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PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

<p>8 In the Matter of 9 ARTHUR C. KRALOWEC, 10 Member No. 53916, 11 <u>A Member of the State Bar.</u></p>	}	<p>Case No. 97-O-17385-JMR DECISION</p>
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I. Introduction

In this contested matter, Respondent **ARTHUR C. KRALOWEC** is charged with committing professional misconduct in one client matter. The court finds, by clear and convincing evidence, that Respondent committed five of the six charges, including improper withdrawal from employment, failure to communicate, failure to perform and committing acts of moral turpitude. In view of the misconduct, the aggravating evidence and the compelling mitigating factors – including the passage of some 10 years since Respondent’s misconduct occurred, good faith and cooperation with the State Bar – the court recommends that Respondent be suspended from the practice of law for six months, stayed, and that he be placed on probation for one year.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on Respondent a Notice of Disciplinary Charges (NDC) on November 29, 2001. (Rules Proc. of State Bar, rule 60.) Respondent filed a response.

On February 21, 2003, the court held an evidentiary hearing. In its March 5, 2003, order, the court determined that there was no evidence of jury misconduct in the *Metzger v. Kralowec* trial and that there was no unfairness in applying the doctrine of collateral estoppel to the jury verdict in



1 *Metzger v. Kralowec*, Tulare County Superior Court, No. 93-162564.

2 Accordingly, the court granted the State Bar's request that count six (alleging moral turpitude
3 in violation of Business and Professions Code section 6106) be established as a matter of law but
4 denied that counts one through four be precluded from relitigation. The court noted:

5 The application of collateral estoppel principles in attorney disciplinary
6 proceedings does not alter the fundamental requirement that the State Bar prove
7 each element of a charged violation by clear and convincing evidence. (*Golden v.*
8 *State Bar* (1931) 213 Cal. 237, 247.) "Neither the Supreme Court nor the State Bar
9 Court will bind ... a respondent to an adverse civil finding made upon the usual civil
10 standard of proof of a preponderance of the evidence when the standard of proof in
11 the State Bar proceeding is clear and convincing evidence." (*In the Matter of*
12 *Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 327.) Here,
13 Respondent was not found liable of the other charges under the same stringent
14 standard of proof. Therefore, collateral estoppel principles could not be extended
15 and applied to Counts 1, 2, 3 and 4.

11 The conclusions reached by civil courts are not dispositive of disciplinary
12 charges although they bear a strong presumption of validity if supported by
13 substantial evidence. Those findings must still be examined under the more stringent
14 standard used in disciplinary matters. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924,
15 947; *Rosenthal v. State Bar* (1987) 43 Cal.3d 612, 634.)

14 A three-day hearing was held on March 25-26 and April 29, 2003 in this matter. Deputy
15 Trial Counsel E. Lisa Vorgias represented the State Bar. Respondent was represented by R. Gerald
16 Markle, Esq. This case was submitted for decision on May 19, 2003, following the filing of closing
17 briefs from Respondent and Deputy Trial Counsel Donald R. Steedman.

18 **III. Findings of Fact and Conclusions of Law**

19 The following findings of fact are based on the parties' stipulation of facts and the evidence
20 and testimony introduced at this proceeding. The court finds part of client Michael Metzger's
21 testimony to be self-serving and not credible.

22 **A. Jurisdiction**

23 Respondent was admitted to the practice of law in California on December 13, 1972, and has
24 since been a member of the State Bar of California.

25 **B. Findings of Fact**

26 This case exemplifies an outrageous waste of judicial resources, involving extremely difficult
27 parties but not difficult issues and thousands of pages of documentary evidence, that spanned 27
28 years from 1976 to now. A long, laborious and litigious battle arose among the parties - a

1 contractor, a disgruntled client, and Respondent. During this period,

- 2 • the client went through five attorneys, including Respondent, to satisfy his principle
- 3 of justice in a construction case that was once worth \$818;
- 4 • the contractor whom the client had countersued had retired and dissolved his
- 5 construction business (in 1993, he was 82 and wanted to end the litigation expense
- 6 without recovering the judgment of \$818);
- 7 • one of the superior court judges presiding over the civil case had retired and another
- 8 judge was publicly censured;
- 9 • the contractor's original attorney had retired and his second attorney had died;
- 10 • Respondent spent 15 years first fighting on behalf of his client in the construction
- 11 case which was finally dismissed in 1993 and then fighting against his client in a
- 12 legal malpractice case, in which Respondent was found liable for about \$93,950 and
- 13 in which the jury found that Metzger would have been entitled to recover \$35,180
- 14 from the contractor; and
- 15 • after the legal malpractice case had concluded, State Bar waited four years before
- 16 filing this proceeding against Respondent.

17 ***1. 1975 -1988: Background of the Construction Case (Munson v. Metzger)***

18 For the purpose of this disciplinary proceeding, the background of the original construction
19 action is briefly summarized.

20 In 1975, Michael Metzger, the client, bought a house in the Tulare County community of
21 Dinuba. He had recently received a judgment of more than \$1 million in a personal injury case.
22 When he moved to Dinuba and for several years thereafter, Metzger, who was divorced, used a
23 wheelchair and needed assistance of a housekeeper.

24 In 1976, Metzger hired a contractor, Guy Munson dba Dinuba Munson Co., to build a block
25 wall, among other things. The completed wall, which was six feet eight inches high and ran 190 feet
26 along the eastern edge of Metzger's property, was cracked and vibrated. Metzger, who had already
27 made two progress payments of \$3,000, refused to pay the balance until the problem was fixed.

28 In September 1976, the contractor sued Metzger to foreclose a mechanic's lien on his

1 property.

2 In January 1977, Metzger hired his *first* attorney, Myrtle Burgess, to defend him and
3 countersued the contractor for breach of contract (the contract action).

4 In 1978, the contract action went to trial in the Visalia Municipal Court before Judge Robert
5 Bradstreet. After a four day trial, the judge found in favor of the contractor for \$2,618, plus costs.

6 In 1980, Metzger hired a *second* attorney, Daniel Bacon, to appeal the decision.

7 During the pendency of the appeal, Metzger decided to remove the wall and discovered that
8 the wall had been built improperly. The Uniform Building Code required that the design of the wall
9 had to be certified by a licensed engineer and approved by the building department before the start
10 of construction. In this case, the engineer's plans apparently had not been submitted until the wall
11 was completed and signed off by a county building inspector.

