

# PUBLIC MATTER

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STATE BAR COURT  
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LOS ANGELES

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 17-O-01945-DFM
	)	
<b>JOEL RICHARD BANDER,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar, No. 119460.	)	<b>ENROLLMENT ORDER</b>
_____	)	

### INTRODUCTION

Respondent is charged here with willfully violating (1) Business and Professions Code<sup>1</sup>; section 6068, subdivision (k) (failure to comply with conditions of probation); and (2) section 6106 (moral turpitude - misrepresentation). The court finds culpability and recommends discipline as set forth below.

### PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed by the State Bar of California on October 12, 2017.

On November 7, 2017, Respondent filed his response to that NDC.

On November 20, 2017, the initial status conference was held in the case. At that time, the matter was given a trial date of February 6, 2018, with a one-day trial estimate.

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<sup>1</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.



Thereafter, at the pretrial conference in this matter on January 29, 2018, approximately a week before the scheduled trial, the parties agreed that the State Bar could file an amended NDC in the case. The amended NDC was filed on January 29, 2018. By agreement of the parties, Respondent's response to the original NDC was deemed responsive to the amended NDC.

Trial commenced on February 6, 2018. During the course of the State Bar's examination of Respondent as a witness in the case, this court, because of the extensive manner in which the original NDC had been amended and the broad manner in which the amended language arguably made relevant otherwise uncharged violations, became concerned that due process required: (1) the State Bar to further amend its NDC to provide sufficient notice of the factual allegations being advanced by the State Bar to support its contentions of culpability; and (2) Respondent to be given time to adequately prepare his defense to those allegations. Accordingly, the trial was recessed and scheduled to reconvene on March 20, 2018.

On February 16, 2018, the State Bar filed a Second Amended Notice of Disciplinary Charges. On March 7, 2018, Respondent filed a written response to those charges.

Trial was reconvened on March 20, 2018, and completed on that date. The matter was submitted for decision on that date, although the parties were allowed to submit post-trial briefs on or before April 3, 2018. The State Bar was represented at trial by Deputy Trial Counsel Scott Karpf. Respondent acted as counsel for himself.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on Respondent's response to the NDC, the extensive stipulations of undisputed facts and conclusions of law filed by the parties, and the documentary and testimonial evidence admitted at trial.

**Jurisdiction**

Respondent was admitted to the practice of law in California on December 10, 1985, and has been a member of the State Bar at all relevant times.

**Case No. 17-O-01945**

On August 28, 2013, the California Supreme Court filed an order in Case Nos. 12-O-13705, 12-O-13739, 12-O-13779, 12-O-13833, 12-O-13925, 12-O-13926, 12-O-14230, 12-O-15398, 12-O-15448, and 12-O-16699 (S211543) (the Supreme Court Order), suspending Respondent for three years, stayed, and placing him on probation for four years with conditions of probation including actual suspension for a minimum of two years and until he provides proof to this court of his rehabilitation, fitness to practice, and present learning and ability in the general law. This order was based on a Stipulation re Facts, Conclusions of Law and Disposition executed by Respondent on April 18, 2013, and approved and recommended to the Supreme Court by this court on April 25, 2013.

Among the other conditions of probation, Respondent was ordered to submit a written quarterly report to the Office of Probation on or before January 10, April 10, July 10 and October 10 of each year, or part thereof, during which his probation is in effect, stating under penalty of perjury whether he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). In addition, he was also ordered to initiate, participate in, and comply with fee arbitrations with a number of different former clients. This lengthy probation condition provides:

**FEE ARBITRATION CONDITIONS OF PROBATION:**

As an additional term and condition of probation, Respondent shall do the following:

**A. Respondent's Duty to Initiate and Participate in Fee Arbitration**

Respondent must initiate fee arbitration within thirty (30) days from the effective date of this matter, including making any payment(s) and filing fees required by the organization conducting the fee arbitration to start the process, as follows:

