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10 **J. Douglass Jennings, Jr.**

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

In The Matter of ) Case No. 11-O-12527  
J. Douglass Jennings, Jr., ) **RESPONSE TO NOTICE OF**  
Member No. 52504, ) **DISCIPLINARY CHARGES**  
A Member of the State Bar. )  
\_\_\_\_\_)

TO THE OFFICE OF THE CHIEF TRIAL COUNSEL OF THE STATE BAR OF CALIFORNIA AND TO ITS COUNSEL OF RECORD:

Respondent J. Douglass Jennings, Jr. responds to the Notice of Disciplinary Charges as follows:

**Respondent's Preliminary Statement**

Prior to 2005, Respondent represented Samuel Robinson in connection with various tax and estate planning matters. Mr. Robinson was a high net worth individual, who had millions of dollars of investments located in a number of different states. At all times pertinent to this proceeding, Mr. Robinson used independent, professional financial advisors at both Smith Barney and Geneos

1 Wealth Management, Inc., including at least one licensed financial advisor, Chartered Financial  
2 Consultant Craig Isaacs.

3 In 2005, after Respondent had finished providing legal services to Mr. Robinson,  
4 Respondent formed a number of investment projects which he offered to numerous private  
5 investors, including Mr. Robinson. La Jolla Equities, Inc. was the managing corporation of other  
6 related corporate entities that provided a number of private investment opportunities to investors for  
7 over four decades. Samuel Robinson invested in Jackson Hole, L.L.C. and La Jolla Equities Income  
8 Fund 1, L.P., two of the entities managed by La Jolla Equities, Inc. The Jackson Hole LLC and La  
9 Jolla Equities Income Fund 1, L.P. investments were offered to Mr. Robinson on similar terms as  
10 were offered to other private investors. A total of 45 investors invested in the Jackson Hole. L.L.C  
11 and 5 investors invested in La Jolla Equities Income Fund 1, and none other than Mr. Robinson  
12 filed a complaint.

13 The investments offered to Mr. Robinson and many other members of the public were arm's  
14 length transactions approved by Mr. Robinson's independent financial advisors. Rule 3-300  
15 provides, "Rule 3-300 is not intended to apply where the member and client each make an  
16 investment on terms offered to the general public or a significant portion thereof. For example, rule  
17 3-300 is not intended to apply where A, a member, invests in a limited partnership syndicated by a  
18 third party. B, A's client, makes the same investment. Although A and B are each investing in the  
19 same business, A did not enter into the transaction 'with' B for the purposes of the rule." Even  
20 though Respondent did, in fact, obtain a Rule 3-300 waiver from Mr. Robinson, strictly speaking,  
21 the investments in La Jolla Equities and Jackson Hole were not Rule 3-300 transactions.

22 Contrary to the State Bar's allegation, Respondent provided Mr. Robinson the required Rule  
23 3-300 written advice to seek independent counsel, and also provided Mr. Robinson with a full and  
24 complete written prospectus describing the investments. The terms of the investments were fair and  
25 reasonable when they were made.

26 Respondent properly complied with California Rule of Professional Conduct 3-300, and  
27 obtained informed, written consent from his client. Mr. Robinson consented, in writing, to the  
28 transfer of his trust funds to invest in Jackson Hole, LLC and La Jolla Equities, Ltd. in the amount

1 of \$500,000 to each. He also signed an acknowledgement of the potential conflict of interest with  
2 Respondent and his right to independent counsel with regard to the \$500,000 investment in Jackson  
3 Hole, LLC. Due to the passage of time, the separate writing relating to the La Jolla Equities  
4 investment cannot be located. However, a letter to Mr. Robinson dated January 16, 2006  
5 corroborates that the original similar acknowledgment and waiver of conflict of interest regarding  
6 La Jolla Equities were lost. The State Bar has the January 16, 2006 letter, but has chosen to ignore  
7 it. The State Bar's allegation that Respondent failed to comply with Rule 3-300 is fundamentally  
8 wrong and unfair.

9         Subsequent individual transfers of funds or investments in connection with the Jackson Hole  
10 and La Jolla investments were done pursuant to the terms of the 2005 agreements with the  
11 knowledge and oversight of Mr. Robinson's independent financial advisors. Respondent was not  
12 required to get individual, written consent for each and every deposit of funds made in connection  
13 with the subsequent deposits of additional funds. After he executed the Rule 3-300 consents,  
14 Mr. Robinson simply continued to add additional funds to the same investments to which he had  
15 previously consented, with full, informed knowledge and with the continuing input of his  
16 independent financial advisors. There were no new or different investments requiring new  
17 disclosures or consents.

18         Additionally, Mr. Robinson executed a General Power of Attorney in July, 2006,  
19 authorizing Respondent to handle Mr. Robinson's funds.