12 Because of this newly discovered evidence, attorney Bacon asked the court to reopen the trial
13 for additional evidence but was denied. Judge Bradstreet found that the newly discovered evidence
14 was cumulative and not so strong as to render a different probable result. Metzger filed an appeal.
15 Meanwhile, Metzger filed a second action against the contractor for fraud (the fraud action).

16 In 1982, the appellate division of the Tulare County Superior Court reversed the judgment
17 in the contract action and remanded the matter to allow Metzger to present new evidence.

18 The contract action went to trial for the second time in 1984. Judge Bradstreet again found
19 in favor of the contractor but decreased the judgment to \$818 against Metzger.

20 Still determined to win, Metzger hired a *third* attorney, Margaret McKnight, to appeal that
21 decision. In January 1988, the appellate division reversed the decision once more and remanded the
22 case to the municipal court for yet a third trial.

23 On February 5, 1988, Metzger hired his *fourth* attorney, Respondent, a sole practitioner, to
24 represent him in both the contract and the fraud actions. They signed a written retainer agreement
25 and Metzger agreed to pay Respondent on an hourly rate of \$105.

26 **2. 1988 -1993: Respondent Hired As Metzger's Fourth Attorney**

27 When Respondent became the attorney of record for Metzger, he had the trial transcripts
28 from the previous two trials, the depositions of the parties, two sets of appellate briefs, and two

1 rulings from the court of appeal.

2 Respondent estimated that it would cost Metzger about \$30,000 to bring the case to trial and
3 told him the amount was more than he was likely to recover. But to Metzger, the dispute had
4 become a matter of principle, not a matter of money; he was determined to take the case before a
5 jury.

6 Respondent believed that the most economical way to pursue the matter was consolidating
7 the contract and fraud actions before a superior court and then resolving the contract action by
8 summary judgment.

9 In April 1988, Respondent and Metzger discussed strategy and agreed that the case would
10 be tried by jury and that the witnesses who had previously testified in the trials would testify again.
11 But soon, the question of whether the fraud complaint should include the county and its employees
12 as additional defendants became the focus of disagreement between the two men.

13 In May 1988, Respondent disqualified the assigned municipal court judge, Howard R.
14 Broadman, from hearing the consolidation motion because Respondent had publicly feuded with him
15 in the past.

16 In June 1988, Respondent began researching the possibility of suing Tulare County building
17 inspectors who had approved the completed wall and the engineer who had prepared the wall plans.
18 According to Respondent, Metzger believed he was the victim of a wide-ranging conspiracy and
19 insisted on suing everyone he felt was involved. This included not only the contractor and the
20 Tulare County employees, but also his former attorneys, Judge Bradstreet, the sheriff, a neighbor
21 and a county supervisor.

22 Metzger, however, claimed that he went along with the idea of investigating the county's
23 liability at Respondent's suggestion. Contrary to Metzger's claim, he wrote in his diary:

24 "No amounts of money can replace the depleted time and humiliation damage and
25 abuse these individuals have conspired upon me." (State Bar exhibit 6.)

26 Respondent filed a motion to activate the contract action, to consolidate the actions for trial
27 and other proceedings and to transfer the consolidated cases to the superior court. In August 1988,
28 the court issued an order, consolidating the fraud and contract actions.

1 In January 1990, Respondent filed a motion for summary adjudication of the contract cause
2 of action. In March, Judge Broadman, who had been elevated to the superior court and assigned to
3 the case, heard the summary adjudication motion. Without ruling on the motion, Judge Broadman
4 on his own ordered the matter to arbitration, which effectively prevented Respondent from appealing
5 the decision.

6 The attorney client relationship between Respondent and Metzger deteriorated rapidly and
7 reached an impasse which stalled any further progress on the case. On August 28, 1990, Respondent
8 urged Metzger to "seriously consider" hiring a new attorney and enclosed two other letters written
9 in April and May but were never mailed. These letters also proposed that Metzger find a new
10 attorney and enclosed signed substitution of attorney forms. Over the next 16 months, Respondent
11 sent Metzger additional letters of a similar nature. But Metzger refused to accept Respondent's
12 attempts to withdraw. Respondent's last charge on his legal services was August 10, 1990. By then,
13 Metzger had already paid Respondent more than \$36,000 in fees.

14 Between August 1990 and February 1991, Respondent continued to confer with Metzger on
15 at least 10 occasions but did not charge him for those hours. Based on these letters and conferences,
16 Respondent believed that he had adequately withdrawn as Metzger's attorney. But he never filed
17 a substitution of attorney with the court or sought the court's permission to withdraw.

18 In September 1991, Respondent wrote Judge Broadman requesting that the judge disqualify
19 himself from the case. Instead, the judge issued a minute order dismissing the request as an ex parte
20 communication, admonishing Respondent against such conduct and stating that if the party believed
21 certain actions should occur, he should file a duly noticed motion.¹ Nevertheless, no such motion
22 was ever filed.

23 Respondent sent Metzger his last letter on December 5, 1991, stating:

24 "In my last letter to you I informed you that I was not going to do anything for you
25 further on this case ... if you do not take action to protect yourself that you will have
26 no case left to pursue. It will be dismissed and then you will have no chance of

27 ¹Respondent argues that the communication was not improper ex parte because
28 Respondent's letter was copied to opposing counsel and that the judge's admonishment was
unwarranted.

1 recovering for your injuries which you believe were inflicted by Mr. Munson ... I
2 will not be taking further action on your behalf ... Your letter suggests that you do
3 not understand that our relationship has ended, but I assure you that it has. I am not
4 going to respond to any further direct communications from you." (State Bar exhibit
5 8A.)

6 Metzger received Respondent's letters but refused to agree to Respondent's withdrawal from
7 employment, expecting Respondent to abide by their retainer agreement. Thereafter, Metzger wrote
8 to Respondent from December 1991 through February 1993 on at least 20 occasions. On several
9 of these letters, including those dated July 20, August 24, November 9, and December 4, 1992,
10 Metzger urged Respondent to pursue the matter and requested information regarding case status.
11 In his last letter to Respondent on February 1, 1993, Metzger wrote: "I would appreciate your
12 response to these letters and notifying me what steps you are taking to bring this case to trial."
13 (State Bar exhibit 8A.) Respondent received the letters but did not respond to them.

