1999, minus a few years in between. He has referred "many many" cases to Respondent for the past 20 years and there have been no problems with those referrals. Gates sees Respondent weekly and he is "one of the greatest guys" Gates has ever met.

James Dawson

James Dawson has been an attorney in California since 1976. He initially met Respondent when they were opposing counsel, but since 1999 they have shared office space. Respondent takes cases that other attorneys refuse because they are costly. Dawson has never heard a client, judge, or anyone in a social setting say anything negative about Respondent's integrity. Respondent is a "true asset to the legal community."

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Allen Ruby

Allen Ruby has been an attorney since 1970. He does not know Respondent personally but has known him professionally for the past 40 years. Respondent has high character, honesty, and integrity. Ruby has observed Respondent in court many times and Respondent is on top of his cases and does not do anything underhanded or inappropriate. Ruby represented Respondent briefly in the instant matter. Respondent expressed regret for the mistakes he made in Susie's matter. Respondent asserted that responsibility for any ambiguity in the Settlement Agreement lay with him, as the lawyer.

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. 1.1.) In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. In this case, standard 2.2(b) states that suspension or reproval is the presumed sanction for any violation of former rule 4-100 that does not involve commingling or failure to promptly pay out entrusted funds.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the

court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Here, OCTC argued that Respondent should be found culpable of misappropriation and disbarred. Respondent, on the other hand, sought a reproval or dismissal. In determining the appropriate discipline in this matter, the court found guidance in *Dudugjian v. State Bar* (1991) 52 Cal.3d 1092. In this case, the attorneys retained client settlement funds in their general account and refused to pay them to the clients, in the mistaken belief that the funds were partial payment of the attorneys' fee. The attorneys were found culpable of depositing client funds into a non-trust account and failing to promptly payout the funds. In mitigation, the attorneys honestly believed that their clients had given them permission to retain the settlement funds, the misconduct was unlikely to reoccur, the attorneys did not have a prior record of discipline, and they exhibited good character. No aggravating circumstances were found. The California Supreme Court ordered that the attorneys receive a public reproval.

Similar to *Dudugjian*, Respondent did not intentionally set out to violate any ethical rules. While he failed to deposit Susie's settlement check into a trust account, he promptly distributed the money pursuant to the terms laid out in the Settlement Agreement. Had Respondent declined to renegotiate the fee agreement, he would have been entitled to $6,660.33 (33.3% of $20,001). By acquiescing to the Settlement Agreement, he effectively cut his portion of the settlement to $3,811.07 ($5,000 - $1,188.93 in medical liens). Moreover, Respondent ultimately turned over the full settlement amount to Susie after he dropped the ball on the

Medicare lien and recognized that the terms of the Settlement Agreement were unclear. Consequently, Susie received the full settlement *and* had her medical liens paid by Respondent.

Like the attorneys in *Dudugjian*, the court finds that the present misconduct is not likely to reoccur. Therefore, having considered the evidence, the standards, and the case law – as well as the nominal aggravation and substantial mitigation – the court concludes that a public reproval is appropriate to protect the public, the courts, and the legal profession.

Disposition

Discipline – Public Reproval

It is ordered that John Kevin Crowley, State Bar Number 88189, is publicly reproved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar (Rules of Procedure), this reproval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being attached to this reproval. Failure to comply with any condition attached to this reproval may constitute cause for a separate disciplinary proceeding for willful breach of rule 8.1.1 of the Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reproval for one year following the effective date of the reproval.

Conditions of Reproval

1. **Review Rules of Professional Conduct**

Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State

Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

2. **Comply with State Bar Act, Rules of Professional Conduct, and Reproval Conditions**

Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproval.

3. **Maintain Valid Official State Bar Attorney Records Address and Other Required Contact Information**

Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within 10 days after such change, in the manner required by that office.

4. **Meet and Cooperate with Office of Probation**

Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproval Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

5. State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court

During Respondent's Reproval Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproval conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official State Bar attorney records address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

6. Quarterly and Final Reports

a. Deadlines for Reports. Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproval Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than 10 days before the last day of the Reproval Conditions Period and no later than the last day of the Reproval Conditions Period.

b. Contents of Reports. Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and

signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. Submission of Reports. All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. Proof of Compliance. Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Reproval Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

7. State Bar Ethics School and Client Trust Accounting School

Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and of the State Bar Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending these sessions.

8. Multistate Professional Responsibility Examination Within One Year

Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

Costs

Costs are 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.

Dated: May 6, 2019

MANJARI CHAWLA
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 May 6, 2019, I deposited a true copy of the following document(s):

DECISION AND ORDER

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:

RUSSELL SAMUEL ROECA
ROECA HAAS MONTES DE OCA LLP
48 GOLD ST
SAN FRANCISCO, CA 94133

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

Carla Cheung, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 6, 2019.

Vincent Au
Court Specialist
State Bar Court