20         The State Bar's allegations are contradicted by the fact that Mr. Robinson employed  
21 separate, professional financial advisors to assist him with his investment decisions. Mr. Robinson  
22 was a sophisticated investor, who had a substantial number of other investments, including limited  
23 partnerships, before ever retaining Mr. Jennings. Respondent met with Mr. Robinson's independent  
24 financial advisors in connection with the investments made by Mr. Robinson, and repeatedly  
25 discussed Mr. Jennings' personal involvement in the investments. Mr. Robinson was fully aware of  
26 the risks of the investment transactions, and he repeatedly reaffirmed his consent to continue with  
27 the investments.

1 Mr. Robinson filed a complaint against Respondent in San Diego Superior Court, alleging  
2 similar facts to those underlying this State Bar complaint. Respondent promptly settled that civil  
3 case. Under the terms of the Agreement, Respondent repaid all the principal funds invested in the  
4 La Jolla Equities Income Fund and Jackson Hole, LLC, and all legal fees paid by Samuel Robinson  
5 to Respondent were repaid. Notably, the settlement payment was paid by Respondent's malpractice  
6 insurance carrier. Since professional liability insurance coverage does not cover intentional acts, it  
7 is clear that Mr. Robinson never proved that any of his funds were misappropriated, and  
8 Mr. Robinson only ever asserted that Respondent's actions were negligent. The insurance company  
9 would never have funded the settlement if there had been evidence of fraudulent conduct.

10  
11 **Answer to Specific Allegations Contained in the Notice of Disciplinary Charges**

12  
13 1. Respondent admits that he was admitted to the practice of law in the State of  
14 California on June 2, 1972.

15  
16 **COUNT ONE**

17 2. Respondent objects to the allegation in Paragraph 2 which constitutes a legal  
18 conclusion and, without waiving this objection, denies that the terms of the business transaction  
19 were not fair and reasonable when made, denies that he failed to provide an adequate written  
20 description of the transactions, and denies that he committed acts in willful violation of Rules of  
21 Professional Conduct, rule 3-300.

22  
23 **COUNT TWO**

24 3. Respondent objects to the allegation in Paragraph 3 which constitutes a legal  
25 conclusion and, without waiving this objection, denies that the terms of the business transaction  
26 were not fair and reasonable when made, denies that he failed to provide an adequate written  
27 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
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1 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
2 Professional Conduct, rule 3-300.

3  
4 **COUNT THREE**

5 4. Respondent objects to the allegation in Paragraph 4 which constitutes a legal  
6 conclusion and, without waiving this objection, denies that the terms of the business transaction  
7 were not fair and reasonable when made, denies that he failed to provide an adequate written  
8 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
9 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
10 Professional Conduct, rule 3-300.

11  
12 **COUNT FOUR**

13 5. Respondent objects to the allegation in Paragraph 5 which constitutes a legal  
14 conclusion and, without waiving this objection, denies that the terms of the business transaction  
15 were not fair and reasonable when made, denies that he failed to provide an adequate written  
16 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
17 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
18 Professional Conduct, rule 3-300.

19  
20 **COUNT FIVE**

21 6. Respondent objects to the allegation in Paragraph 6 which constitutes a legal  
22 conclusion and, without waiving this objection, denies that the terms of the business transaction  
23 were not fair and reasonable when made, denies that he failed to provide an adequate written  
24 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
25 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
26 Professional Conduct, rule 3-300.

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1 **COUNT SIX**

2 7. Respondent objects to the allegation in Paragraph 7 which constitutes a legal  
3 conclusion and, without waiving this objection, denies that the terms of the business transaction  
4 were not fair and reasonable when made, denies that he failed to provide an adequate written  
5 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
6 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
7 Professional Conduct, rule 3-300.

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9 **COUNT SEVEN**

10 8. Respondent objects to the allegation in Paragraph 8 which constitutes a legal  
11 conclusion and, without waiving this objection, denies that the terms of the business transaction  
12 were not fair and reasonable when made, denies that he failed to provide an adequate written  
13 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
14 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
15 Professional Conduct, rule 3-300.

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17 **COUNT EIGHT**

18 9. Respondent objects to the allegation in Paragraph 9 which constitutes a legal  
19 conclusion and, without waiving this objection, denies that the terms of the business transaction  
20 were not fair and reasonable when made, denies that he failed to provide an adequate written  
21 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
22 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
23 Professional Conduct, rule 3-300.

24  
25 **COUNT NINE**

26 10. Respondent objects to the allegation in Paragraph 10 which constitutes a legal  
27 conclusion and, without waiving this objection, denies that the terms of the business transaction  
28 were not fair and reasonable when made, denies that he failed to provide an adequate written

1 description of the transactions, denies that he failed to advise Mr. Robinson of the right to obtain  
2 independent counsel and advice, and denies that he committed acts in willful violation of Rules of  
3 Professional Conduct, rule 3-300.