14 Respondent testified that he did not answer the letters because if he did, Metzger would think
15 they had renewed their arguments and would have his "foot in the door." Respondent did not want
16 to reopen their relationship.

17 **3. 1993: Metzger Hired A Fifth Attorney in *Munson v. Metzger***

18 Finally, on April 23, 1993, Metzger hired his *fifth* attorney, substituting the law firm of
19 Anton, Gordon & Monje in place of Respondent to represent him in *Munson v. Metzger*.

20 Metzger's fifth attorney, Thomas Anton, requested that the case be set for trial for its third
21 time.

22 In May, the court removed the case from arbitration and set the matter for trial for October
23 1993.

24 In June 1993, the contractor requested the court to dismiss the case for failure to prosecute
25 within three years following the reversal on appeal and for unreasonable delay.

26 Attorney Anton opposed the dismissal motion and filed a peremptory challenge asking that
27 Judge Broadman be disqualified to hear the motion.

28 On September 24, 1993, another judge then heard the matter and dismissed the case for
failure to bring to trial within the time limit and for delay in prosecution. In its order of dismissal,
the court wrote:

1 "This court fails to see how the interests of justice could be for any result other than
2 a dismissal ... This action was originally begun in 1976 ... The plaintiff is now 82
3 years old and desires to end the expense of this litigation without any recovery.
4 Memories are obviously dimmed by time ... Cross-complainant (Metzger) did
5 nothing, essentially, between March 29, 1990 and April 13, 1993." (State Bar
6 exhibit 5.)

7 By 1993, this simple construction case, *Munson v. Metzger*, over a defective wall had been in
8 litigation for 17 years.

9 **4. 1993 -1997: Metzger v. Respondent**

10 The contractor had moved on and retired and did not care to pursue the judgment of \$818
11 against Metzger. But Metzger, on the other hand, refused to accept defeat and blamed Respondent
12 for his loss.

13 In October 1993, within a month of the case dismissal, Metzger filed suit against Respondent
14 for legal malpractice, breach of contract, and breach of fiduciary duty. Respondent's problem with
15 Metzger intensified.

16 Metzger contended that Respondent failed to pursue the case diligently, failed to inform him
17 that the case would be dismissed as the result of Respondent's inaction, and that the conduct was
18 oppressive, fraudulent and malicious to justify an award of punitive damages.

19 After a 19-day trial beginning in February 1995, the jury by special verdict found
20 Respondent liable and awarded Metzger compensatory and punitive damages. At the same time,
21 Metzger was found to be responsible for 25% of his damages. The jury also found Respondent had
22 acted with malice (but not fraud or oppression) and assessed \$15,000 to be punitive damages. A
23 judgment on the verdict was entered for \$93,949.16 plus costs.

24 Respondent appealed the judgment. The appellate court affirmed trial court's decision in its
25 October 29, 1997, opinion.

26 **5. Nature and Extent of Respondent's Acts Involving Moral Turpitude With Malice**

27 The appellate court found that there was sufficient evidence to conclude that Respondent had
28 acted with malice, by clear and convincing evidence, in breaching his fiduciary duty to his client.

Malice is partially defined as "conduct which is intended by the defendant to cause injury
to the plaintiff." (Civ. Code, § 3294, subd. (c)(1).)

1 The appellate court wrote:

2 "In this case, the jury might reasonably have concluded that
3 (Respondent) acted intentionally to injure Metzger in light of the
4 evidence he charged Metzger for legal services which he
(Respondent) knew were unwarranted and which Metzger did not
request or want." (State Bar exhibit 1.)

5 As a matter of law, Respondent's guilt of malice involves moral turpitude in violation of
6 Business and Professions Code section 6106. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal.
7 State Bar Ct. Rptr. 195, 208.) Accordingly, applying the principles of collateral estoppel as set forth
8 in *Kittrell*, the court finds that the jury's finding and the final judgment of malice in the legal
9 malpractice action is a conclusive legal determination by clear and convincing evidence that
10 Respondent committed acts of moral turpitude in his fiduciary relationship with Metzger and that
11 legal determination is binding on Respondent and preclusive in this proceeding. (*Id.* at pp. 208-
12 209.)

13 However, as in *Kittrell*, the court cannot determine the nature and extent of Respondent's
14 acts involving moral turpitude under the application of collateral estoppel principles. Nor can the
15 court determine the nature and extent of those acts by independently reviewing the record without
16 inappropriately reweighing the evidence in the civil record under the clear and convincing standard
17 of proof. Thus, at this hearing, Respondent was given a fair opportunity to contradict, temper or
18 explain the evidence in the civil record with other evidence. (*In the Matter of Kittrell, supra*, 4 Cal.
19 State Bar Ct. Rptr. at p. 209.)

20 Respondent contended at the legal malpractice trial that the delay in pursuing Metzger's case
21 was attributable to Metzger because he insisted in pursuing claims against "satellite" defendants to
22 the detriment of the core case. Metzger denied this allegation. The parties provided opposite
23 testimony on the issue of whose idea it was to pursue the satellite defendants. Metzger testified at
24 trial that he never expressed any desire to sue the County of Tulare or its employees or any other
25 satellite defendants. He denied that he ever asked Respondent to bring Judge Bradstreet into the
26 action. In Metzger's view, it was Respondent who was intent on pursuing other "ghost" defendants.
27 He accused Respondent of "churning" the case to generate additional fees. He testified that he had
28 confidence in Respondent's abilities and that he was continuously requesting that Respondent take

1 his case to trial. Respondent denied Metzger's allegations. Respondent testified that it was
2 Metzger's idea to pursue the satellite defendants, and it was Metzger's obsession in pursuing
3 satellite defendants and his inconsistent directions that prevented him from taking Metzger's case
4 to trial.

5 Respondent does not agree that he intended to cause harm to Metzger by omitting to file a
6 motion to withdraw in the *Metzger v. Munson* case. Although his legal analysis that he need not file
7 a formal motion to withdraw was in error, Respondent did it in good faith. To Respondent, filing
8 such a motion would demonstrate weakness to opposing counsel and to the court and would expose
9 the case to former judge Howard Broadman, a law and motion judge at that time, who might imperil
10 the case. Besides, Respondent believed that it was an unnecessary prerequisite to terminating his
11 employment.

12 Respondent further contends that he did not run up the bills because it was Metzger who was
13 fixated on the conspiracy theories and adding additional defendants, despite Respondent's efforts
14 to convince him otherwise.

