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STATE BAR COURT
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PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of
VADIM LIBERMAN,
Member No. 152725,
A Member of the State Bar.

Case No. 99-C-11630-RAH
DECISION

1. INTRODUCTION.

This matter is before the Court on an order of reference filed by the review department on November 25, 2003, for a hearing and decision as to whether the facts and circumstances surrounding a *single* misdemeanor violation of Penal Code section 549 of which respondent Vadim Liberman¹ (hereafter Respondent) was convicted involved moral turpitude (Bus. & Prof. Code, §§ 6101, 6102)² or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494) and, if so found, a recommendation as to the discipline to be imposed.

The Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) was represented by Deputy Trial Counsel Charles T. Calix. Respondent was represented by Attorney Michael G. Gerner.

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¹Liberman was admitted to the practice of law in California on June 6, 1991, and has been a member of the State Bar since that time. He has no prior record of discipline.

²Except where otherwise indicated, all statutory references are to the Business and Professions Code.



1 The State Bar contends that section 549 is a crime involving moral turpitude per se or is
2 "the equivalent of a crime of moral turpitude"³ and that "the facts and circumstances surrounding
3 Respondent's involvement in [an] automobile fraud ring demonstrate that he was aware that he
4 was involved in a criminal conspiracy" "to defraud automobile insurance carriers."⁴

5 The State Bar further contends that Respondent is subject to summary disbarment under
6 section 6102, subdivision (c) because, as noted *ante*, section 549 is allegedly a crime involving
7 moral turpitude per se. But the State Bar does not recommend summary disbarment because, for
8 some unidentified reason, it opines that "summary disbarment appears excessive in this instance."
9 What is more, even though the State Bar apparently asserts that the facts and circumstances
10 surrounding Respondent's conviction involve moral turpitude, the State Bar does not recommend
11 the two-year minimum actual suspension provided for in standard 3.2 of the Standards for
12 Attorney Sanctions for Professional Misconduct.⁵ Instead, the State Bar recommends only a
13 year's actual suspension. The Court disregards the State Bar's discipline recommendation.⁶

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15 ³The State Bar does not explain how section 549 is "the equivalent of a crime of moral
16 turpitude," and the Court is unaware of any such term. Accordingly, any assertions by the State
17 Bar regarding section 549 being the equivalent of a crime of moral turpitude are waived. Thus,
the Court need not and, therefore, does not address this assertion.

18 ⁴In its briefs, the State Bar resorts to what may be only politely referred to as "hyperbole"
19 to present its position and to oppose Respondent's position. It is disappointing that the State
20 Bar's briefs are written in a tone that is inappropriate for any pleading filed with a court, much
21 less with this Court – the court which adjudicates the professional conduct of the attorneys of this
22 state. The State Bar's briefs are filled with, *inter alia*, derogatory analogies and assertions, some
23 of which are inept; name calling; barbs; and even insults towards Respondent and his counsel.
24 (See, e.g., footnotes 30 and 31 *post.*) Without question, such "hyperbole" obscures the legitimate
25 positions and persuasive arguments that the State Bar ought to be seeking to advance effectively
in this matter. It is also disappointing that Respondent's closing brief is not entirely free from
such "hyperbole." Respondent's brief contains, *inter alia*, unnecessary comments suggesting such
things as that the State Bar lacks "rudimentary competence." Nonetheless, this Court and the
profession expect the State Bar to set and maintain a higher standard of conduct.

26 ⁵The standards are found in title IV of the Rules of Procedure of the State Bar. All further
27 references to standards are to this source.

28 ⁶First, even assuming *arguendo* that section 549 is a crime involving moral turpitude per
se as the State Bar insists, Respondent's conviction would still not qualify for summary

1 On the other hand, Respondent correctly notes that section 549 is not a crime involving
2 moral turpitude per se. Moreover, Respondent asserts that the facts and circumstances
3 surrounding his conviction do not involve moral turpitude or other misconduct warranting
4 discipline and, therefore, urges this Court to dismiss this proceeding with prejudice.

5 Alternatively, Respondent contends that, even if the Court finds that the facts and circumstances
6 surrounding his conviction involve moral turpitude or other misconduct, no discipline should be
7 imposed.

8 The Court finds that the facts and circumstances surrounding Respondent's conviction do
9 not involve moral turpitude, but that they do involve other misconduct warranting discipline of a
10 minor nature for which the appropriate level of discipline is a private reproof with no conditions
11 attached.

12 **2. RELEVANT PROCEDURAL HISTORY.**

13 On February 23, 2001, in the Los Angeles Superior Court, Respondent pleaded guilty to a
14 single felony count of violating Penal Code section 549⁷ (hereafter section 549). Specifically, in

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16 disbarment because Respondent was ultimately convicted of a misdemeanor and because *only*
17 felony convictions are subject to summary disbarment (§ 6102, subd. (c)). Second, even
18 assuming arguendo that Respondent's conviction qualified for summary disbarment (i.e., was a
19 felony conviction of a crime involving moral turpitude per se), this Court would have a
20 *mandatory statutory duty* to recommend summary disbarment notwithstanding the State Bar
21 subjective view that, for some unstated reason, "summary disbarment appears excessive in this
22 instance." (*Ibid.*; *In re Paguirigan* (2001) 25 Cal.4th 1, 8-9.) Third, assuming arguendo that the
23 facts and circumstances surrounding Respondent's conviction involve moral turpitude as the
24 State Bar insists, the State Bar has not provided any analysis to support its suggestion that the
25 Court disregard the two-year minimum actual suspension provided for in standard 3.2.

26 ⁷Penal Code section 549 (hereafter section 549) is a "wobbler" (i.e., a crime that may be
27 charged or judged either as a felony or a misdemeanor) (see Pen. Code, § 17). Section 549
28 provides: "Any firm, corporation, partnership, or association, or any person acting in his or her
individual capacity, or in his or her capacity as a public or private employee, who solicits,
accepts, or refers any business to or from any individual or entity with the knowledge that, or
with reckless disregard for whether, the individual or entity for or from whom the solicitation or
referral is made, or the individual or entity who is solicited or referred, intends to violate Section
550 of this code or Section 1871.4 of the Insurance Code [by making a false or fraudulent
insurance claim] is guilty of a crime, punishable" Respondent's pleaded guilty only to the

1 accordance with a written plea agreement, Respondent pleaded guilty to the charge from count 9
2 of the first amended indictment filed on April 5, 2000, in the Los Angeles Superior Court
3 that "On or between November 15, 1995, and May 1, 1997, in the County of Los Angeles, the
4 said defendant, Vadim Liberman, did unlawfully accept business from individuals with reckless
5 disregard for whether the individuals intended to violate Penal Code § 550" by making false or
6 fraudulent insurance claims.⁸

7 In accordance with the plea agreement, the superior court did not convict Respondent on
8 his guilty plea on February 23, 2001, but instead, delayed Respondent's conviction until the time
9 of imposition of judgment and sentence when it would also determine whether Respondent's
10 conviction would be a felony or misdemeanor for all purposes. Moreover, Respondent was
11 required to perform 1,000 hours of pro bono legal services to the disadvantaged at the rate of at
12 least 8 hours per week and to make restitution to two insurance companies for the \$7,662 in
13 attorney's fees that he and the Los Angeles law firm of Ellis & Kingston (hereafter E&K), for
14 whom he worked at the time, received for representing individuals in three staged automobile
15 accidents.⁹

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18 "reckless disregard" portion of section 549 and not to the "with the knowledge" portion. In this
19 state the phrase "reckless disregard" is to be construed according to the Model Penal Code's
20 definition of the term "recklessness," which is "A person acts recklessly with respect to a
21 material element of an offense when he consciously disregards a substantial and unjustifiable risk
22 that the material element exists or will result from his conduct. The risk must be of such a nature
23 and degree that, considering the nature and purpose of the actor's conduct and the circumstances
24 known to him, its disregard involves a gross deviation from the standard of conduct that a
25 law-abiding person would observe in the actor's situation." (Model Pen. Code, § 2.02, subd.
26 (2)(c); *In re Steven S.* (1994) 25 Cal.App.4th 598, 615.))

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⁸The Court recognizes that the review department concluded in its order filed herein on
December 11, 2001, that Respondent "pled guilty to count nine of an indictment filed on
December 4, 2000." The Court concludes, however, that the record establishes that Respondent
pleaded guilty as to the quoted charge from count 9 of the second amended indictment filed on
April 5, 2000. Neither party has contended otherwise.

⁹K&E and Respondent actually represented individuals in five staged accidents, but they
received attorney's fees for representing individuals in only three of the accidents.