1. Francis Spoonemore      Amount in dispute: \$8,000
2. Maijorie Padua          Amount in dispute: \$6,000
3. Antonio Castillo        Amount in dispute: \$5,000
4. Angela Ser-Manukyan    Amount in dispute: \$5,450
5. Seung Man Jeong        Amount in dispute: \$6,800
6. Felicidad Campo        Amount in dispute: \$6,000
7. Artak Topchyan         Amount in dispute: \$6,000
8. Kang Seon Seomun       Amount in dispute: \$2,000
9. Franklin Yasay          Amount in dispute: \$5,000

Respondent must provide the Office of Probation with a copy of the conformed filing of each fee arbitration request within forty-five (45) days from the effective date of this matter. Respondent must immediately provide the Office of Probation with any information requested regarding the fee arbitrations to verify Respondent's compliance.

Respondent must fully and promptly participate in each fee arbitration as directed by the organization conducting the fee arbitration. Respondent will not be permitted to raise the statute of limitations as a defense to the fee arbitration. Respondent understands and agrees that the Office of Probation may contact the entity conducting the fee arbitration for information.

Respondent must accept binding arbitration on each arbitration request form. If the arbitration proceeds as non-binding, however, Respondent must abide by the arbitration award and forgo the right to file an action seeking a trial de novo in court to vacate the award.

**B. Respondent's Duty to Comply with the Arbitration Award**

Within fifteen (15) days after issuance of any arbitration award or judgment or agreement reflected in a stipulated award issued pursuant to a fee arbitration matter, Respondent must provide a copy of said award, judgment or stipulated award to the Office of Probation when such award, judgment or stipulated award becomes final as a matter of law. Respondent must abide by any award, judgment or stipulated award of any such fee arbitrator when such award, judgment or stipulated award becomes final as a matter of law. Respondent agrees to provide proof of compliance with any such award, judgment or stipulated award to the Office of Probation within thirty (30) days. If the award, judgment or stipulated award does not set forth a deadline for any payment, Respondent is to make full payment within thirty

(30) days after any such award, judgment or stipulated award becomes final as a matter of law. Respondent must provide proof thereof to the Office of Probation within thirty (30) days after payment.

To the extent that Respondent has paid any fee arbitration award, judgment or stipulated award prior to the effective date of this matter, Respondent will be given credit for such payments) provided satisfactory proof of such payments) is or has been provided to the Office of Probation

**C. Fee Arbitration Conditions can be Satisfied by Respondent's Full Payment Plus Interest**

The Fee Arbitration Conditions can also be satisfied by Respondent's full payment of the amount in dispute, specified above, plus interest of 10% per annum from February 12, 2010, when Respondent entered bankruptcy, within thirty (30) days from the effective date of this matter. Satisfactory proof of payment must be received by the Office of Probation within forty-five (45) days from the effective date of this matter.

Nothing in these Fee Arbitration Conditions prevents Respondent from negotiating and settling the amount in dispute with the above-named individuals before Respondent initiates the required fee arbitration process; provided, however, that any settlement must be in writing and satisfactory proof of such settlement, including proof of any payment required, must be received by the Office of Probation within twenty-five (25) days from the effective date of this matter.

If the Client Security Fund ("CSF") has reimbursed any of the above-listed individuals, for all or any portion of the principal amount(s), Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs. To the extent the CSF has paid only principal amounts, Respondent will still be liable for interest payments. Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d). Respondent must pay all restitution before making payment to CSF. Satisfactory proof of payments to CSF must be received by the Office of Probation within thirty (30) days of any payment.

**D. Effect of Respondent's Failure to Comply with Fee Arbitration Conditions**

Respondent understands that failure to strictly comply with these conditions regarding fee arbitration may result in this Court imposing additional discipline (with attendant costs) and conditions upon Respondent, including ordering Respondent to pay back the full amount in dispute plus 10% interest from the date interest accrues.