4  
5 **COUNT TEN**

6 11. Respondent objects to the allegation in Paragraph 11 which constitutes a legal  
7 conclusion and, without waiving this objection, denies that he failed to perform legal services with  
8 competence, denies that the transactions were improper, and denies that he committed acts in willful  
9 violation of Rules of Professional Conduct, rule 3-110(A). Respondent competently handled Mr.  
10 Robinson's tax work for years, successfully represented him in an a fire insurance claim, and  
11 worked with Mr. Robinson's outside financial advisors in carrying forward Mr. Robinson's  
12 preferred estate planning and investment strategy.

13 12. Responding to Paragraph 11 of the NDC, Respondent incorporates by reference his  
14 answers to Paragraph 2 - 10 above as if set forth in full herein.

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16 **AFFIRMATIVE DEFENSES**

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18 **FIRST AFFIRMATIVE DEFENSE**

19 (Failure to State Sufficient Facts)

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

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23 **SECOND AFFIRMATIVE DEFENSE**

24 (Duplicative Charges)

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

1 **THIRD AFFIRMATIVE DEFENSE**

2 (Statute of Limitations)

3 The facts alleged in Counts One through Ten of the Notice of Disciplinary Charges establish  
4 on the face of the NDC that the action is barred by the period of limitations contained in Rule 5.21  
5 of the Rules of Procedure of the State Bar of California, which provides that a disciplinary  
6 proceeding based solely on a complainant's allegations of a disciplinary violation must begin within  
7 five years from the date of the violation. See Rule 5.21(A).

8 According to Count One of the NDC, the alleged violation of rule 3-300 is based on a  
9 transaction which occurred on May 13, 2005. According to Count Two of the NDC, the alleged  
10 violation of rule 3-300 is based on a transaction which occurred on May 18, 2005. According to  
11 Count Three of the NDC, the alleged violation of rule 3-300 is based on a transaction which  
12 occurred on May 21, 2008. According to Count Four of the NDC, the alleged violation of rule 3-  
13 300 is based on a transaction which occurred on March 3, 2008. According to Count Five of the  
14 NDC, the alleged violation of rule 3-300 is based on a transaction which occurred on July 10, 2008.  
15 According to Count Six of the NDC, the alleged violation of rule 3-300 is based on a transaction  
16 which occurred on July 25, 2008. According to Count Seven of the NDC, the alleged violation of  
17 rule 3-300 is based on a transaction which occurred on August 12, 2008. According to Count Eight  
18 of the NDC, the alleged violation of rule 3-300 is based on a transaction which occurred on  
19 December 9, 2008. According to Count Nine of the NDC, the alleged violation of rule 3-300 is  
20 based on a transaction which occurred on December 31, 2008. According to Count Ten of the NDC,  
21 the alleged violation of rule 3-110(A) is based on a transaction which occurred in or about January,  
22 2004. Each of the allegedly improper acts occurred well over five years from the date of the  
23 commencement of this proceeding.

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25 **FOURTH AFFIRMATIVE DEFENSE**

26 (Unreasonable Delay)

27 The State Bar has unreasonably delayed in its filing of Counts One through Ten of the NDC,  
28 on which Respondent has relied to his prejudice and detriment. The charges contained in Counts

1 One through Ten of the NDC are stale, and there is an irrebutable presumption of unfairness to  
2 Respondent arising from this unreasonable delay. The law has long recognized that extended delay  
3 is highly prejudicial to a litigant. Memories fade. Mr. Robinson is deceased. Documents are  
4 destroyed or misplaced. There are "all the impediments the statute of limitations was designed to  
5 avoid." *Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314.

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7 **FIFTH AFFIRMATIVE DEFENSE**

8 (Reliance Upon the Law)

9 All of Respondent's admitted conduct was done in reliance upon well-established laws and  
10 legal principles, upon which Respondent had the legal right to rely in conducting his affairs.

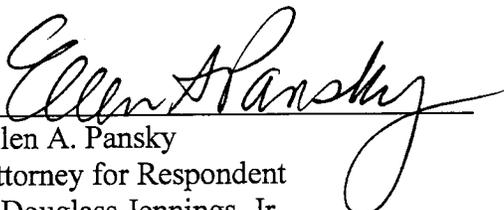
11  
12 WHEREFORE, Respondent prays that the Court find that Respondent did not commit acts  
13 constituting professional misconduct, and that the Notice of Disciplinary Charges be dismissed.

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15 Respectfully submitted,

16 PANSKY MARKLE HAM, LLP

17 Dated: April 15, 2015

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20 By:

  
21 Ellen A. Pansky  
22 Attorney for Respondent  
23 J. Douglass Jennings, Jr.  
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**PROOF OF SERVICE**

*In the Matter of J. Douglass Jennings, Jr.*

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

On **April 15, 2015**, I served the foregoing document(s) described as:

**RESPONSE TO NOTICE OF DISCIPLINARY CHARGES**

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

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

Drew Massey, Deputy Trial Counsel  
Office of the Chief Trial Counsel  
Enforcement  
The State Bar of California  
845 S. Figueroa Street  
Los Angeles, CA 90017

(X) **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at South Pasadena, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed April 15, 2015 at South Pasadena, California.



\_\_\_\_\_  
Valerie Markle