1 Even though the superior court did not convict Respondent when he pleaded guilty on
2 February 23, 2001, Respondent's guilty plea to a felony charge alone was, under section 6101,
3 subdivision (e), deemed to be not just a conviction on February 23, 2001 (*In re McAllister* (1939)
4 14 Cal.2d 602, 604), but a felony conviction even if the superior court later reduced it to a
5 misdemeanor at the time of conviction or judgment and sentencing (§ 6102, subd. (b); *In the*
6 *Matter of Jackson* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 610, 613-614). Because
7 Respondent's deemed conviction was for a crime (1) that is a felony and (2) for which there is
8 probable cause to believe involves moral turpitude, the review department filed an order on May
9 30, 2002, initiating this conviction referral proceeding against Respondent by placing him on
10 interim suspension pending the final disposition of this proceeding.¹⁰ (§ 6102, subd. (a); see also
11 Cal. Rules of Court, rule 951(a) & Rules Proc. of State Bar, rule 320(a) [Supreme Court's
12 statutory powers under sections 6101 and 6102 are exercised by the review department].)
13 However, before the July 2, 2002, effective date of that interim suspension order, the superior
14 court allowed Respondent to withdraw his guilty plea.

15 Once Respondent withdrew his guilty plea, there was no deemed conviction under section
16 6101, subdivision (e) or section 6102, and the State Bar Court lost jurisdiction for purposes of
17 maintaining a conviction referral proceeding and of placing Respondent on interim suspension.
18 Accordingly, on June 21, 2002, the review department filed an order vacating its May 30, 2002,
19 interim suspension order and dismissing the conviction referral proceeding without prejudice.

20 On April 3, 2003, Respondent pleaded nolo contendere to and was convicted on a *single*
21 *misdemeanor* count of violating section 549. Because Respondent pleaded nolo contendere to a
22 misdemeanor charge of violating section 549, and not a felony violation, his April 3, 2003,
23 conviction is a misdemeanor conviction for State Bar Act purposes. (§ 6102, subd. (b); *In the*
24 *Matter of Jackson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 614.) Because Respondent had already
25 complied with the requirements of his plea agreement that he perform 1,000 hours of community
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27 ¹⁰Each of these grounds independently supported Respondent's interim suspension.
28 (§ 6102, subd. (a).)

1 service and that he make restitution to two insurance companies, the *only* sentence the superior
2 court imposed on him was that he make the \$100 minimum mandatory payment to the
3 Restitution Fund in the State Treasury. (Neither incarceration nor probation was imposed.)
4 Respondent immediately paid the \$100 fine. Accordingly, the criminal proceedings against
5 Respondent were closed that same day.

6 The State Bar reported Respondent's April 3, 2003, misdemeanor conviction to the
7 review department. Even though section 549 is a crime for which there is probable cause to
8 believe involves moral turpitude, in an order filed on June 20, 2003, the review department found
9 good cause for not placing Respondent on interim suspension pending the final disposition of
10 this proceeding. (§ 6102, subd. (a); see also Cal. Rules of Court, rule 951(a); Rules Proc. of State
11 Bar, rule 320(a).) Finally, as noted *ante*, the review department filed an order on November 25,
12 2003, referring this matter to this Court for a trial and decision as to whether the facts and
13 circumstances surrounding Respondent's conviction involved moral turpitude or other
14 misconduct warranting discipline and, if so, for a recommendation as to discipline. Without
15 question and notwithstanding the State Bar's unsupported assertion to the contrary, the holding
16 that section 549 is *not* a crime involving moral turpitude per se is implicit in the review
17 department's order. The State Bar does not allege that it sought Supreme Court review of either
18 of these review department orders. Accordingly, this Court accepts the review department's
19 classification of section 549 as a crime for which there is probable cause to believe involves
20 moral turpitude.

21 In accordance with the review department referral order, this matter proceeded to trial in
22 the hearing department from September 27, 2004, through September 30, 2004. Thereafter, the
23 Court took the matter under submission for decision on December 17, 2004; however, in an order
24 filed on March 16, 2005, the Court vacated the submission to permit the State Bar to file a
25 stipulation with respect to the testimony of Igor Purchansky, which the State Bar had
26 inadvertently failed to offer into evidence. The State Bar filed that stipulation on March 25,
27 2005. (See footnote 15, *post*.) Thereafter, the Court took the matter under submission decision
28 again March 29, 2005.

1 **3. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

2 **A. Background Facts.**

3 Respondent is a Russian immigrant who came to the United States and found his way to
4 Wayne State University in Detroit, where he went to law school. He graduated from law school
5 in 1988 and became a licensed attorney in the State of Massachusetts. Respondent then moved to
6 California to attempt the bar examination. His employment with E&K commenced in 1988.
7 Respondent took the California Bar Examination four times.¹¹ During the period of time that he
8 was attempting to pass the California Bar Examination, Respondent had a summer clerkship and,
9 later, a job as a law clerk with K&E.

10 In 1991, Respondent passed the California Bar Examination and began working as an
11 associate attorney for E&K. In 1992, hoping to capitalize on his bilingual capabilities,
12 Respondent began advertising the firm's legal services in a Russian weekly newspaper called
13 Panorama. His ads in this newspaper ran for several years.

14 One of the first clients that contacted Respondent from these newspaper ads as a new
15 attorney at E&K was Igor Snarsky, a Russian immigrant who lived in the San Diego area.
16 Snarsky and his wife retained E&K to represent them with respect to injuries they suffered in a
17 legitimate (i.e., nonstaged) traffic accident. Respondent was the E&K attorney assigned the
18 Snarskys' case. Respondent obtained an agreed upon settlement for the Snarskys.

19 About one year later, Snarsky retained E&K to represent him with respect to another
20 legitimate traffic accident in which he was involved. Respondent was the E&K attorney assigned
21 to Snarsky's case, and he again obtained an agreed upon settlement for Snarsky.

22 After Respondent successfully handled those two matters for Snarsky, Snarsky began
23 referring his San Diego area friends (many of whom were also Russian and spoke primarily, if
24 not exclusively, Russian) to E&K in Los Angeles. Some of these individuals speak a Russian
25 dialect different than the one Respondent speaks. Neither E&K nor Respondent paid Snarsky a
26

27 ¹¹It is possible that his records show a fifth attempt, however, on one attempt he did not
28 take the examination because he was sick.

1 referral fee for these referrals he made to E&K.

2 When cases were accepted by E&K, they went through an extensive and detailed intake
3 procedure. For all new cases, including those referred to E&K by Snarsky, a sequential file
4 number was assigned to the client file from a ledger maintained by the firm, a jacket was made
5 by a secretary, automatic letters went out to the client with retainer information, and the file
6 number was used on all correspondence during the pendency of the matter. When the case
7 concluded, the file number was retired and a new storage number was assigned to the closed file.
8 This procedure was automatic with every case.

9 At some point, Snarsky began to assume additional roles with respect to the clients he
10 referred to E&K because E&K did not have an office in the San Diego area. In that regard,
11 Snarsky often acted in a "limited liaison" role for E&K with the clients he referred by helping the
12 firm in contacting and communicating with the clients.¹²

13 Attorneys Ellis and Kingston of E&K even considered opening an office in San Diego. In
14 that regard, they made a trip with Respondent to San Diego to look at buildings that Snarsky had
15 identified as possible locations for the firm to open a branch office.¹³ Even though the two E&K
16 partners were favorably impressed with Snarsky's presentation, they eventually chose not to open
17 the branch office.

18 In November 1994, the Los Angeles District Attorney was advised by Allstate Insurance
19 Company and State Farm Insurance Company of the existence of several suspicious claims. The
20 claims involved automobile collisions where one vehicle contained Eastern European immigrants

21
22 ¹²Respondent testified that this role permitted Snarsky to explain to clients what was
23 needed for their cases, to pass on authorization documents, to receive and obtain signatures and
24 endorsements on releases and drafts, and to help in contacting clients and communicating with
25 them. Snarsky assisted E&K in obtaining the referred clients' signatures on retainer agreements,
26 on documents relating to the clients' medical care, on settlements, on releases, and on settlement
27 checks made payable jointly to the clients and E&K. In addition, Snarsky assisted E&K in
28 disbursing settlement proceeds by giving the clients E&K trust account checks for the clients'
share of the proceeds. At some point, Snarsky sought formal employment with E&K to perform
these services. However, E&K never offered Snarsky any compensation or any paid position.

¹³Two large clients of the firm had their headquarters, or a significant corporate presence,
in San Diego: GEICO and Wauwanesa Insurance.