The Supreme Court order became effective on September 27, 2013, and was properly served on Respondent and received by him.

On October 3, 2013, State Bar Probation Deputy Maricruz Farfan sent a courtesy reminder letter to Respondent, reminding him of the terms of the Supreme Court order and providing the deadline for completing each probation condition. Included with this letter, which was received by Respondent, were copies of the Supreme Court's order, the language of the conditions of probation, and instruction sheets and forms to use in submitting quarterly reports.

This letter also included the following warning:

**You are responsible for timely complying with each and every term and condition whether or not it is reflected in this letter and/or the Quarterly Report form.** You are reminded that for all conditions, **being even one day late** means that you are **NOT** in compliance.” [Emphasis and underlining in original.]

In addition, the letter stated that the Office of Probation did not have authority to extend compliance due dates or to modify the terms and conditions of the discipline order. Instead, it noted that any requests by Respondent for extensions of time or modifications of the terms and conditions of the Supreme Court's order needed to be filed with the State Bar Court. (Ex. 6, pp. 2, 4.)

On November 1, 2013, Respondent participated in the required meeting with the Probation Deputy. During that meeting, Respondent was advised again of the conditions of his probation; his quarterly reporting schedule and requirements; that the “filing of a motion with State Bar Court should be considered if [Respondent is] unable to meet conditions by the deadline;” and that “a non-compliance referral will be made if conditions are not met by deadlines, which may result in additional discipline[.]”

On November 6, 2013, Probation Deputy Farfan emailed Respondent at his membership records email address, attaching a copy of the Required Meeting Record generated during the initial probation meeting on November 1, 2013. This attached record repeated the various due dates and Respondent's need to seek relief from this court if he was going to be unable to comply timely with any probation condition. (Ex. 10, p. 2.) Respondent received this email.

On November 18, 2014, the Santa Monica Bar Association served Respondent by mail with a copy of a fee arbitration award, awarding a \$3,000 refund to Antonio Castillo. Respondent received this Castillo fee arbitration award. This fee arbitration award was received by Respondent, final as a matter of law, and binding on Respondent. The award stated that Respondent was to refund the money to Castillo "forthwith."

Pursuant to the probation condition quoted above, Respondent was required to provide a copy of this Castillo fee arbitration award to the Office of Probation on or before December 3, 2014. On December 15, 2014, twelve days after that deadline, Respondent emailed a copy of the award to Probation Deputy Farfan.

On January 8, 2015, Respondent submitted to the Office of Probation a quarterly report under the penalty of perjury in which he marked the box indicating that he had fully complied during the preceding quarter with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation. (Ex. 1004.) This representation was inaccurate because of Respondent's delinquent submission of the Castillo arbitration award.

On July 20, 2015, the Santa Monica Bar Association served on Respondent a copy of a fee arbitration award, obligating Respondent to pay Narine and Artak Topchyans \$4,500 plus 10% interest per year "from the 30th day after the date of service of this award." Thirty days later, on August 19, 2015, payment of the Topchyans' fee arbitration award became due.

Pursuant to the probation condition quoted above, Respondent was obligated to comply timely with this arbitration award. Although it is now well more than two years later, Respondent has neither paid the award nor filed a motion with this court requesting an extension of the time for him to do so.

On October 5, 2015, Respondent submitted to the Office of Probation a quarterly report under the penalty of perjury in which he marked the box indicating that he had fully complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding quarter. This representation was again inaccurate due to Respondent's failures to pay the Topchyan award and present proof of that payment to the Office of Probation.

On October 5, 2015, after receiving Respondent's inaccurate October 2015 quarterly report, Probation Deputy Farfan mailed and emailed to Respondent a letter listing a number of ways in which he had failed to comply properly with his probation conditions. Included among the items listed was the fact that Respondent had not yet presented proof of his payment of the Topchyan \$4,500 arbitration award. This letter warned Respondent that he was at risk of being referred to the Office of Chief Trial Counsel for possible additional disciplinary charges because of his failure to comply with his probation conditions.

