

**FILED**

AUG 08 2005

**PUBLIC MATTER**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

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In the Matter of )  
Juvenal Federico Agravante, )  
Member No. 169950, )  
A Member of the State Bar. )

Case No. 04-O-12504-RAP  
Order Modifying Decision on  
Reconsideration

This matter is before the court on (1) the State Bar's July 21, 2005, motion seeking reconsideration of the court's July 6, 2005, decision and (2) the court's own motion for reconsideration. In its motion for reconsideration, the State Bar requests that the court make 20 modifications to its decision. For good cause shown, the court grants the State Bar's first, second, and twentieth requests as set forth *post*. The court denies the State Bar's remaining 17 requests (i.e., the State Bar's third through nineteenth requests), no good cause shown. In addition, on its own motion, the court makes certain modifications to its decision as set forth *post*.

In accordance with the State Bar's first request, lines 13 through 24 on page 3 of the decision are deleted. And, on the court's own motion, the following text is substituted in their place:

On April 8, 2005, the State Bar filed a pleading that it titled "withdrawal of exhibits and amendment to footnote 14." That pleading, however, is defective in that there are no exhibits that the State Bar can withdraw because as the State Bar asserts, in that pleading, it inadvertently omitted the exhibits from its April 7, 2005, brief. Moreover, the court rejects the State Bar's attempt to use that pleading to exclude from the court's consideration the client letter that was to have been attached to the State



1 Bar's April 7, 2005, brief as exhibit 4, which establishes that respondent  
2 cannot be found culpable of misappropriating the full amount alleged in  
3 count 11, which deals with the Tria client matter. Moreover still, the court  
4 rejects the State Bar's attempt to amend footnote 14 in its April 7, 2005, brief  
5 to delete the description of the content of the client letter that was to have  
6 been attached to that brief as exhibit 4. To do so would cause the court to  
7 find respondent more culpable in the Tria client matter than he can be found  
8 under the factual allegations in the NDC, which are deemed admitted by the  
9 entry of respondent's default, and the facts recited in footnote 14 of the State  
10 Bar's April 7, 2005, brief.

11 In accordance with the State Bar's second request, lines 12 through 19 on page 4 of the  
12 decision are deleted.

13 In accordance with the State Bar's twentieth request and on the court's own motion, line 27  
14 on page 15 of the decision is deleted and the following text is substituted in its place:<sup>1</sup>

15 *the Standards for Attorney Sanctions for Professional Misconduct; and*  
16 (3) he makes restitution to Jesus C. Tria Sr., or to the Client Security  
17 Fund if it has paid, in the total sum of \$1,240 plus interest thereon at  
18 the rate of 10 percent per annum from June 20, 2003, until paid, and  
19 he provides satisfactory proof of that restitution to the State Bar's  
20 Office of Probation in Los Angeles.

21 The court denies the State Bar's remaining 17 requests because, as the State Bar itself notes  
22 in its motion for reconsideration, the remaining requests are based on a substantial *pleading error*  
23 in count 6 of the notice of disciplinary charges. In a default proceeding, due process requires that  
24 such pleading errors be corrected by filing and serving an amended notice of disciplinary charges  
25 (NDC). In count 6, the State Bar pleaded that respondent was to have prepared and filed

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27 <sup>1</sup>This modification effectuates the court's conclusion on lines 13 and 14 on page 15 of the  
28 decision, that respondent's three years' actual suspension should continue "until respondent  
makes restitution to Tria."