1 and the other vehicle contained persons of Filipino decent. In addition, many of the individuals
2 in these collisions filed lawsuits using one of a small group of law firms as well as the same
3 small group of medical providers. After a preliminary investigation, the Fraud Bureau of the
4 California Department of Insurance (hereafter CDI) and the San Diego District Attorney's Office
5 agreed to jointly conduct a "sting" operation to further investigate the extent of the suspected
6 illegal activity.

7 In conducting the sting operation, the various law enforcement agencies involved
8 identified a Russian immigrant named "Igor" who owned an appliance business in San Diego
9 called "Discount Action Appliance." In addition, an associate of Igor was identified as
10 "Michael," also apparently a Russian immigrant. This "Igor," was, in fact, Snarsky. In brief, the
11 sting operation revealed an insurance fraud ring - a group of individuals who staged automobile
12 accidents whereby one automobile (the "hammer") would be driven into another vehicle (the
13 "nail"). Insurance claims were made both for the resulting property damage to the vehicles and
14 for the alleged bodily injuries of individuals who were purportedly in the vehicles at the time of
15 the staged accident. Snarsky was the head of the ring. With respect to five accidents that were
16 staged by his ring, Snarsky referred individuals with fake injuries as clients to E&K. Respondent
17 did not know that the accidents were staged or that anyone (including Snarsky and the
18 individuals Snarsky referred to E&K as clients) intended to make or were making false or
19 fraudulent insurance claims.¹⁴ During the time period in which Snarsky referred clients to it,
20 E&K had more than 1,200 active client matters. In addition, the settlements for clients with false
21 or fraudulent claims that Snarsky referred to E&K averaged about \$6,000 or less per client.

22
23 ¹⁴This fact is clearly established by, inter alia, the credible testimony of Respondent.
24 After carefully weighing and considering throughout the trial in this proceeding, Respondent's
25 demeanor while testifying; the manner in which he testified; the character of his testimony; the
26 very personal interest he has in the outcome in this proceeding; and the extent of his capacity to
27 accurately perceive, recollect, and communicate the matters on which he testified, the Court finds
28 Respondent's testimony to be extremely credible on virtually every issue. In short, the Court is
clearly convinced of the truthfulness of Respondent's testimony. This is in stark contrast to the
Court's findings with respect to the testimony of Snarsky, the State Bar's key witness. As noted
in more detail *post*, the Court finds not only that Snarsky's testimony lacks credibility in general,
but also that it lacks candor in a number of instances.

1 Moreover, except with respect to recklessness conclusively established by his conviction,
2 the nature of which is not clearly identified in the record, Respondent did not have reason to
3 suspect that the accidents were staged or that either Snarsky or any of the clients Snarsky referred
4 to E&K intended to make false or fraudulent claims until May 13, 1997, when, as discussed in
5 footnote 18, *post*, an undercover investigator with alleged injuries from a staged accident
6 telephoned him and told him that she was never injured and that the accident she supposedly was
7 involved in was staged. As further discussed in footnote 18, *post*, after that telephone call,
8 Respondent immediately reported the investigator's allegations of fraud to Attorneys Ellis and
9 Kingston, and neither E&K nor Respondent accepted any more referrals from Snarsky.

10 **B. The Five Staged Accidents.**

11 **i. The September 15, 1995, Staged Accident.**

12 On August 1, 1995, in a restaurant in San Diego, CDI Agent Tony Torres, acting under the
13 assumed name of "Tony Miramontes" (hereafter Torres-Miramontes), and CDI Agent James
14 Montoya, acting under the assumed name of "James Cruz" (hereafter Montoya-Cruz), met with
15 Snarsky as part of the sting operation. At the meeting, Snarsky recruited Torres-Miramontes and
16 Montoya-Cruz to participate in a staged accident. The staged accident was scheduled to occur
17 and did occur on September 5, 1995. It was between a 1977 Chevrolet (the hammer) and a 1977
18 Porsche (the nail), which Torres-Miramontes claimed to own.

19 Torres-Miramontes and Montoya-Cruz were purportedly in one car at the time of the
20 accident. Igor Purchansky and Kalinaka Rutberg were purportedly in the other car. After the
21 staged accident, Snarsky referred Rutberg and Purchansky to E&K regarding injuries they
22 allegedly suffered in that staged accident. Their claims were assigned to Respondent by the firm.

23 Snarsky had met Purchansky in Russia about 25 years ago. Purchansky was intimately
24 involved with the insurance fraud ring with Snarsky. While they since had a "falling out" and are
25 no longer friends, Snarsky and Purchansky lived together and shared the same phone number. In
26 addition, Rutberg, who was then a minor, lived with Snarsky and Purchansky.

27 In December 1995, Respondent sent a letter to Farmers' Insurance Group indicating
28 E&K's representation of Rutberg and Purchansky and attaching the medical reports relating to

1 their treatment for the injuries they allegedly sustained in the accident. In February 1996,
2 Michael D. McMullin, a CDI investigator posing as a trainee insurance adjustor with Farmers'
3 Insurance, contacted Respondent and took Rutberg's and Purchansky's recorded statements at
4 E&K's office, which is in Los Angeles. Thereafter, Respondent obtained favorable settlements
5 for Rutberg and Purchansky from Farmers' Insurance, which made the settlement payments as
6 part of the sting operation.

7 **a. Financial Dealings with Nonattorney.**

8 According to the stipulated testimony of Purchansky, the credibility of which the Court
9 rejects,¹⁵ when he received the E&K client trust account check for his portion of the settlement
10 proceeds, he and Snarsky went to the bank where he (i.e., Purchansky) cashed the check and then
11 gave the cash to Snarsky. In addition, according to that stipulated testimony, Purchansky never
12 received any of the money for the staged accident from Snarsky.¹⁶ Furthermore, Snarsky
13 admitted that Purchansky gave him at least a portion of the cash proceeds from the E&K trust
14 account check. Snarsky also testified that, out of the portion of the cash he got from Purchansky,
15 he (i.e., Snarsky) gave Respondent an "under-the-table" payment in cash and told Respondent
16 that the payment was his share of the settlement proceeds in Purchansky's case.

17 The State Bar does not argue that Respondent's alleged acceptance of such an illegal
18 kickback involves moral turpitude or is itself an act of dishonesty or corruption in willful
19

20
21 ¹⁵This stipulation contains various factual statements to which the parties have stipulated
22 that Purchansky would have made had he been called to testify at trial in this proceeding. It
23 includes a partial description of Purchansky's role in the fraud ring. It is not signed nor approved
24 by Purchansky. It is signed only by the State Bar, Respondent, and Respondent's attorney. Even
25 though they were friends for more than 20 years, Snarsky and Purchansky have parted ways, and
26 Snarsky considers Purchansky a liar. In light of the adverse testimony regarding Purchansky's
credibility, the description of Purchansky's role in Snarsky's fraud ring, and its inconsistency with
the other credible evidence in this proceeding, the Court finds that factual statements in the
stipulation of Purchansky's testimony lack credibility and are insufficient to establish any
disputed fact.

27 ¹⁶Purchansky and Snarsky have apparently battled over whether Purchansky was paid
28 money owed by Snarsky arising out of this staged accident. Snarsky contends that he paid him
by giving him a car.

1 violation of section 6106. Instead, the State Bar argues that it is an act involving moral turpitude,
2 dishonesty, or corruption in violation of section 6106 only because Respondent allegedly
3 accepted the payment in cash to avoid having to share the payment with E&K or to avoid having
4 to pay taxes on it or both. The State Bar also argues that Respondent accepted the alleged
5 payment from Snarsky in willful violation of rule 1-320(A) and (B). The Court disagrees with
6 each of the State Bar arguments.