On October 6, 2015, Respondent responded by email to Probation Deputy Farfan, advising, "I currently do not have funds to pay the outstanding arbitration award. As you know, I have dutifully paid the prior awards, but cannot do so promptly at this time. I am trying to marshal funds."

On January 7, 2016, and April 7, 2016, Respondent submitted additional quarterly reports in which he again indicated that he had fully complied during the preceding quarter with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation. These



representations, under the penalty of perjury, were also inaccurate because Respondent had still not complied with his obligations to pay the Topchyan arbitration award and to present proof of such payment to the Office of Probation.

On July 11, 2016, Respondent submitted to the Office of Probation the quarterly report due July 10, 2016.<sup>2</sup> In this report, Respondent again misrepresented under the penalty of perjury that he had fully complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding quarter. This representation was inaccurate because Respondent had still not complied with his obligations to pay the Topchyan arbitration award and to present proof of that payment to the Office of Probation.

On September 15, 2016, the Santa Monica Bar Association served Respondent with a fee arbitration award, awarding \$6,300 to Felicidad Campo. This fee arbitration award was binding on Respondent and became due on October 15, 2016. Notwithstanding the probation condition quoted above, Respondent has still not paid any portion of the Campo fee arbitration award. Nor has he filed a motion with this court for an extension of the deadline for him to do so.

On October 11, 2016, Respondent submitted to the Office of Probation his quarterly report due on October 10, 2016. In designating the quarter for which the report was being made, Respondent inexplicably handwrote on the form that it was the report due on October 10, 2017 (not 2016) and thus was ostensibly reporting on his compliance during the period July 1 through September 30 of the next year. When the report was received, it was stamped as “Non Compliant” on October 11, 2016, but Respondent was not notified by the Office of Probation of this deficiency until March of the following year. (Ex. 16.)

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<sup>2</sup> This report was certified as “Compliant” because July 10, 2016, fell on a Sunday.

On January 5, 2017, Respondent submitted to the Office of Probation a quarterly report under the penalty of perjury in which he marked the box indicating that he had fully complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding quarter. This was inaccurate due to Respondent's ongoing failures to pay the Topchyan and Campo awards and present proof of such payments to the Office of Probation.

On March 14, 2017, Probation Deputy Farfan mailed and emailed a letter to Respondent, delineating the probation conditions with which Respondent was then in non-compliance, including his obligations to pay Topchyan and Campo awards and his need to file a correctly-dated report for the quarter immediately preceding October 1, 2016. Approximately two weeks later, on April 1, 2017, notwithstanding Respondent's receipt of the letter and email delineating his ongoing non-compliance with the conditions of his probation, Respondent signed under the penalty of perjury, and subsequently submitted to the Office of Probation on April 6, 2017, another quarterly report inaccurately representing that he had fully complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation during the preceding quarter.

Although Respondent remained on probation until September 2017, he continued to fail to pay the Topchyan and Campo arbitration awards and also failed to submit a corrected quarterly report for that due on October 10, 2016. In addition to those ongoing violations, he failed to timely submit both the quarterly report due on July 10, 2017, and the final report due on September 27, 2017. The instant disciplinary charges resulted.

As noted above, the trial in this matter first commenced on February 6, 2018, and then was recessed. A day after that first day of trial, Respondent submitted to the Office of Probation on February 7, 2018, the reports due on July 10, 2017, and September 27, 2017, together with a