15 Between November 1988 and April 1989, Respondent performed research on the issue of
16 suing additional defendants. After six months, Respondent concluded that it was impossible to sue
17 those satellite parties and told Metzger in his April 21, 1989, letter:

18 "[Y]ou suffered horribly, but you did not incur huge economic losses. You either
19 take this case as essentially a matter of principle or you are going to be very badly
20 disappointed ... pursuant to your instructions, we have been examining the record for
21 examples of obvious fraud on the part of the County Building Department ... But we
22 have not found the 'hook' needed to bring the county in ... as I told you, I am not
23 surprised ... So it seems to me that our relationship is breaking down ... I want you
24 to consider getting another attorney to represent you in this matter from here on ...
25 I am concerned that things will just get worse between us before they get better, and
26 in view of your expectations, I don't see how I can possibly make you happy."
27 (State Bar exhibit 8A.)

28 After May 1989, Respondent did no further research for county liability but charged Metzger
for the time Metzger would come in and insist on discussing his conspiracy theories and about
pursuing the county for damages. For example, in May 1989, Metzger conferred with Respondent
at least five times on the same subject. Respondent tried but was unsuccessful in convincing his
client to end this useless pursuit.

1 In a letter dated May 22, 1989, to Metzger, Respondent wrote:

2 "As I told you over and over in the past, our chances against the County are so slim
3 as to not warrant any more effort. You continue to hope against hope that we will
4 come up with a theory which will hold the county into the suit and we have not and,
as hard as we try, we can not." (State Bar exhibit 6.)

5 From May 1989 through December 1991, the records are replete with evidence of
6 correspondence between Respondent and Metzger, recounting their discussions in great detail.
7 Metzger had his own mind set as to how to proceed with the case. Respondent, as Metzger's
8 attorney, was unable to control his client. Respondent would tell Metzger countless times that he
9 was withdrawing from employment but then only to be persuaded by Metzger to stay on the case.
10 Eventually, there was an impasse.

11 Metzger no longer restricted this case to a matter of principle. He was determined to recover
12 a huge sum at whatever costs and expected Respondent to continue to represent him.² He insisted
13 on bringing additional defendants and on the conspiracy theories. Respondent was clearly not in
14 charge of managing the litigation and was not free to act independently as an attorney. Although
15 Respondent repeatedly warned Metzger about the possibility of the case dismissal and advised him
16 to hire a substituting attorney, Respondent became so frustrated that he finally stopped performing
17 any services as of December 1991. He told Metzger that their professional relationship had ended.

18 **C. Conclusions of Law**

19 **1. *Count 1: Rule 3-700(A)(1) of the Rules of Professional Conduct³ (Withdrawal***
20 ***From Employment Without Court's Permission)***

21 Rule 3-700(A)(1) provides that an attorney shall not withdraw from employment in a

22
23 ²In Respondent's April 21, 1989, letter to Metzger, Respondent wrote: "[Y]ou can
24 imagine how shocked I was when you told me ... that you thought that it would take a seven-
25 figure recovery to satisfy you in this matter. I told you ... that there was no chance of such a
recovery in this case." (State Bar exhibit 8A.)

26 ³References to rule are to the 1989 and current Rules of Professional Conduct, unless
27 otherwise noted. The 1989 rules were in effect from May 27, 1989 to September 13, 1992, and
28 the current rules are effective after May 27, 1989, during which the alleged misconduct took
place. The provisions of the former rules and the current rules charged in the NDC are
essentially the same.

1 proceeding without the court's permission if its rules require such permission for the termination of
2 employment.

3 Respondent acknowledges that he did not file a formal motion to withdraw in *Munson v.*
4 *Metzger* in wilful violation of rule 3-700(A)(1). He defends his decision, claiming that he did not
5 want to harm his client's case and that his independent research told him that a formal motion to
6 withdraw was not necessary. Respondent's legal conclusion was wrong. Code of Civil Procedure
7 section 284 provides that an attorney may withdraw from an action, before or after final judgment,
8 upon the consent of both client and attorney, or upon the order of the court.

9 Because Metzger refused to accept his withdrawal from employment, Respondent was
10 obligated to seek the court's permission to do so. His failure to comply results in a wilful violation
11 of rule 3-700(A)(1).

12 **2. Count 2: Rule 3-700(A)(2) (Improper Withdrawal From Employment)**

13 Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until he has
14 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

15 "An attorney of record in pending litigation remains counsel of record, and thus continues
16 to have a duty to take such actions as are essential to avoid foreseeable prejudice to the client's
17 interests, unless and until a substitution of counsel is filed or the court grants leave to withdraw."
18 (*In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91, 115.)

19 Although Respondent had repeatedly told his client to hire another attorney due to their
20 strained attorney-client relationship, he failed to take any steps to avoid foreseeable prejudice to the
21 rights of Metzger in wilful violation of rule 3-700(A)(2). His constant warnings about the statute
22 of limitations to his client were meaningless absent an affirmative act to protect the case from
23 dismissal. As a result, shortly after Metzger hired a successor attorney in 1993, the case was
24 dismissed for lack of prosecution.

25 **3. Count 3: Rule 4-200(A) (Unconscionable Fee)**

26 Rule 4-200(A) prohibits an attorney from entering into an agreement for, charge, or collect
27 an illegal or unconscionable fee.

28 Unconscionability of a fee is determined on the basis of all the facts and circumstances

1 existing at the time the agreement is entered into except where the parties contemplate that the fee
2 will be affected by later events. Among the factors to be considered include the amount of the fee
3 in proportion to the value of the services performed, the nature and length of the professional
4 relationship with the client, the time and labor required and the informed consent of the client to the
5 fee. (Rule 4-200(B).)

6 Here, at the time of the written retainer agreement in February 1988, Metzger consented to
7 Respondent's hourly rate of \$105, Respondent gave him an initial estimate of \$30,000 to bring the
8 case to trial, and Metzger represented to Respondent that this case was a matter of principle more
9 than a monetary recovery. During the course of their attorney-client relationship, Metzger
10 demanded repeatedly that Respondent explore the conspiracy theories and possibility of adding more
11 defendants. As a result, he consumed much of Respondent's time in telephone calls, conferences
12 and correspondence, even after Respondent had determined that Metzger's ideas were unrealistic
13 and had stopped doing any legal research on those issues. Moreover, between August 1990 and
14 February 1991, Respondent continued to confer with Metzger but did not charge him for those
15 hours.