7 While the Court harbors no doubt that Snarsky is very familiar with illicit payments in
8 general, the Court has no competent evidence to conclude that Respondent was involved in any
9 such transaction. Because almost all of the evidence supporting the State Bar's contention that
10 Respondent knew of and was involved in Snarsky's insurance fraud ring is from Snarsky's
11 testimony, the Court has carefully weighed the credibility of his testimony. In doing so, the
12 Court has considered such factors as Snarsky's demeanor while testifying; the manner in which
13 he testified; the character of his testimony; his apparent lack of significant interest in the outcome
14 in this proceeding; and the extent of his capacity to accurately perceive, recollect, and
15 communicate the matters on which he testified. The Court finds his testimony on virtually every
16 disputed issue is not credible and, in some instances, lacked candor (i.e., was false). (See,
17 generally, *In the Matter of Dahlz* (Review Dept.2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [noting
18 the clear distinction between credibility and candor].) In making this finding on credibility and
19 candor, the Court also notes (1) that Snarsky has lied to the police, to insurance companies, to
20 lawyers, and to even his "partner" in the insurance fraud ring, Torres-Miramontes; (2) that
21 Torres-Miramontes testified on cross-examination that he did not feel that Snarsky should be
22 believed, stating that Snarsky is a liar, a thief, and a criminal; (3) that Snarsky himself even
23 admitted, on cross-examination, to being a liar; and (4) that Snarsky has certain personal traits
24 that adversely reflect on his credibility.¹⁷

25 _____
26 ¹⁷Snarsky is extraordinarily violent and vindictive. On several occasions, he requested
27 that Torres-Miramontes "cut the balls off" a business associate who Snarsky believed had done
28 him (i.e., Snarsky) wrong. While testifying in this proceeding, Snarsky minimized this request
by describing it as just a figure of speech. However, the Court must reject Snarsky's description
because, during at least one such occasion, Snarsky went on to tell Torres-Miramontes the exact

1 Except with respect to undisputed issues, the Court is unable to give credence to any of
2 Snarsky's testimony. As such, the Court is left with Respondent's flat denial of the charge, which
3 the Court expressly finds to be extremely credible. (See footnote 14, *ante*.) In short, the record
4 does not establish that Respondent willfully engaged in any act involving moral turpitude,
5 dishonesty, or corruption with respect to this staged accident, or his representation of Purchansky
6 and Rutberg, or otherwise. Nor does the record establish that Respondent willfully violated
7 subdivision (A) or (B) of rule 1-320.

8 **b. Dishonesty.**

9 According to the stipulation of Purchansky's testimony, when Respondent was preparing
10 Purchansky for his recorded statement, Respondent told Purchansky to tell the insurance adjuster
11 taking his statement that Purchansky saw Respondent's advertisement in a Russian newspaper,
12 rather than that he had been referred to E&K by Snarsky. The State Bar claims that this is an act
13 of moral turpitude in violation of section 6106. The Court disagrees. The record does not
14 establish that Respondent actually made such a statement because, as noted in footnote 11 *ante*,
15 the Court does not find the stipulation of Purchansky's testimony credible.

16 **c. Failure to Communicate and to Maintain Client Confidences.**

17 The State Bar contends that Respondent failed to inform Purchansky of the terms of a
18 settlement offer prior to agreeing to the settlement, in violation of section 6068, subdivision (m)
19 and rule 3-510. The State Bar also contends that Respondent violated section 6068, subdivision
20 (e) by failing to obtain Purchansky's permission to discuss settlement offers with Snarsky. The
21 Court disagrees. First, the Court finds that Respondent's testimony denying the alleged
22 contentions to be credible. Second, the record establishes by Respondent's credible testimony
23 that Respondent communicated with Purchansky several times by telephone, that Respondent
24

25 method of accomplishing this gruesome task without causing death of the victim, presumably
26 with the goal of continuing the victim's agony into the future. In one case, Snarsky asked that
27 Torres-Miramontes castrate Gnadi Elkins, one of Snarsky's former business associates who
28 Snarsky felt owed him money. Snarsky also repeatedly requested that Torres-Miramontes rape
Llana Elkins, Gnadi's wife, and then transport her to Tijuana, Mexico where she would be held
as a prostitute against her will.

1 was at Purchansky's recorded statement when it was taken by the insurance adjuster, and that
2 Purchansky authorized Respondent to rely on and that Respondent, in fact, relied on Snarsky as
3 the conduit to inform Purchansky of the developments of his case and the settlement terms. In
4 addition, even if Purchansky did not expressly authorize Respondent to communicate with and
5 rely on Snarsky with respect to Purchansky's claims, it is very clear that Respondent reasonably
6 and in good faith believed that Purchansky authorized him to communicate with and rely on
7 Snarsky. The Court rejects for want of credibility Snarsky's testimony suggesting the contrary.
8 Likewise, the Court rejects the statements suggesting the contrary in the stipulation of
9 Purchansky's testimony for want of credibility.

10 **ii. The October 5, 1995, Staged Accident.**

11 Another staged accident took place on October 5, 1995. Thereafter, Snarsky referred
12 alleged accident victims Vladimir Itelson and Bouslana Krotman to E&K for representation.
13 Respondent was the E&K attorney who handled Itelson's and Krotman's claims.

14 The record is rather sparse as to the details of this accident and the amount of the
15 settlement. Apparently, when the settlement proceeds were distributed to Itelson and Krotman by
16 E&K, Itelson and Krotman each gave a portion of their proceeds to Snarsky. Snarsky also
17 testified that, out of the portion of the cash he got from Itelson and Krotman, he gave Respondent
18 an "under-the-table" payment in cash and told Respondent that the payment was his share of the
19 settlement proceeds in Itelson's and Krotman's case.

20 The State Bar does not argue that Respondent's alleged acceptance of such an illegal
21 kickback involves moral turpitude or is itself an act of dishonesty or corruption in willful
22 violation of section 6106. Instead, the State Bar again argues that it is an act involving moral
23 turpitude, dishonesty, or corruption in violation of section 6106 only because Respondent
24 allegedly accepted the payment in cash to avoid having to share the payment with E&K or to
25 avoid having to pay taxes on it or both. The State Bar also argues that Respondent accepted the
26 alleged payment from Snarsky in willful violation of rule 1-320(A) and (B). For the same
27 reasons of credibility set forth *ante* with respect to the September 15, 1995, staged accident, the
28 Court disagrees with each of the State Bar arguments.

1 In short, the record does not establish that Respondent willfully engaged in any act
2 involving moral turpitude, dishonesty, or corruption. Nor does it establish that he willfully
3 violated subdivision (A) or (B) of rule 1-320.

4 **iii. The November 15, 1995, Staged Accident.**

5 Another staged accident in the sting operation took place on November 15, 1995. Marat
6 Poselenik, Marina Zlotnikova, and Ludmila Kaykova were purportedly in the car that was
7 rear-ended in this staged accident. They each falsely claimed that they were injured. Snarsky
8 referred them to E&K for representation. After the participation, authorization and approval of
9 Attorneys Ellis and Kingston, they were accepted as E&K clients, and Respondent was the
10 attorney assigned to handle their claims.

11 The November 15, 1995, staged accident and the resulting false insurance claims by
12 Poselenik, Zlotnikova, and Kaykova are the subjects of count 9 of the second amended
13 indictment file April 5, 2000, which is the count on which Respondent's nolo contendere plea to
14 a misdemeanor violation of section 549 is based.

15 After the November 15, 1995, staged accident, the police were called to the scene. The
16 police investigated the accident and filed a police department traffic collision report. A copy of
17 this report was given to E&K and Respondent. It reflects that at least one the three clients
18 complained of neck pain to the police at the scene of the accident.

19 Claims were made to GEICO Insurance Company based on Poselenik's, Zlotnikova's, and
20 Kaykova's false claims. GEICO took their recorded statements at E&K's office in Los Angeles.
21 Thereafter, GEICO declined their claims, and in October 1996, Respondent notified the clients
22 and GEICO that E&K was withdrawing from representation. It did so because the property
23 damage was low, but the personal injury claims were high and because it did not want to get into
24 a dispute with GEICO, which was also an E&K client. Thereafter, Respondent sent the clients'
25 file to Attorney Stephen L. Gordon, who was the clients' replacement counsel.

26 There is no evidence suggesting that Respondent's representation of Poselenik,
27 Zlotnikova, and Kaykova involved moral turpitude. However, as discussed in section C, *post*,
28 the Court concludes that Respondent's conviction establishes that he recklessly accepted

1 representation of Poselenik, Zlotnikova, and Kaykova. However, the record establishes that
2 Respondent accepted the representation of these clients only after the participation, authorization
3 and approval of Attorneys Ellis and Kingston, which tempers Respondent's reckless conduct.

4 **iv. May 15, 1996, Staged Accident.**

5 Another staged accident in the sting operation took place on May 15, 1996. Alexandria
6 Price, a special agent of the California Department of Justice, acting in an undercover capacity as
7 "Alice Peerman" (hereafter Price-Peerman) and Lauren Pedroza, a CDI investigator, operating
8 under the name of "Carmen Mendoza" (hereafter Pedroza-Mendoza), met with Snarsky in San
9 Diego, and Snarsky drove a 1984 Honda into the rear end of a Nissan.