corrected version of the October 10, 2016 quarterly report. Notwithstanding all of the criticisms by the State Bar during the first day of the trial of this matter of the accuracy of Respondent's prior quarterly reports, Respondent represented inaccurately in his belated report due July 10, 2017, that he had complied with all of the provisions of the State Bar Act, the Rules of Professional Conduct, and the conditions of his probation during the period April 1, 2017 through June 30, 2017, except "I did not timely file this report." (Ex. 28.) Respondent did not include in this report his ongoing failures to pay the Topchyan and Campo arbitration awards or his ongoing failure during that quarter to file a corrected October 10, 2016 quarterly report. Respondent's delinquent Final Report, reporting for the period July 1, 2017 through September 27, 2017, included the same representation and suffered from the same deficiency. Finally, Respondent's corrected October 10, 2016 quarterly report, inaccurately represented that Respondent, for the period July 1, 2016 through September 30, 2016, had "complied with all of the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of probation except "The prior filing for this period inadvertently listed the reporting period as 2017." (Ex. 27 [underlining in original].) Once again, Respondent did not include in this report his failure to pay the Topchyan award by the deadline expiring during that quarter.

**Count 1 –Section 6068, subd. (k) [Failure to Comply with Conditions of Probation]**

In the original NDC, the State Bar contended that Respondent failed to comply with the above restitution condition of his probation as follows:

- A. Failing to timely submit proof of a fee arbitration award to the Office of Probation within 15 days of service for the Antonio Castillo matter;
- B. Failing to pay \$4,500.00 fee arbitration award to former clients Artak and Narine Topchyan within thirty (30) days after any such award, judgment or stipulated award becomes final as a matter of law; and
- C. Failing to pay \$6,300.00 fee arbitration award to former client Felicidad Campo within thirty (30) days after any such award, judgment or stipulated award becomes final as a matter of law.

In his response, Respondent agreed that he submitted proof of the Castillo arbitration award approximately one week late. He added, however, that he timely paid the arbitration award. With regard to the Topchyan and Campo arbitration awards, Respondent acknowledged that he did not timely pay those awards, but attributed his failure to pay those awards to his financial inability to do so.

In the Second Amended NDC, the State Bar expanded its allegations of probation violations to include the following:

- A. Failing to timely submit proof of a fee arbitration award to the Office of Probation within 15 days of service for the Antonio Castillo matter;
- B. Failing to timely submit proof of a fee arbitration award to the Office of Probation within 15 days of service for the Narine and Artak Topchyan matter;
- C. Failing to timely submit a quarterly report, due October 10, 2016;
- D. Failing to timely submit a quarterly report, due July 10, 2017;
- E. Failing to timely submit his final probation report, due September 27, 2017;
- F. Failing to pay \$4,500.00 fee arbitration award to former clients Artak and Narine Topchyan within thirty (30) days after any such award, judgment or stipulated award became final as a matter of law; and
- G. Failing to pay \$6,300.00 fee arbitration award to former client Felicidad Campo within thirty (30) days after any such award, judgment or stipulated award became final as a matter of law.

In his response to this Second Amended NDC, Respondent:

- A. Admitted that he was one week late in filing his proof of the Castillo arbitration award, attributing the delinquency to a “calendar oversight;”
- B. Admitted that his notification to the Office of Probation of the Topchyan award was two days late, attributing the delinquency to his belief that the five-day extension of Code of Civil Procedure section 1013(a) applied to the situation;
- C. Denied that the quarterly report due October 10, 2016, was not timely filed;
- D. Admitted that the quarterly report due July 10, 2017, was not timely filed, attributing that failure to his allegation that “At the time the parties were seemingly resolving the matter causing Respondent to falsely believe the good faith of the State Bar Counsel that the matter would be resolved.”
- E. Admitted that the final probation report was not timely filed, also attributing this delinquency to his belief that matters were being resolved with the State Bar;

- F. Admitted that the Topchyan arbitration award has not been paid, attributing that fact to his “inability to pay the restitution based on lack of funds;” and
- G. Admitted that the Campo arbitration award has not been paid, again attributing that fact to his lack of funds.