16 Therefore, there is no clear and convincing evidence that Respondent had charged or
17 collected an unconscionable fee in violation of rule 4-200(A).

18 **4. Count 4: Rule 3-110(A) (Failure to Perform)**

19 Rule 3-110(A) provides that a member shall not intentionally, recklessly or repeatedly fail
20 to perform legal services with competence.

21 Respondent told Metzger on many occasions that he was withdrawing from employment and
22 that he was no longer going to perform any legal services. But because he had improperly
23 withdrawn from employment, his cessation of legal services, including failure to prosecute, was in
24 wilful violation of rule 3-110(A). However, the court will not attach additional weight to the finding
25 of both violations, counts 1 and 4, in determining the appropriate discipline to recommend in this
26 matter. Little, if any, purpose is served by duplicative allegations of misconduct. (*Bates v. State Bar*
27 (1990) 51 Cal.3d 1056, 1060.)

28 //

1 5. **Count 5: Business and Professions Code Section 6068(m)⁴ (Failure to**
2 **Communicate)**

3 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of
4 clients and to keep clients reasonably informed of significant developments in matters with regard
5 to which the attorney has agreed to provide legal services.

6 Respondent explained that he did not want to again open the door of communication between
7 him and Metzger and therefore, did not answer his client's letters from December 1991 through
8 February 1993.

9 "A difficult client is a fearful thing, but it does not excuse [Respondent's] wilful failure to
10 respond to numerous notes and telephone calls over a period of several months." (*Farnham v. State*
11 *Bar* (1988) 47 Cal.3d 429, 444.) As long as he remained as the attorney of record, Respondent had
12 a duty to respond to Metzger's status inquiries and his failure to respond was in wilful violation of
13 section 6068(m).

14 6. **Count 6: Section 6106 (Moral Turpitude)**

15 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,
16 dishonesty or corruption.

17 Respondent contends that it would be unfair to bind him to the adverse civil findings because
18 "he was required to litigate under different and less advantageous procedures in the civil
19 proceeding" caused by the misconduct of a former judge, Howard Broadman. (*In the Matter of*
20 *Applicant A* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 318, 329.)

21 Although the Supreme Court concluded that Broadman had engaged in prejudicial conduct
22 by his "attempt to influence the outcome" of the legal malpractice matter, *Metzger v. Kralowec*,
23 there is no evidence or conclusion that he succeeded in influencing the outcome or that unfairness
24 resulted. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1112, italics
25 added.) Broadman was disciplined for trying to influence but not for actually influencing the jury
26

27 ⁴All references to section are to the Business and Professions Code, unless otherwise
28 indicated.

1 during trial. Despite Respondent's extensive arguments and challenges, the Fifth District Court of
2 Appeal affirmed the findings in *Metzger v. Kralowec*.

3 After an evidentiary hearing in this proceeding, the court has determined that there was no
4 evidence of jury misconduct in the *Metzger v. Kralowec* trial and that there was no unfairness in
5 applying the doctrine of collateral estoppel to the jury verdict in *Metzger v. Kralowec*. Respondent
6 did not show that he had an unfair trial.

7 Thus, the court finds that the jury's finding and the final judgment of malice in the legal
8 malpractice action is a conclusive legal determination by clear and convincing evidence that
9 Respondent committed acts of moral turpitude in violation of section 6106 in his fiduciary
10 relationship with Metzger and that legal determination is binding on Respondent and preclusive in
11 this proceeding. (*In the Matter of Kittrell, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 208-209.)

12 In the legal malpractice case, the appellate court agreed with the jury that it might reasonably
13 have concluded that Respondent acted intentionally to injure Metzger in light of the evidence he
14 charged Metzger for legal services which Respondent knew were unwarranted and which Metzger
15 did not request or want.

16 However, based on the evidence presented at this hearing, in which Respondent was given
17 a fair opportunity to contradict, temper or explain the evidence in the civil record with other
18 evidence, there is no clear and convincing evidence to establish that Respondent intentionally
19 harmed Metzger.

20 The nature and extent of Respondent's acts involving moral turpitude are such that he
21 breached his fiduciary duty to Metzger through gross negligence in the way he handled the litigation,
22 albeit he did not intentionally harm his client. After he had determined that adding satellite
23 defendants was not feasible in May 1989, Respondent's fees were based not on further research but
24 on the time spent discussing the issue. And after August 1990, Respondent stopped charging
25 Metzger even though their dispute continued. The gravamen of Respondent's misconduct was his
26 failure to prosecute the case, resulting in its dismissal.

27 Gross negligence or recklessness by an attorney in discharging fiduciary duties involves
28 moral turpitude. (See *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 475.) By abdicating his

1 responsibility for the construction case to his client, Respondent displayed gross negligence
2 constituting moral turpitude. Respondent attempted to discharge his duties to Metzger in his
3 December 1991 letter:

4 "I informed you that I was not going to anything for you further on this case ... if you
5 do not take action to protect yourself that you will have no case left to pursue. It will
be dismissed."

6 As a result of his failure to properly withdraw as attorney of record and to prosecute, Respondent
7 knew or should have known that the case would be dismissed. He therefore breached his fiduciary
8 duty owed to Metzger.

9 Respondent concedes in his closing brief that "[i]n the proverbial 20/20 vision of hindsight,
10 it is apparent that [Respondent] 'stuck' with Michael Metzger for too long." However, he maintains
11 that "while he may have erred, [Respondent] erred by putting his client's interest above his own."

12 Throughout their attorney-client relationship, Respondent did not have independent authority
13 to effectively manage the construction litigation as he should have.

14 "When no substantial right is implicated, an attorney must be free to act independently. It
15 is essential to the efficient conduct of the client's case and the accomplishment of the client's
16 ultimate goals that an attorney have the authority to make independent decisions in the day-to-day
17 management of civil litigation. This authority '[allows] the lawyer-professional to apply his
18 technical expertise ... [Citation omitted.]' It also protects the lawyer's professional reputation and
19 preserves the lawyer's role as an officer of the court." (*Blanton v. Womancare, Inc.* (1985) 38
20 Cal.3d 396, 410.)