10 After this May 15, 1996, staged accident, Snarsky referred Regina Vartanova, Renanatta
11 Vartanova, Emma Vartanova and William Goodman to E&K. E&K assigned the matter to
12 Respondent. On their behalf, Respondent sent a letter to Liberty Mutual Insurance Company
13 concerning the alleged injuries claimed by his clients. He attached medical records and reports
14 relating to the medical care that these four individuals allegedly received in the purported
15 accident. On January 20, 1997, Brent Bauzer, a CDI investigator posing as an insurance adjustor
16 for Liberty Mutual Insurance Company and using the name "Bret Miller" (hereafter Bauzer-
17 Miller), took the recorded statements of these four individuals. Thereafter, Respondent settled
18 these individuals' claims.

19 Snarsky again claims that, out of the portion of the cash he got from the Vartanovas and
20 Goodman, he gave Respondent an "under-the-table" payment in cash and told Respondent that
21 the payment was his (i.e., Respondent's) share of the settlement proceeds in Vartanovas' and
22 Goodman's case. Again, the State Bar argues (1) that Respondent's alleged acceptance of such an
23 illegal kickback is an act involving moral turpitude, dishonesty, or corruption in willful violation
24 of section 6106 and (2) that Respondent accepted the alleged payment from Snarsky in willful
25 violation of rule 1-320(A) and (B). For the same reasons of credibility set forth *ante* with respect
26 to the September 15, 1995, staged accident, the Court disagrees with each of the State Bar
27 arguments.

28 ///

1 In short, the record does not establish that Respondent willfully engaged in any act
2 involving moral turpitude, dishonesty, or corruption. Nor does it establish that he willfully
3 violated subdivision (A) or (B) of rule 1-320.

4 **v. The September 5, 1996, Staged Accident.**

5 On September 5, 1996, Torres-Miramontes and two other undercover agents, one named
6 Michael Cohen, acting as "Michael Martin" (hereafter Cohen-Martin), and the other named Hilda
7 Ochoa-Parra, acting as "Alma Garcia" (hereafter Parra-Garcia), staged an accident by driving a
8 1984 Honda into the side of a Mercury Sable which had been brought to the location by Snarsky.
9 After that staged accident, Snarsky referred Cohen-Martin and Parra-Garcia to E&K, and
10 Respondent was the E&K attorney who handled their claims.

11 In a letter dated November 5, 1996, Respondent notified Prudential Insurance Company
12 that he had been retained to represent Parra-Garcia. On December 12, 1996, Respondent sent
13 Parra-Garcia's medical records relating to her alleged injuries to Prudential. On January 31,
14 1997, Parra-Garcia's recorded statement was taken by Henry DeAlba with Prudential.

15 Parra-Garcia was purportedly the girlfriend of one of Snarsky's close friends. Snarsky
16 told Respondent that she was in grave need of money. As a favor to Snarsky, Attorney Ellis
17 authorized Respondent to waive E&K's attorney's fees on Parra-Garcia's case. In addition, Parra-
18 Garcia's treating doctor also waived his fees for the same reason.

19 Thereafter, Respondent obtained a \$6,250 settlement for Parra-Garcia from Prudential.
20 Respondent had trouble contacting Parra-Garcia because he did not have a telephone number for
21 her.¹⁸ Even though he did not discuss the settlement with Parra-Garcia, Respondent discussed it

22
23 ¹⁸It also appears that the investigation team in at least one other case failed to provide
24 Respondent with accurate contact information. See transcript of telephone conversation with
25 CDI Investigator Tawana Thompson, acting in the sting operation under the assumed name of
26 "Kim Thomas" (hereafter Thompson-Thomas), Exhibit B at page 2-4. Snarsky had previously
27 referred her to E&K as a client, and Respondent had been trying to contact her about her bodily
28 injury claim. Finally, on May 13, 1997, Thompson-Thomas telephoned Respondent at E&K and
claimed to have been out of the country. It is admitted that the purpose of her call was to try to
get Respondent to incriminate himself as the sting operation was winding down. When she
spoke with him on the telephone, Thompson-Thomas told Respondent that she did not want to
pursue her injury claim any further because there really was no accident and she was not really

1 with Snarsky who purported to have settlement authority from Parra-Garcia.

2 In accordance with Snarsky's liaison role, E&K sent him the release that Prudential
3 wanted Parra-Garcia to sign; two Prudential settlement drafts totaling \$6,250 made jointly
4 payable to Parra-Garcia and E&K,¹⁹ and a \$6,250 check drawn on E&K's client trust account and
5 made payable to Parra-Garcia. Snarsky in turn gave these items to Torres-Miramontes.
6 Thereafter, Torres-Miramontes had Parra-Garcia sign the release and endorse the two Prudential
7 drafts. In addition, Torres-Miramontes and Parra-Garcia went to the bank to cash the \$6,250
8 trust account check made payable to Parra-Garcia. Before the bank cashed the check, it called
9 Attorney Ellis and obtained his authorization. Once they obtained the cash from the bank,
10 Torres-Miramontes and Parra-Garcia kept \$2,230 out of the \$6,250 as their share of the
11 settlement proceeds on the staged accident as agreed upon with Snarsky. Torres-Miramontes
12 gave the remaining \$4,020, the signed release, and the endorsed Prudential drafts to Snarsky.
13 Snarsky returned the signed release and endorsed Prudential drafts to E&K.

14 **a. Client Trust Account Violation and Misappropriation.**

15 The State Bar asserts that Respondent is culpable (1) of violating rule 4-100(A), which
16 requires that an attorney maintain client funds in a trust account, and (2) of misappropriating
17 client funds in violation of section 6106. According to the State Bar, Respondent is culpable of
18 those violations because he participated in the distribution of the \$6,250 client trust account

19
20
21 injured. However, Respondent did not know what she was talking about: he was immediately
22 surprised by her statement and without hesitation told her he was unaware of it, that to pursue the
23 matter would be fraud, and that neither he nor E&K would continue to represent her. When he
24 asked her for her address so that he could mail her a termination of representation type letter, she
25 demurred, saying she would have to get back to him with her "new" P.O. Box. It is significant to
26 note that, following this telephone conversation, Respondent immediately reported Thompson-
27 Thomas's claims of fraud to Attorneys Ellis and Kingston, who told Respondent that he handled
28 the situation in accordance with his ethical obligations and with E&K firm policy. Thereafter,
neither E&K nor Respondent accepted any more referrals from Snarsky. Further, there is no
evidence that either E&K or Respondent performed any work after this telephone conversation
for any client that was referred by Snarsky.

¹⁹Before it sent these two Prudential drafts to Snarsky, E&K restrictively endorsed them
by stamping them for deposit only into its client trust account.

1 check to Parra-Garcia in a manner that permitted her to cash it before the two Prudential
2 settlement drafts had been deposited into and permanently credited to E&K's trust account,²⁰
3 which caused the bank to pay out funds of other E&K clients when it cashed the \$6,250 trust
4 account check for Parra-Garcia. The Court rejects the State Bar's assertions.

5 Even if this Court were to find, based solely on Snarsky's testimony, that Respondent was
6 the person who sent the two Prudential settlement drafts and the \$6,250 E&K trust account check
7 to Snarsky, the record would still not establish Respondent's culpability for violating rule
8 4-100(A) or for misappropriating client funds. Respondent was not a signatory to the client trust
9 account. Only Attorneys Ellis and Kingston could sign on the trust account. Further,
10 Respondent was not a decision-maker with respect either to accepting new clients, issuing funds
11 from the client trust account, or making E&K policy. Attorneys Ellis and Kingston were.
12 Respondent could only represent clients as an employee of the firm.

13 Ellis kept the checkbook for the client trust account locked in his desk at E&K. E&K had
14 a policy and procedure for processing settlement payments in personal injury cases in which
15 Snarsky acted as an agent/liaison for E&K.²¹ First, the attorney handling the case (i.e.,
16 Respondent) would prepare a disbursement accounting, showing the settlement amount reduced
17 by the various fees, costs and medical bills. The client's portion of the recovery also would be
18 stated. The attorney would then present the insurance settlement draft and this accounting to
19 Ellis, who would review it for accuracy.

20 ///

21
22 ²⁰The evidence in support of the fact that the \$6,250 client trust account check was
23 distributed before the insurance draft was deposited and cleared the bank is from the testimony of
24 Torres-Miramontes, Para-Garcia, and Snarsky. The insurance drafts in evidence do not indicate a
25 date of deposit. There is no credible evidence to suggest that Respondent was aware of the fact
26 that the client trust account check might be cashed before that the two Prudential drafts were
27 deposited and cleared the bank.

28 ²¹As noted *ante*, E&K used Snarsky as an agent/liaison with respect to its San Diego
clients that were referred to E&K by Snarsky. This was done for reasons of convenience:
avoiding having an employee (most often one who needed to speak Russian) fly or drive to San
Diego to obtain signatures or help in translating documents into dialects other than the Russian
dialect that Respondent speaks.