Based on the evidence presented by the State Bar, the stipulation of the parties, and Respondent’s admissions, set forth above, this court finds that Respondent willfully violated section 6068, subdivision (k), by failing to timely submit to the Office of Probation (1) proof of the Castillo and Topchyan awards; (2) his quarterly report due July 10, 2017; and (3) his final probation report, due September 27, 2017. Respondent’s belief that he might be working out disciplinary issues with the State Bar provides no excuse for his failure to comply with ongoing obligations imposed by the Supreme Court.

With regard to the quarterly report due October 10, 2016, this court also finds that there is clear and convincing evidence of a willful violation by Respondent with regard to that report. Respondent submitted a report, signed by him on October 9, 2016, and brought by him to the State Bar office for filing on Monday, October 10, 2016. Because the State Bar treats Columbus Day as a holiday, its offices were closed on that Monday. As a result, the report was not “received” by the Office of Probation until the following day, October 11, 2016. The State Bar neither contends, nor does this court find, that this report was late because of its receipt on October 11, 2016. (See also Civ. Code, § 11.) Instead, the basis for the State Bar’s assertion, and this court’s finding, that a compliant report was not timely submitted for the prior period is the fact that Respondent indicated in this report that he was reporting for the period July 1, 2017 through September 30, 2017, not 2016. This inaccurate dating made the report meaningless, because the inaccurate time reference was incorporated into and made meaningless each of Respondent’s responses in the report. Although Respondent was subsequently notified of this problem by Probation Deputy Farfan on March 14, 2017, he made no effort to rectify the mistake

until after the trial of this matter had commenced and then purported to correct the prior report with one that was inaccurate.

This court also finds that Respondent's failure to pay the two arbitration awards by the deadlines set forth in the probation conditions constituted willful violations by him of his obligations under section 6068, subdivision (k). While Respondent contends that his failure to pay these awards resulted from his lack of money, this contention is unpersuasive given his testimony at trial regarding his investment of significant monies in a financial venture in the Philippines during the same time period when these restitution obligations became due. Moreover, even if Respondent had been financially unable to comply with this condition of his probation, he was obligated to seek relief from this court. His failure to make any effort to do so renders him culpable of a violation of the probation condition and, in turn, section 6068, subdivision (k). (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138; see also *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868.)

**Count 2 –Section 6106 [Moral Turpitude - Misrepresentation]**

In this count, the State Bar alleges that Respondent's reports submitted on January 8, 2015; October 5, 2015; January 7, 2016; April 10 [sic], 2016; July 11, 2016; January 5, 2017; April 6, 2017; and February 7, 2018, all contained misrepresentations in violation of section 6106 because they falsely represented that Respondent had complied, either fully or with specified exceptions, during the reporting period with the State Bar Act, the Rules of Professional Conduct, and all conditions of his probation when Respondent knew or was grossly negligent in not knowing at the time of each such representation that such was not the case. In support of these allegations, the State Bar alleges that (1) the January 8, 2015 report was inaccurate because Respondent had failed to timely submit the Castillo arbitration award; (2) the

October 5, 2015 report was inaccurate because Respondent had failed to timely submit the Topchyan fee arbitration award to the Office of Probation and had failed to pay said arbitration award; (3) the January 7, 2016, April 10, 2016, July 11, 2016, and February 7, 2018 (due October 10, 2016) reports were inaccurate because Respondent had failed to pay the Topchyan fee arbitration award; (4) the January 5, 2017, and April 6, 2017 reports were inaccurate because Respondent had failed to pay the Topchyan fee arbitration award, failed to pay the Campo fee arbitration award, and failed to file a compliant quarterly report due October 10, 2016; and (5) the February 7, 2018 quarterly report (due July 10, 2017) and February 7, 2018 final report (due September 27, 2017) were inaccurate because Respondent had failed to pay the Topchyan fee arbitration award and had failed to pay the Campo fee arbitration award.

This court agrees with the above allegations by the State Bar and finds that Respondent misrepresented under penalty of perjury in each of the above reports that he had complied during the specified reporting period with the State Bar Act and all conditions of his probation and that Respondent knew, or was grossly negligent in not knowing, the inaccuracy of those misrepresentations at the time for the reasons alleged by the State Bar in the Second Amended NDC. Such misrepresentation constituted acts of moral turpitude in wilful violation of the prohibition of section 6106.