1 immigration visa applications for "Tria's five children"; that Tria gave respondent \$2,570 as filing  
2 fees for those five applications; and that, even though respondent prepared and sent the five  
3 applications to the United States State Department for processing, he never sent in or otherwise paid  
4 the filing fees for the applications. However, as the State Bar itself notes in its motion for  
5 reconsideration, "In footnote 8 of the Decision, the court correctly calculated that [only] \$1,240 [out  
6 of the \$2,570] was to be used to pay filing fees for four of Tria's five children, while the remaining  
7 \$1,330 was to be used to pay the filing fees for the applications of Father Noel P. Tria, Filipinas T.  
8 Rullero, her husband, and her daughter." Accordingly, based on factual allegations that are deemed  
9 admitted by respondent's default as modified by the facts found in footnote 8 of the decision, the  
10 court correctly found, in its decision, that respondent could not be found culpable of  
11 misappropriating the entire \$2,570 as charged in count 11, but that he could be found culpable of  
12 misappropriating only \$1,240 of the \$2,570. (*In the Matter of Heiner* (Review Dept. 1990) 1 Cal.  
13 State Bar Ct. Rptr. 301, 318.) Nonetheless, on reconsideration, the State Bar requests again that the  
14 court find respondent culpable of misappropriating the entire \$2,570 as charged because, in count  
15 6, the State Bar incorrectly charged that respondent was to have prepared and filed five visa  
16 applications "when in fact there were eight visa applications to be filed." The court, however, cannot  
17 find respondent culpable of engaging in misconduct for which he was not charged.

18 In State Bar Court disciplinary proceedings "motions to correct typographical errors or  
19 modify facts in pleadings which do not alter the charges in the original notice would appear to be  
20 permissible [even] after entry of default." (*In the Matter of Morone* (Review Dept. 1990) 1 Cal.  
21 State Bar Ct. Rptr. 207, 217.) Concomitantly, motions to correct pleading errors that alter the  
22 charges are improper after entry of default. Most definitely, correcting the NDC in the present  
23 proceeding to charge respondent with not paying the filing fees on the visa applications of Father

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1 Noel P. Tria and Filipinas T. Rullero, her husband, and her daughter would improperly expand the  
2 scope of the charges. In sum, the State Bar's third through nineteenth requests are denied.<sup>2</sup>

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5 Dated: August 08, 2005.

  
6 RICHARD A. PLATEL  
7 Judge of the State Bar Court  
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24 <sup>2</sup>In its motion for reconsideration, the State Bar incorrectly asserts that count 6 charges  
25 respondent with "failing to perform any legal services for Tria." Count 6 charges respondent  
26 with "failing to perform any *further* services for Tria." (Italics added.) Moreover, contrary to the  
27 State Bar's assertion, the text found on lines 22 through 24 on page 8 of the NDC is not a factual  
28 allegations that is deemed admitted by respondent's default. That text is the "charge," which is a  
legal conclusion and, therefore, not deemed admitted. In sum, the NDC does not contain  
adequate factual allegations to support a violation of rule 3-110(A) of the Rules of Professional  
Conduct (failure to perform). And, for the reasons set forth in the court's decision, the court  
declines to find a rule 3-110(A) violation.

**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 August 8, 2005, I deposited a true copy of the following document(s):

**ORDER MODIFYING DECISION ON RECONSIDERATION, filed AUGUST 8, 2005**

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

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

(Courtesy copy)

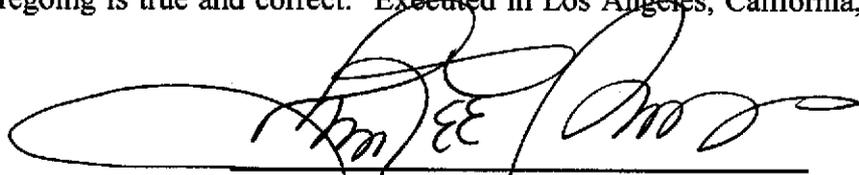
**JUVENAL F. AGRAVANTE  
520 E WILLOW #11  
LONG BEACH CA 90806**

**JUVENAL F. AGRAVANTE  
(AKA LEON F AGRAVANTE)  
4311 YORK BLVD  
LOS ANGELES CA 90041 3219**

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

**ERIC HSU , Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 8, 2005.



**Johnnie Lee Smith**  
Case Administrator  
State Bar Court