1 If the documents were proper, Ellis would stamp the insurance draft with a restrictive
2 endorsement for deposit only into E&K's client trust account. Ellis would then prepare a
3 disbursement check for the client that was drawn on E&K's client trust account. Both the
4 insurance draft, which required the client's endorsement, and a check made payable to the client
5 and drawn on E&K's trust account would be given to the handling attorney, who would send
6 them to Snarsky so that he could obtain the client's signature of the insurance draft and give the
7 E&K trust account check to the client.

8 In cases where both the insurance draft and the trust account check were simultaneously
9 to be given to Snarsky, the trust account check was post-dated to provide Snarsky time to return
10 the endorsed insurance draft to E&K and to provide E&K time to deposit it into its trust account
11 and to allow time for the draft to be paid and permanently credited to trust account.²² In that
12 regard, E&K had a longstanding arrangement with its bank that insurance company checks
13 deposited by 4:00 p.m. would be given immediate/permanent credit that day.²³

14 Also, the record establishes that, when Parra-Garcia cashed the \$6,250 client trust account
15 check before the two Prudential settlement drafts were deposited and cleared the banking system,
16 it violated E&K's policies.²⁴ At the time the \$6,250 trust account check was sent to Snarsky,²⁵

18 ²²The Court does not commend this policy as a good practice. In fact, it exposes
19 attorneys, such as Ellis, to potential disaster with respect to their client trust accounts. However,
20 if this policy were followed, it is possible that there would be no trust account violations.

21 ²³E&K has banked at the same branch of the same bank since the 1970's.

22 ²⁴During his testimony, the State Bar presented Attorney Ellis with the following
23 hypothetical: "If you were to learn that the two drafts from Prudential Insurance Company were
24 sent to Ms. Garcia simultaneously with the client trust account draft from your office and that she
25 cashed the client trust account draft before sending back the insurance company drafts to you,
26 would that violate Ellis & Kingston policy?" To which Ellis replied: "Yes."

27 ²⁵There was no evidence that, at the time E&K used Snarsky as an agent/liason, anyone
28 at E&K knew of his criminal record or of his insurance fraud ring. In fact, it is unlikely that
Snarsky's fraudulent conduct would immediately have been recognized by Respondent, who was
a new attorney at the time. Attorney Kingston was more sophisticated than most at identifying
such conduct because, before he entered private practice, he investigated fraudulent claims for an
insurance company. Yet, even Kingston did not suspect the fraudulent conduct of Snarsky.

1 Respondent was aware of and relied on these E&K policies. (See *In the Matter of Respondent F*
2 (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26 [no misappropriation where there was
3 sufficient proof of adequate office procedures in place.]) Moreover, Ellis (the E&K partner
4 primarily charged with the proper handling of the firm's client trust account), when called by the
5 bank, specifically authorized the bank to cash the \$6,250 check made payable to Parra-Garcia
6 even though the Prudential drafts had not even been deposited into the client trust account.
7 There was no evidence that Respondent was aware of this authorization made by Ellis.

8 In sum, the record does not establish that Respondent is culpable of willfully violating
9 rule 4-100(A) or that he is culpable of willfully misappropriating client funds.

10 **b. Failure to Inform Clients of Significant Developments and of**
11 **Written Settlement Offers and Failure to Maintain Client**
12 **Confidences.**

13 The State Bar contends that Respondent never attempted to contact Para-Garcia with
14 respect to her claims, despite having her telephone number and address and that he never
15 discussed settlement authority or her recorded statement with her. This conduct, it is argued,
16 violates Respondent's duty, under section 6068, subdivision (m), to keep his clients reasonable
17 informed of significant development in their cases and his duty, under rule 3-510, to notify his
18 civil clients of any written settlement offer he receives on their behalf. In addition, the State Bar
19 contends that Respondent violated his duty, under section 6068, subdivision (3), to maintain
20 client confidences by speaking with Snarsky instead of Parra-Garcia regarding settlement
21 matters.

22 First, the Court summarily rejects the State Bar's assertion that Respondent violated rule
23 3-510 because there is no evidence that Respondent received a written settlement offer on behalf
24 of Parra-Garcia. Second, for the reasons set forth *post*, the Court rejects the State Bar's assertions
25 that Respondent violated section 6068, subdivisions (e) and (m).

26 At the time of her assignment to participate as an undercover officer in the September 5,
27 1996, staged accident, Para-Garcia was a very new law enforcement officer. She had only been
28 on the job for approximately two months. In testifying, she had serious difficulties remembering
facts (seven years had elapsed since the investigation). She was overly hesitant while testifying

1 and, except for selected particulars, was unsure as to what occurred in the investigation. The
2 substance of her testimony and her credibility were effectively impeached on cross-examination
3 when Respondent's attorney questioned her on how she recalled with unusual clarity that, right
4 before Prudential took her recorded statement in January 1997, Respondent coached her to stress
5 that she suffered from headaches that she did not have. In summary, the Court finds that Para-
6 Garcia's testimony, at least regarding her lack of contact with or from Respondent, lacks
7 credibility. It should be clear that this finding does not mean and in no way suggests that the
8 Court finds that Para-Garcia lied or that her testimony lacks candor.

9 Respondent, however, clearly testified that he did maintain contact with Parra-Garcia,
10 albeit often through Snarsky, since as noted *ante*, she never provided Respondent with a phone
11 number. When it was required to have a lawyer speak with Para-Garcia, Respondent did so. The
12 Court finds that Respondent's testimony that he did stay in contact and properly communicate
13 with her (as well as Respondent's testimony overall) to be very credible. (See footnote 14, *ante*.)

14 Furthermore, as repeatedly noted *ante*, Snarsky was an agent of E&K when he acted as a
15 liaison with the clients he referred to E&K. He was authorized by E&K and the clients to act as a
16 "limited liaison" about their cases. Even if he was not authorized as such by both E&K and each
17 of the referred clients, Respondent reasonably and honestly believed in good faith that E&K and
18 each of the clients had authorized him to deal with Snarsky and that each of the clients wanted
19 him to communicate with Snarsky about important matters, including settlement, regarding their
20 claims and cases.

21 What is more, Respondent's honest good faith beliefs are particularly reasonable with
22 respect to Parra-Garcia because of her cover story that she was the girlfriend of one of Snarsky's
23 very good friends. In fact, it was because of that fact that E&K waived its attorney's fees on her
24 settlement. In addition, Respondent's beliefs were reasonable because Parra-Garcia acted
25 consistently with them. For example, she asserts that, after Prudential took her recorded
26 statement in January 1997, Respondent told her that he would contact her through Snarsky. She
27 does not claim that she acted shocked at the statement or that she objected to Respondent
28 contacting her through Snarsky in any way.

1 The record fails to establish that Respondent willfully violated either subdivisions (e) or
2 (m) of section 6068 or that he willfully violate rule 3-510.

3 **c. Financial Arrangements with a Nonattorney.**

4 Snarsky testified that, out of his \$4,020 share of the \$6,250 settlement proceeds on Parra-
5 Garcia's claims, he gave Respondent an "under-the-table" payment in cash. Again, the State Bar
6 argues (1) that this alleged act involves moral turpitude, dishonesty, or corruption in violation of
7 section 6106 and (2) that Respondent accepted the alleged payment in violation of rule 1-320(A)
8 and (B). For the same reasons of credibility set forth *ante* regarding the September 15, 1995,
9 staged accident, the Court disagrees with each of the State Bar arguments.

10 In short, the record does not establish that Respondent willfully engaged in any act
11 involving moral turpitude, dishonesty, or corruption. Nor does it establish that he willfully
12 violated subdivision (A) or (B) of rule 1-320.

13 **C. Conclusions Regarding Whether Facts and Circumstances Surrounding**
14 **Respondent's Misdemeanor Conviction Involved Moral Turpitude or Other**
Misconduct.

15 As note *ante*, Respondent was convicted of one misdemeanor violation of section 549 on
16 April 3, 2003. Under section 6101, subdivisions (a) and (e), "an attorney's conviction of a crime
17 pursuant to a plea of nolo contendere is 'conclusive evidence of guilt of the crime' for purposes
18 of disciplinary proceedings. [Citations.]" (*In re Gross* (1983) 33 Cal.3d 561, 567.) In other
19 words, the criminal conviction "is conclusive proof that the attorney committed all acts necessary
20 to constitute the offense. [Citation.]" (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.)
21 Accordingly, Respondent's misdemeanor conviction for violating Penal Code section 549, which
22 is based on his nolo contendere plea to the charge from count 9 of the first amended indictment
23 filed on April 5, 2000, in the Los Angeles Superior Court that is quoted *ante*, conclusively
24 establishes that he accepted business (1) from Snarsky, Poselenik, or Kaykova or (2) from some
25 combination of Snarsky, Poselenik, and Kaykova with reckless disregard for whether they (i.e.,
26 Snarsky, Poselenik, or Kaykova) intended to violate Penal Code section 550 by filing false or
27 fraudulent insurance claims with respect to the November 15, 1995, staged accident.