Respondent's contentions that his representations were not acts of moral turpitude because the State Bar has not shown that it was misled by them is without merit. (See instead *Davis v. State Bar* (1983) 33 Cal.3d 231, 240; *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200; (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174, citing *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91-92.)

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5.)<sup>3</sup> The court finds the following with regard to aggravating factors.

#### **Prior Discipline**

Respondent has two prior records of discipline.

Case Nos. 09-O-14921, 09-O-17787, 09-O-17869, 09-O-19068, 09-O-19452, 10-O-00848, 10-O-01778, 10-O-01807, 10-O-01809, 10-O-01810, 10-O-01811, 10-O-01812, 10-O-02905, 10-O-02907, 10-O-03224, 10-O-04309, 10-O-04935, 10-O-07482, 10-O-08720, 11-O-12063 (Bander I)

Effective June 21, 2012, the Supreme Court ordered that Respondent be suspended for one year, stayed, and be placed on probation for three years, subject to conditions including 90 days of actual suspension. The misconduct involved 20 matters and included violations of rule 4-100(B)(3) (failure to provide an accounting) and rule 3-700(D)(2) (failure to return unearned fees) in 19 separate client matters and section 6068, subdivision (o)(3) (failure to report judicial sanctions) in another. The misconduct took place during the years 2008-2010.

Case Nos. 12-O-13705, 12-O-13739, 12-O-13779, 12-O-13833, 12-O-13925, 12-O-13926, 12-O-14230, 12-O-15398, 12-O-15448, 12-O-16699 (Bander II)

As previously noted, the California Supreme Court imposed discipline on Respondent in 2013, consisting of three years' suspension, stayed, and four years of probation, including actual suspension for a minimum of two years and until Respondent provides proof to this court of his rehabilitation, fitness to practice, and learning and ability in the law. Respondent's misconduct involved ten client matters and violations of rule 3-110(A) (failure to act with competence) and section 6068, subdivision (m) (failure to inform client of significant developments). Because it

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<sup>3</sup> All further references to standard(s) or std. are to this source.



was previously recognized by the parties and the court that the misconduct in this second matter had occurred during the same time period as that resulting in the first discipline, the discipline in this second matter was assessed in accordance with *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.

This prior record of discipline is an aggravating factor. (Std. 1.5(a); *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311.)

#### **Multiple Acts of Misconduct**

Respondent's numerous acts of misconduct is an aggravating factor. (Std. 1.5(b); *In the Matter of Laden* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 678, 683.)

#### **Lack of Insight and Remorse**

Respondent's meritless defenses and contentions in the present proceedings and his inaccurate reports submitted after the first day of the trial of this matter demonstrate his lack of insight into the wrongfulness of his actions. (*In the Matter of Katz* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 430, 438.)

#### **Mitigating Circumstances**

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

#### **Candor and Cooperation**

Respondent acknowledged in his response to the State Bar's charges many of the facts establishing culpability for many of those charges and he subsequently entered into an extensive stipulation of such facts, thereby assisting the State Bar in the prosecution of the case. For such conduct Respondent is entitled to some mitigation. The weight of that mitigation credit, however, is greatly reduced by his failure to admit culpability for all of the charges. (Std. 1.6(e);

see also *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50; cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [credit for stipulating to facts but “very limited” where culpability is denied].)

### **Good Faith, No Harm**

Although Respondent argues in his closing brief that he should receive mitigation credit or good faith and no harm, the evidence falls far short of being clear and convincing on those issues. Two of his former clients have yet to receive payment of the arbitration awards issued against Respondent. There is no evidence that this delay in payment by Respondent has not caused harm to those individuals. Nor is the evidence persuasive that Respondent’s acts of moral turpitude and probation violations result from any good faith on his part. That is especially true with regard to his inaccurate reports submitted after the first day of the trial of this matter. Accordingly, this court declines to treat either of those issues as a mitigating factor.