21 "The effective management of litigation requires independent decisions by the attorney
22 regarding not only procedural matters but also certain *substantive* matters – for example, it may
23 include the legal theories or arguments to be advanced. Routine and technical matters, including
24 those ordinary matters which arise in the course of litigation, may be handled independently by the
25 attorney as a necessary aspect of the professional management of the case." (*Ibid.*)

26 Here, Respondent was under the dictate of his client. He had no authority to advance the
27 legal theories or arguments of his own. Metzger insisted on the satellite defendants and the
28 conspiracy theories. Metzger was undoubtedly a difficult client to deal with but Respondent, as an

1 officer of the court, had an obligation to effectively manage the litigation or withdraw. Rather than
2 resolving their differences, Respondent became so frustrated that he abandoned his client to the
3 client's detriment. As a result, he breached his fiduciary duty to his client with malice and
4 committed an act of moral turpitude as a matter of law.

5 **IV. Mitigating and Aggravating Circumstances**

6 **A. Mitigation**

7 Respondent bears the burden of proving mitigating circumstances by clear and convincing
8 evidence. (Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵ There are compelling
9 mitigating factors.

10 Respondent's conduct was surrounded by good faith, albeit erroneous judgment. (Std.
11 1.2(e)(ii).) Although Respondent did not properly withdraw from the construction case, he
12 purposely did not file the motion to withdraw, believing in good faith that he was protecting his
13 client's best interests. He had no ill will toward Metzger.

14 Respondent suffered from a physical disability at about the time of his misconduct. (Std
15 1.2(e)(iv).) He contracted a serious illness in 1991, was hospitalized for about 10 days, and was
16 unable to practice law for about a year. He was weak and reduced his practice to only letter writing
17 for about a year from Spring 1991 to 1992. However, his illness does not merit significant weight
18 in mitigation since it is not established that it was directly responsible for his misconduct.

19 Respondent cooperated with the State Bar by entering into a stipulation of facts. (Std.
20 1.2(e)(v).) Based on the correspondence between Respondent and the State Bar (Respondent's
21 exhibits A through L) and the procedural history of this case, the court finds that the State Bar had
22 been extremely uncooperative with Respondent and caused undue delay and difficulties in not only
23 negotiating the stipulation but also in prosecuting this matter. For example, at the eve of the
24 culpability phase of the trial, the State Bar was still contacting potential witnesses for purposes of
25 aggravation *not* previously identified during discovery, including Respondent's former and current
26

27 ⁵All further references to standards ("std.") are to the Standards for Attorney Sanctions
28 for Professional Misconduct.)

1 clients. The State Bar did not properly identify these witnesses either during discovery or in its
2 pretrial statements. Upon motion by Respondent, the court had to order the State Bar to cease
3 contacting these unidentified potential witnesses.

4 The passage of more than 10 years since the client abandonment occurred followed by lack
5 of any additional similar misconduct is substantial mitigation. (Std. 1.2(e)(viii).) Respondent
6 improperly withdrew from employment in 1991 and failed to communicate with his client from 1992
7 to 1993. There is no evidence in this record of any new acts of misconduct occurring after 1993.

8 There was excessive delay in conducting disciplinary proceedings, which delay is not
9 attributable to Respondent. (Std. 1.2(e)(ix).) The legal malpractice case was filed in 1993, the jury
10 trial concluded in 1995, and the appellate court issued its opinion in 1997. Yet, the State Bar waited
11 until 2001 to file its notice of disciplinary charges against Respondent. However, because
12 Respondent did not show that the delay caused any specific, legally cognizable prejudice, the
13 excessive delay is entitled to little weight in mitigation.

14 **B. Aggravation**

15 There is one aggravating factor. (Std. 1.2(b).)

16 Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

17 1. In State Bar Court case No. 79-O-93 TU, Respondent stipulated to a private reproof
18 on May 23, 1980, based upon his having entered into a conflict of interest which
19 occurred when Respondent was a city attorney in 1977. Respondent did not obtain
20 written consent from his former client, whom he had represented for eight days, to
21 participate in settlement discussions adverse to his former client. However,
22 information received during their attorney-client relationship was already made
23 public by either the client or the client's successor attorney. And, during the
24 settlement discussions in which the parties were all present, neither the client nor his
25 new counsel objected to Respondent's participation.

26 2. In State Bar Court case No. 89-O-12629 and 90-O-12608 (Cons.), filed January 5,
27 1994, Respondent was privately reproofed for falsely advertising that his law practice
28 was a law corporation in at least two different advertising media (telephone book and

1 a directional sign outside his office). The court there found the nature of his
2 misconduct to be relatively benign and that it would be an injustice to impose more
3 than a private reproof since his prior record of discipline was so remote in time and
4 the offense for which it was imposed was so minimal in severity. Respondent was
5 exonerated of the charges in case No. 89-O-12629.

6 The nature and extent of Respondent's misconduct in these two prior records were de
7 minimis in severity and the discipline imposed occurred 23 and 10 years ago, respectively, during
8 Respondent's 30 years of practice. Therefore, their weight in aggravation is nominal. (*In the Matter*
9 *of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96 [a private reproof more than 20 years
10 earlier, for improperly stopping payment on a \$500 check to another law firm, was too remote in
11 time to merit significant weight on the issue of degree of discipline.])

12 Metzger was harmed in that the construction case was dismissed after 17 years of litigation.
13 (Std. 1.2(e)(iii).) But the court does not find that significant harm was established by clear and
14 convincing evidence.

15 At the hearing, Metzger testified that he pursued the case for so long because of principle.
16 He believed that people took advantage of him as someone with a physical handicap. He claimed
17 to be emotionally devastated by the case dismissal and felt exploited for his money and the way the
18 contractor, the county and Respondent treated him. He also testified that he felt financially harmed
19 by the attorney fees he had paid Respondent. The court does not find his testimony clear and
20 convincing or credible.

21 Although Metzger's efforts to communicate with Respondent were no doubt frustrating, the
22 record does not show that Metzger suffered legally cognizable emotional harm as a consequence of
23 Respondent's failure to adequately communicate or the case dismissal. No evidence was presented,
24 for example, that Metzger sought therapy or counseling of any sort, or experienced any unusual
25 symptoms of stress.