28 ///

1 Because, as noted *ante*, a violation of Penal Code section 549 does not involve moral
2 turpitude per se, the Court must review the facts and circumstances surrounding Respondent's
3 conviction to determine whether they involve moral turpitude or other misconduct warranting
4 discipline in accordance with the review department's November 25, 2003, conviction referral
5 order. In reviewing the facts and circumstances, the Court is "not restricted to examining the
6 elements of the crime, but rather may look to the whole course of [Respondent's] conduct which
7 reflects upon his fitness to practice law. [Citations.]" (*In re Hurwitz* (1976) 17 C.3d 562, 567.)
8 That is because it is the act or acts of misconduct underlying Respondent's conviction, as
9 opposed to the conviction itself, that warrants discipline. (*In re Gross, supra*, 33 Cal.3d at p.
10 569.) Thus, the Court is not limited to reviewing Respondent's dealings with Snarsky, Poselenik,
11 and Kaykova with respect to the November 15, 1995, staged accident.

12 The Court begins by noting that the record does not clearly identify how Respondent
13 *accepted* business from Snarsky, Poselenik, or Kaykova with *reckless disregard* for whether they
14 intended to file false or fraudulent insurance claims with respect to the November 15, 1995,
15 staged accident. In short, the record does not establish how Respondent was reckless in
16 accepting business from Snarsky, Poselenik, or Kaykova. Furthermore, the only substantial
17 evidence on the issue is the negotiated factual basis for Respondent's February 23, 2001, guilty
18 plea as set forth in the Superior court transcript.²⁶ But this Court must disregard that factual basis
19 because it is inconsistent with the elements of a section 549 violation.²⁷ As noted *ante*,
20 Respondent's conviction is, for State Bar purposes, conclusive proof that he committed all the
21

22 ²⁶That negotiated factual basis is: that, during his representation of Poselenick and
23 Kaykova, there came a time when Respondent was aware of facts which he recklessly ignored in
24 which, if "explored" by Respondent, would have demonstrated that his clients' claims were
25 fraudulent.

26 ²⁷Moreover, legal significance of this negotiated factual basis for Respondent's February
27 23, 2001, guilty plea is apparently nominal because (1) Respondent withdrew that plea and, in
28 April 2003, entered a nolo contendere plea on which he actually convicted, (2) the superior court
record does not reflect that it adopted that factual basis of Respondent's guilty plea to be the
factual basis of Respondent's nolo contendere plea, and (3) the superior court record does not
contain a factual basis for Respondent's nolo contendere plea.

1 elements of a section 549 violation (*Chadwick v. State Bar, supra*, 49 Cal.3d at p. 110).²⁸

2 Moreover, even though Respondent's conviction establishes that he acted recklessly, as
3 that term is described in footnote 7, *ante*, the record in this proceeding establishes the same fact
4 that the superior court expressly found in its April 3, 2003, order on Respondent's plea
5 agreement, which fact is that Respondent did not accept representation of Poselenik, Zlotnikova,
6 and Kaykova "until after the participation, authorization and approval of Mr. Ellis and Mr.
7 Kingston, the managing partners of the law firm which employed [Respondent]." While this fact
8 does not vitiate Respondent's conviction or excuse Respondent's conduct in accepting
9 representation of these clients with reckless disregard as to whether they intended to file false or
10 fraudulent insurance claims, which conduct is conclusively established by Respondent's
11 misdemeanor conviction of section 549, the fact does strongly support this Court's independent
12 conclusions (1) that neither Respondent's conviction nor the facts and circumstances surrounding
13 it involve moral turpitude and (2) that, at most, the facts and circumstances surrounding
14 Respondent's conviction involve minor "other misconduct warranting discipline."²⁹

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16

²⁸The Court rejects Respondent's assertion that the "validity and efficacy" of the principle
17 that he is legally conclusively presumed guilty should be "revisited" because all of the facts and
18 evidence clearly establish his innocence. Such an assertion would be more appropriately directed
to either the Supreme Court or the California Legislature or both.

19 ²⁹It should be noted that the record does not establish that Respondent was reckless in
20 accepting representation of any client Snarsky referred to E&K other than Poselenik, Zlotnikova,
21 and Kaykova or in otherwise accepting any clients from Snarsky or anyone else. The record does
22 not even establish that Respondent acted recklessly in accepting representation of the clients
23 Snarsky referred to E&K with respect to the May 15, 1996, and the September 5, 1996, staged
24 accidents, which occurred, of course, after the November 15, 1995, staged accident. Any
25 conclusion that Respondent was reckless in accepting representation of the clients Snarsky
26 referred with respect to those two staged accidents would be conjecture. Because the record does
27 not establish how Respondent was reckless in accepting Poselenik, Zlotnikova, and Kaykova.
28 Therefore, the Court cannot conclude that such recklessness continued when Respondent
accepted representation of the other clients that Snarsky referred or that he otherwise would have
discovered that Snarsky was involved with Poselenik, Zlotnikova, and Kaykova in making false
or fraudulent insurance claims or even that Snarsky was involved in staging accidents. At most,
the record establishes that, if he had not been reckless in accepting representation of Poselenik,
Zlotnikova, and Kaykova, Respondent would have discovered that one or more of them (i.e.,
these three clients) intended to file false or fraudulent insurance claims based on non-existent

1 In sum, the record establishes only that Respondent is culpable of but a single
2 misdemeanor act of recklessness in accepting representation of Poselenik, Zlotnikova, and
3 Kaykova, which is tempered by fact that Respondent did so only after the participation,
4 authorization and approval of Attorneys Ellis and Kingston.

5 **D. Facts in Mitigation.**

6 Respondent's four plus years of blemish-free practice prior to the commencement of the
7 misconduct found herein is not long enough to be a mitigating factor. (Std. 1.2(e)(i).)

8 No one was harmed by Respondent's conduct. (Std. 1.2(e)(iii).) No one was harmed by
9 Respondent's reckless conduct in accepting representation of Poselenik, Zlotnikova, and Kaykova,
10 which is the conduct underlying Respondent's conviction. Nor was anyone harmed by
11 Respondent's acceptance of representation or representation of the other clients Snarsky referred
12 to E&K with false or fraudulent insurance claims. First, at least with respect to Poselenik's,
13 Zlotnikova's, and Kaykova's false or fraudulent claims, E&K and Respondent withdrew from
14 representation before GEICO, the involved insurance company, paid the false or fraudulent
15 claims. Those clients were represented by Attorney Gordon at the time GEICO paid their claims.
16 Second, unlike Respondent, every insurance company that paid a false or fraudulent claim that
17 Respondent submitted on behalf of a client knew that the claim was false or fraudulent at the
18 time Respondent submitted it. Third, the insurance companies paid each of the false or
19 fraudulent claims as knowing and willing participants in the sting operation. Fourth, in
20 accordance with his plea agreement, Respondent made restitution for all of the attorney's fees
21 that E&K received on the false or fraudulent claims that Respondent submitted on behalf of a
22 client.

23 Respondent was very cooperative during these proceedings. This is a mitigating factor.
24 (Std. 1.2(e)(v).)

25 Respondent presented a number of character witnesses from the legal and general
26 communities who were aware of his misconduct. Those witnesses uniformly gave impressive

27 _____
28 injuries.

1 testimony as to Respondent's good character. (Std. 1.2(e)(vi).) Several were attorneys, including
2 Malcolm Ellis, Paul Kingston, John Laurie, Donald R. Wager, Howard Gertz, Elena Yampolsky,
3 and Vitaly B. Sigal. Without question, good character testimonials from attorneys are given great
4 weight because such individuals " 'possess a [keen] sense of responsibility for the integrity of the
5 legal profession.' " (*In re Menna* (1995) 11 Cal.4th 975, 988, quoting *Warbasse v. The State Bar*
6 (1933) 219 Cal. 566, 571.) Accordingly, this Court gives significant weight to the testimony of
7 these attorneys.