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, this 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.) The court then looks to the 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.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404,

419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

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 2.14 applies to violations of probation conditions and calls for a period of actual suspension as the presumed sanction. Standard 2.11 applies to acts of moral turpitude and calls for either disbarment or actual suspension as the presumed discipline.

Also applicable is standard 1.8(b) which instructs that disbarment is appropriate where an attorney has two or more prior records of discipline if (1) an actual suspension was ordered in any of the prior disciplinary matters; (2) the prior and current disciplinary matters demonstrate a pattern of misconduct; or (3) the prior and current disciplinary matters demonstrate the attorney's unwillingness or inability to conform to his or her ethical responsibilities.<sup>4</sup> Respondent's case meets at least two of the criteria under standard 1.8(b).<sup>5</sup> First, under standard 1.8(b)(1),

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<sup>4</sup> The two stated exceptions to disbarment under standard 1.8(b) do not apply here because (1) Respondent did not prove compelling mitigation that clearly predominates, and (2) his present misconduct did not overlap in time with his prior misconduct.

<sup>5</sup> We also note that under our progressive discipline standard, there is little, if any, room for discipline less than disbarment due to Respondent's prior 24-month minimum actual suspension. (See, e.g., std. 1.8(a) [if member has single prior record of discipline, sanction must be greater than prior, unless prior was remote and not serious].)

Respondent was actually suspended in *Bander II*. Second, given the magnitude of his combined prior misconduct, Respondent should have taken the utmost care in meeting his professional obligations, including strict compliance with his disciplinary probation order. Yet, he did not heed the import of the order, and he violated his probation conditions, which demonstrates under standard 1.8(b)(3) that he is either unwilling or unable to conform to necessary ethical standards.

Respondent's probation requirements were responsibilities designed to address prior underlying misconduct, prevent recidivist acts, and protect the public. His restitution obligations were explicitly designed to cause Respondent to address and rectify the consequences to his former clients of his prior misconduct. (See *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 312 [a condition of probation, such as restitution, "serves the rehabilitative and public protection goals of disciplinary probation by forcing attorneys to confront in concrete terms the consequences of the attorney's misconduct"].) Respondent's demonstrated failure to prioritize and comply with that purpose, coupled with his multiple acts of moral turpitude directed at the State Bar in the context of the disciplinary process, make clear that more than lengthy periods of probation and actual suspension are necessary to protect the court, the profession and the public from future misconduct by him. For that reason, a recommended discipline of disbarment is found by this court to be both necessary and appropriate.

## RECOMMENDED DISCIPLINE

### Disbarment

The court recommends that respondent **Joel Richard Bander**, State Bar No. 119460, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to (1) Narine and Artak Topchyan in the amount of \$4,500, plus 10 percent interest per year from August 19, 2015; and (2) Felicidad Campo in the amount of \$6,300, plus 10 percent interest per year from October 15, 2016. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court further recommends that Respondent be ordered to comply with 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 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.


### **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Joel Richard Bander**, State Bar No. 119460, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this

decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)<sup>6</sup>

IT IS SO ORDERED.

Dated: May 4, 2018

  
DONALD F. MILES  
Judge of the State Bar Court

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<sup>6</sup> An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

**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 Los Angeles, on May 4, 2018, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY  
INACTIVE ENROLLMENT ORDER**

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

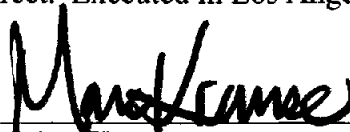
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOEL RICHARD BANDER  
3400 S BARRINGTON AVE  
LOS ANGELES, CA 90066

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

SCOTT D. KARPFF, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 4, 2018.



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Marc Krause  
Court Specialist  
State Bar Court