26 Moreover, having strong principles is laudable but one must weigh and balance the nature
27 of that principle against the harm that it had caused. Metzger became so blindly self-righteous and
28 consumed with his goal to punish those he thought who had wronged him that he had burdened the

1 courts and the administration of justice for 27 years over a defective wall whose original damages
2 was only \$818. He clearly had his day in court and then some. In the legal malpractice case,
3 Metzger was awarded \$93,949.16 plus costs, which included \$35,000 for the defective wall, \$36,329
4 for the attorney fees he had paid Respondent and \$15,000 in punitive damages against Respondent.
5 Therefore, there is no clear and convincing evidence that Metzger was financially harmed by
6 Respondent. On the contrary, he had benefitted financially at the expense of Respondent.

7 V. DISCUSSION

8 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect
9 the public, to preserve public confidence in the profession and to maintain the highest possible
10 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*
11 *State Bar* (1987) 43 Cal.3d 1016, 1025; Standard 1.3.)

12 This case involves improper withdrawal from employment, failure to communicate, and
13 committing acts of moral turpitude with malice. The standards for Respondent's misconduct provide
14 a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the
15 offenses and the harm to the client. (Stds. 1.6, 1.7, 2.3, 2.4 and 2.10.) The standards, however, are
16 only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty*
17 (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on
18 its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

19 Standard 1.7(b) provides that the discipline for an attorney with two prior records of
20 discipline shall be disbarment unless the most compelling mitigating circumstances clearly
21 predominate. Here, because the prior discipline was remote and the prior misconduct was minimal,
22 disbarment would be manifestly disproportionate to Respondent's cumulative misconduct.

23 Standard 2.3 provides that culpability of moral turpitude toward a client shall result in actual
24 suspension or disbarment, depending upon the extent to which the victim of the misconduct is
25 harmed or misled and depending upon the magnitude of the act of misconduct and the degree to
26 which it relates to the member's acts within the practice of law.

27 In this present proceeding, although Respondent's breach of fiduciary duty to his client was
28 found to be an act of moral turpitude with malice as a matter of law, the magnitude of the

1 misconduct is not substantial and the improper withdrawal took place a long time ago. The client
2 was not significantly harmed or misled. Metzger knew that Respondent wanted to withdraw from
3 employment but refused to acquiesce. In hindsight, Respondent recognizes that he should have filed
4 a motion for withdrawal.

5 In arguing for the proper degree of discipline, Respondent asserts a private reproof while
6 the State Bar urges a six-month actual suspension.

7 On one hand, Respondent argues that a private reproof would be the appropriate disposition,
8 citing *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703 and *In re Hickey*
9 (1990) 50 Cal.3d 571 in support of his assertion. These cases provide some guidance but at the same
10 time, are distinguishable in that the client misconduct was less serious than the misconduct in this
11 instant matter.

12 In *Hanson*, the attorney who had one prior record of discipline was publicly reproofed for
13 failure to return unearned fees and improper withdrawal in a single client matter. He failed to notify
14 opposing counsel that he no longer represented his client. His prior private reproof did not merit
15 significant weight because the misconduct took place 17 years before the underlying acts of
16 misconduct.

17 Similarly, Respondent's misconduct underlying the first prior discipline occurred in 1978
18 and the second prior was in the early 1990's. Therefore, they were remote in time. Also, the current
19 misconduct occurred in 1991 through 1993, contemporaneously with the misconduct in the second
20 prior record of discipline.

21 But Respondent's improper withdrawal was more serious than that of the attorney in *Hanson*
22 in that Respondent failed to seek a court order to withdraw as opposed to *Hanson* who had failed
23 to simply send a notification letter to opposing counsel regarding his withdrawal.

24 In *Hickey*, the attorney was actually suspended for 30 days, with a three-year stayed
25 suspension and a three-year probation, for his criminal conviction of carrying a concealed weapon
26 and improper withdrawal in one client matter. His client misconduct occurred when he had been
27 in practice for about six years. The Supreme Court found his pattern of violent behavior and abuse
28 of alcohol to be a danger to the public but that his client withdrawal had little weight in its decision

1 to actually suspend the attorney. However, his improper withdrawal did not involve moral turpitude
2 as was found in this case.

3 On the other hand, the State Bar urges six months of actual suspension with a two-year
4 stayed suspension for Respondent's acts of moral turpitude, failure to perform services, and alleged
5 collection of an unconscionable fee of which he was not found culpable. In support of its
6 recommendation, the State Bar relies on four cases: *Calvert v. State Bar* (1991) 54 Cal.3d 765,
7 *Bushman v. State Bar* (1974) 11 Cal.3d 558, *In the Matter of Yagman* (Review Dept. 1997) 3 Cal.
8 State Bar Ct. Rptr. 788, and *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr.
9 266.

10 However, each of the cases relied on by the State Bar involves far more egregious underlying
11 misconduct since Respondent is not culpable of collecting an unconscionable fee and the charge of
12 failure to perform was duplicative of the offense of improper withdrawal. Thus, three of the cases
13 cited (*Bushman*, *Yagman*, and *Harney*) involving unconscionable fees are inapplicable.

14 The facts and the culpability finding in *Calvert* are also distinguishable in that the attorney
15 there did not abandon the client. Because of her failure to communicate with a client and her
16 continuing representation when she lacked sufficient time to perform with competence, the attorney
17 was actually suspended for 60 days with a three-year stayed suspension and one-year probation.
18 More importantly, the attorney's prior record was a 90-day suspension, reflecting serious offenses.
19 Here, Respondent's prior record consisted of private reprovals for minor violations.

20 In addition to the above cases, the court finds guidance from the following cases which
21 involved circumstances similar to the circumstances found in the current matter. The level of
22 discipline ranges from a public reproof to a 30-day actual suspension, depending on the mitigating
23 and aggravating factors.

24 Like Respondent, the attorney in *In the Matter of Buckley* (Review Dept. 1990) 1 Cal. State
25 Bar Ct. Rptr. 201 also had two prior private reprovals. The review department noted that
26 misdemeanor sex offenses which are not serious and are unrelated to the practice of law generally
27 result in private reproof absent aggravating circumstances. Since the attorney had two prior private
28 reprovals for one client abandonment and contempt of court, the court determined that a public

1 reproval was warranted but not suspension. The prior matters coupled with their collective lack of
2 severity would make it manifestly unjust under the circumstances to recommend suspension.