8 John Laurie worked with Respondent at E&K. He described Respondent in the most
9 glowing terms of honesty, integrity and trustworthiness. He felt he could trust Respondent with
10 his life. He has referred cases to Respondent since learning of the criminal proceedings. To this
11 day, he does not believe that Respondent was knowingly involved in any way in the insurance
12 fraud. Howard Gertz also worked with Respondent at E&K. He, too, never has felt that
13 Respondent was knowingly involved in the insurance fraud cases. Like Mr. Laurie, Mr. Gertz
14 felt that Respondent had all the characteristics of honesty, integrity and trustworthiness, and that
15 he had the highest ethical standards, Neither Mr. Laurie nor Mr. Gertz felt that Respondent
16 presented any threat to the public by actively practicing as a lawyer.

17 Donald Wager is a criminal defense attorney in Southern California. He represented
18 Respondent in his criminal case in the Los Angeles County Superior Court. He has represented
19 several attorneys in disciplinary matters (see, e.g., *In re Gross, supra*, 33 Cal.3d 561) and has
20 lectured extensively to the Criminal Courts Bar, the California Public Defenders Association, and
21 for the State Bar on Legal Ethics. He is a past president of the Criminal Courts Bar Association
22 and a member of the National Association of Criminal Defense Lawyers. He noted that
23 Respondent was honest, and quite competent. He testified that he would refer cases to him in the
24 event that matters required his expertise. Like the other lawyers who testified, he noted that
25 Respondent posed no threat to the public or the administration of justice.

26 Many of these attorneys also testified as to Respondent's diligence and competence in
27 performing legal work. Clearly, this is strong evidence of his good moral character. (*Kwasnik v.*
28 *State Bar* (1990) 50 Cal.3d 1061, 1069.)

1 Others who gave impressive testimony as to Respondent's good character were friends,
2 some of whom were doctors and scientists, including Sergey Roshal, Igor Boyarsky, Boris
3 Ryvkin, and Arax M. Merametdjian. Notably, this favorable testimony, which is from friends or
4 family members of good repute who routinely observe Respondent's daily conduct and mode of
5 living, is very strong evidence of Respondent's exceptionally good character.³⁰ (Cf. *In re*
6 *Andreani* (1939) 14 Cal.2d 736, 749-750; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 547.)

7 To satisfy the requirements of his plea agreement, Respondent provided 1,000 hours of
8 pro bono legal services to clients of Bet Tzedek Legal Services in Los Angeles. Since that time,
9 Respondent has continued to provide a pro bono services for Bet Tzedek clients and recently
10 completed an entire trial pro bono for that organization. Respondent is clearly entitled to
11 mitigating credit for the pro bono services he has provided to Bet Tzedek and its clients in excess
12 of the 1,000 hours that he provided to satisfy the terms of his plea agreement. Such community
13 service "is a mitigating factor that is entitled to 'considerable weight.'" (*Calvert v. State Bar*
14 (1991) 54 Cal.3d 765, 785, quoting *Schneider v. State Bar* (1987) 43 Cal.3d 784, 799.)

15 Moreover, even with respect to the 1,000 hours he provided to satisfy his plea agreement,
16 Respondent is entitled to mitigating credit for being an exemplary volunteer at Bet Tzedek and
17 performed his services with exceptional diligence and care. In that regard, Respondent was twice
18

19 ³⁰The Court rejects the State Bar's assertion that Respondent is not entitled to mitigation
20 for the good character testimonials presented to the Court in the declarations of Russian
21 immigrants Elena Yampolsky; Vitali B. Sigal, who is Respondent's brother-in-law and partner;
22 Sergey Roshal, M.D.; and Boris Ryvkin. To support this assertion, the State Bar inappropriately
23 attacks the declarations of these four individuals, arguing that the authors do not constitute a
24 " 'wide range of references in the legal and general communities,' rather, they are in one small
25 community, *which was the same one involved in the automobile fraud ring*, and therefore, do not
26 constitute mitigation." (Italics added.) To minimize the probative value of the declarations of
27 four individuals merely because the individuals belong to a single ethnic community on the
28 grounds that it is a small community, is illogical, at best. However, for the State Bar to argue
that the declarations should be devalued because they are written by individuals from the same
ethnic community as the one that was "involved in the automobile fraud ring" is absurd and
entirely inappropriate conduct. None of the four declarants was involved in the automobile fraud
ring. The Court expressly finds that the statements made in declarations of these four
individuals, two of whom are attorneys and two of whom are medical doctors, are extremely
credible and entitled to great weight.

1 nominated for the Wiley W. Manuel Award for Pro Bono Legal Services for his contribution to
2 Bet Tzedek. This reflects well on the effort that Respondent made to perform his services with
3 skill and dedication.³¹ (See *Kwasnik v. State Bar, supra*, 50 Cal.3d at p. 1069 [attorney's diligent
4 and competent performance of legal services is evidence of good moral character].)

5 **E. Facts in Aggravation.**

6 The State Bar failed to establish any aggravating circumstances by clear and convincing
7 evidence.

8 **4. LEVEL OF DISCIPLINE.**

9 Again, the record establishes only that Respondent is culpable of but a single
10 misdemeanor act of recklessness under Penal Code section 549 in accepting representation of
11 Poselenik, Zlotnikova, and Kaykova, which is tempered by fact that Respondent did so only after
12 the participation, authorization and approval of Attorneys Ellis and Kingston. The level of moral
13 culpability underlying Respondent's conviction is very low and very strong mitigating
14

15 ³¹The State Bar urges this Court not only to refrain from giving Respondent any
16 mitigation credit for his pro bono work at Bet Tzedek, but also urges the Court to actually
17 *penalize* Respondent for seeking mitigating credit for it. The Court declines to do so. The record
18 establishes that Respondent continued volunteering with Bet Tzedek long after he completed his
required 1000 hours.

19 Further, the State Bar asserts that ". . . Respondent chose a (sic) organization that works
20 primarily with Russian emigres, undoubtedly to further his reputation in the Russian
21 community." First, the State Bar did not proffer any evidence as to the national origin of Bet
22 Tzedek's clients. Second, even assuming, arguendo, that Bet Tzedek represents primarily
23 Russian immigrants, it is equally plausible that Respondent chose to volunteer at Bet Tzedek
because of his fluency in both English and Russian. The Deputy Trial Counsel's cynical
24 characterization of Respondent's motive appears to be based on surmise and conjecture and,
25 therefore, is rejected.

26 In order to minimize the value of this work, the State Bar attempts to draw an analogy in
27 its closing brief to a person claiming to clean up the environment, but eventually "disclosing" that
28 he had been sentenced to pick up trash. This argument is not supported by the facts or logic.
There was no attempt by Respondent to hide the reason for his Bet Tzedek work. In making this
nomination, Bet Tzedek was always aware that Respondent was volunteering pursuant to a court
program, as evidenced by the frequent updates provided by the organization to Judge Rappe.
(See Exhibits H, I, J, and K.) Further, this Court was also clearly made aware of the connection
the Bet Tzedek work bore to his criminal conviction. The State Bar's assertion that Respondent
was trying to use his work to gain an unfair advantage is inappropriate.

1 circumstances, including lack of harm, are clearly established by the record. Nonetheless,
2 Respondent's conviction involved conduct that he committed while he was practicing law.
3 Accordingly, the Court concludes that it must impose discipline upon Respondent to insure that
4 he understands the need for his conduct to comport, at all times, with that required of an officer
5 of the court and to maintain the integrity of the profession. The Court, therefore, concludes that
6 the appropriate discipline to impose is a private reproof with no conditions attached.

7 **5. PRIVATE REPROVAL.**

8 Respondent Vadim Liberman is hereby privately reproofed, effective upon the finality of
9 this decision. (Rules Proc. of State Bar, rule 270(a), see also Rules Proc. of State Bar, rule
10 270(c).) Because the discipline imposed is only a private reproof, the State Bar is not awarded
11 its costs. (Bus. & Prof. Code, § 6086.10, subd. (a).)

12
13
14 Dated: June 28, 2005.



RICHARD A. HONN
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator 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 June 28, 2005, I deposited a true copy of the following document(s):

DECISION, filed June 28, 2005

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

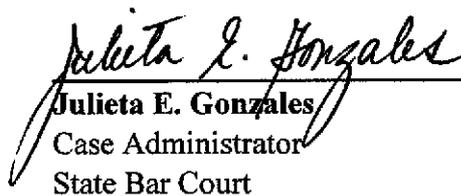
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL G GERNER ESQ
10100 SANTA MONICA BLVD #300
LOS ANGELES CA 90067

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 28, 2005**.



Julieta E. Gonzales
Case Administrator
State Bar Court