3 In *Stuart v. State Bar* (1985) 40 Cal.3d 838, an attorney who had been privately reprov-
4 ed in a different matter eight years before was actually suspended for 30 days for one instance of client
5 abandonment (resulting in the dismissal of that client's case). He was also found to have violated
6 his oath and duties as an attorney, and committed acts of moral turpitude. Specifically, he was
7 charged with acting incompetently and withdrawing from employment without taking steps to avoid
8 prejudice to his client. The Supreme Court found that the attorney still failed to admit responsibility
9 for his negligence. He consistently demonstrated a lack of diligence and concern for his client's
10 interests, and was extremely careless in managing his office. He did not maintain contact with his
11 client, he lost his client's file, and the client lost the opportunity to pursue his case. Additionally,
12 the Supreme Court found particularly disturbing that these events occurred shortly after he had been
13 privately reprov- ed in a separate disciplinary matter (about four years after he was admitted to the
14 practice of law).

15 In *Van Sloten v. State Bar* (1989) 48 Cal.3d 921, the Supreme Court imposed a six-month
16 stayed suspension and one year probation with no actual suspension for the attorney's one client
17 abandonment in a marital dissolution matter. His inattention spanned one year. Although he had
18 no prior record of discipline, his misconduct was aggravated by his failure to participate in the
19 review department proceedings.

20 The facts and circumstances surrounding Respondent's misconduct are not as egregious as
21 that of the attorney in *Stuart*. Respondent has been in practice for 30 years and his client
22 abandonment happened more than 10 years ago. Unlike *Buckley* whose third record of discipline
23 involved a criminal conviction, Respondent's misconduct here is related to the practice of law. Like
24 *Van Sloten*, Respondent made no attempts to formally withdraw from the case.

25 While Respondent did represent a difficult client who was apparently convinced of being
26 defrauded and conspired against by government employees and who ignored Respondent's repeated
27 requests to withdraw, there were ethical choices open to Respondent, including seeking court's
28 assistance and preserving Metzger's case. Instead, Respondent decided on his own to disassociate

1 himself from Metzger, resulting in the case dismissal.

2 In recommending discipline, the "paramount concern is protection of the public, the courts
3 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The court
4 will consider the seriousness of the misconduct and the mitigating evidence absent the aggravating
5 factor. Respondent's mitigating evidence is a sufficient basis to justify deviating from the applicable
6 standards. While the misconduct involves the practice of law, the passage of more than 10 years and
7 the lack of evidence of similar misconduct recurring are compelling mitigating consideration.

8 Furthermore, Respondent mistakenly believed he was serving his client's interests by not
9 filing a motion to withdraw. His act of moral turpitude was committed through gross negligence and
10 not with intent. Such circumstances lessen the seriousness of an attorney's misconduct. (*Ames v.*
11 *State Bar* (1973) 8 Cal.3d 910, 921 [attorneys acted in what they thought were clients' best interests];
12 *In re Higbie* (1972) 6 Cal.3d 562, 573 [attorney's wrongdoing not motivated by personal
13 enrichment].)

14 A public reproof would have been appropriate but for the culpability finding of moral
15 turpitude with malice which requires a greater degree of discipline.

16 Therefore, in light of case law involving comparable offenses and in consideration of the
17 misconduct, the minor prior private reproofs and the compelling mitigating factors of good faith,
18 passage of time, cooperation and lack of significant harm, a period of stayed suspension would be
19 necessary and appropriate to protect the public and the integrity of the profession.

20 VI. Discipline

21 Accordingly, it is hereby recommended that Respondent **ARTHUR C. KRALOWEC** be
22 suspended from the practice of law for six months, that execution of the suspension be stayed, and
23 that Respondent be placed on probation for one year with the following conditions:

- 24 1. During the probation period, Respondent shall comply with the State Bar Act and the Rules
25 of Professional Conduct;
- 26 2. Respondent shall submit written quarterly reports to the Probation Unit on each January 10,
27 April 10, July 10, and October 10 of the period of probation. Under penalty of perjury,
28 Respondent shall state whether Respondent has complied with the State Bar Act, the Rules

1 of Professional Conduct, and all conditions of probation during the preceding calendar
2 quarter. If the first report will cover less than thirty (30) days, that report shall be submitted
3 on the next following quarter date, and cover the extended period.

4 In addition to all quarterly reports, a final report, containing the same information, is due no
5 earlier than twenty (20) days before the last day of the probation period and no later than the
6 last day of the probation period;

7 Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly,
8 and truthfully, any inquiries of the Probation Unit, which are directed to Respondent
9 personally or in writing, relating to whether Respondent is complying or has complied with
10 the conditions contained herein;

11 3. Within ten (10) days of any change, Respondent shall report to the Membership Records
12 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to
13 the Probation Unit, all changes of information, including current office address and
14 telephone number, or if no office is maintained, the address to be used for State Bar
15 purposes, as prescribed by section 6002.1 of the Business and Professions Code;

16 4. Within one year of the effective date of the discipline herein, Respondent shall provide to
17 the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given
18 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-
19 1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the
20 test given at the end of that session. Arrangements to attend Ethics School must be made in
21 advance by calling (213) 765-1287, and paying the required fee. This requirement is
22 separate from any Minimum Continuing Legal Education Requirement (MCLE), and
23 Respondent shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State
24 Bar, rule 3201);

25 5. The period of probation shall commence on the effective date of the order of the Supreme
26 Court imposing discipline in this matter; and

27 6. At the expiration of the period of this probation, if Respondent has complied with all the
28 terms of probation, the order of the Supreme Court suspending Respondent from the practice

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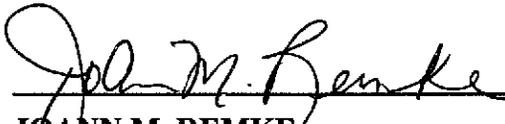
of law for six months that is stayed shall be satisfied and that suspension shall be terminated.

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Probation Unit, within one year of the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. COSTS

The court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and payable in accordance with Business and Professions Code section 6140.7.

Dated: August 12, 2003



JOANN M. REMKE
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. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 12, 2003, I deposited a true copy of the following document(s):

DECISION

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

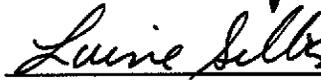
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ROBERT GERALD MARKLE
PANSKY & MARKLE
1114 FREMONT AVE
SOUTH PASADENA CA 91030**

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

DONALD R. STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 12, 2003.



Laine Silber
Case Administrator
State Bar Court