FILED APRIL 8, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **STEVEN A. GERINGER** **Member No. 107826**, A Member of the State Bar.	**Case No. 04-O-13916-PEM [05-O-03987]** **DECISION**

I. Introduction

In this contested matter, respondent **STEVEN A. GERINGER** is charged with seven counts of misconduct in two client matters. The charged misconduct includes: (1) representation adverse to a former client; (2) accepting representation of more than one client in a matter in which the interests of the clients potentially conflicted, without the written consent of the clients; (3) representation of multiple clients with adverse interests, without the written consent of the clients; (4) failure to perform with competence; (5) improper withdrawal from employment; (6) failure to respond to client inquiries; and (7) failure to cooperate with a State Bar investigation. The court finds, by clear and convincing evidence, that respondent is culpable of two of the charged acts of misconduct.

In view of respondent's misconduct and the aggravating and mitigating evidence, the court orders, among other things, that respondent be publicly reproved.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on May 30, 2007. On July 9, 2007, respondent filed a response to the NDC. On November 26, 2007, respondent filed an amended answer to the NDC.

A three-day trial was held on December 4, 5, and 6, 2007.[1] The State Bar was represented in this proceeding by Deputy Trial Counsel (DTC) Maria J. Oropeza. Respondent was represented by Glen Earl Gates. The court took this proceeding under submission on January 10, 2008, after the parties filed their closing briefs.

On January 14, 2008, the State Bar filed a motion to strike a portion of respondent's closing brief (motion to strike). This motion specifically requested that the court strike the portion of respondent's closing brief that exceeded fifteen pages pursuant to rule 1110(g) of the Rules of Practice of the State Bar Court (Rules of Practice). On January 22, 2008, respondent filed an opposition to the motion to strike.

In its motion to strike, the State Bar argues that it is inherently unfair to hold one party to the applicable rules of practice and to allow the other party to ignore the rules. The State Bar's closing brief is fifteen pages long. However, the court notes that it would have far exceeded fifteen pages had the State Bar used the same font size and line spacing that respondent used in his closing brief. Instead, the State Bar chose to implement a mid-document alteration of their font size and line spacing in order to condense their text down to fifteen pages. Had respondent followed suit, he could have greatly reduced his total number of pages.

The State Bar's alteration of their closing brief resulted in a violation of rule 1110(a) of the Rules of Practice. This rule states, in part, that the lines on each page of a pleading intended to be filed in the State Bar Court must be one and one half spaced or double spaced and numbered consecutively. Here, the State Bar failed to properly number their lines. Each page of the State Bar's closing brief is numbered 1 through 28; however, each page after the first page contains approximately 37 lines.[2] Hence, the State Bar violated one Rule of Practice in order to effectuate compliance with another.

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[1]The parties also filed a partial stipulation of facts on the first day of trial.

[2]The first page of the State Bar's closing brief uses two different sizes of font and therefore likely contains less than 37 one and one half or double spaced lines.

Therefore, no good cause having been shown, the State Bar's motion to strike a portion of respondent's closing brief on the basis of fairness is denied.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 3, 1983, and has since been a member of the State Bar of California.

B. The Bruno Matter

In 1985, David Bruno formed a sole proprietorship, known as D.A. Bruno Enterprises, an electrical contracting business in Madera, California. Ten years later in 1995, David Bruno, his brother, George Bruno, and George Bruno's wife, Phyllis Bruno, formed a corporation known as D.A. Bruno Enterprises Inc. (the corporation).

The corporation issued 1000 shares of stock. David Bruno held 500 of the shares; Phyllis Bruno held 490 shares and George Bruno held 10 shares. All three shareholders signed a buy-sell agreement which was to govern the purchase or sale of any corporate stock. At the time of incorporation, David Bruno merged all the assets of D.A. Bruno Enterprises into the corporation, except the ownership of the shop and accounts/obligations that were owed to him as owner of D.A. Bruno Enterprises. The corporation retained the firm of Forrest and McLaughlin as legal counsel.

In November 1997, respondent was retained by David Bruno to represent him in a collection matter entitled *D.A. Bruno Enterprises v. Paul Robles, Case No. 29242.* This collection matter was unrelated to the corporation. Judgment was entered on behalf of David Bruno on December 29, 1997. Respondent secured a wage garnishment on behalf of David Bruno against Paul Robles. The December 29 judgment was paid in full in March of 1999.

In 1997, the firm of Forrest and McLaughlin dissolved due to the death of the principal attorney in the firm. Forrest and McLaughlin told George Bruno that the records at the law firm had to be retrieved from the firm and sent to another law office.

Respondent was asked by George Bruno to represent him in terms of getting the files from the Forrest and McLaughlin law firm. On January 6, 1998, respondent sent a letter and memorandum to Ronald Henderson (Henderson) of Forrest and McLaughlin. In this letter,

respondent asked Henderson to forward all of his firm's records relating to George Bruno, G.W. Bruno Ag. Tech and the corporation to respondent's office. The enclosed memorandum was an authorization for the release of records signed by George Bruno. In this memorandum, George Bruno stated that respondent was retained as his counsel and had complete authority to receive all records and written documents relating to any services, products or relationships that George Bruno had with the firm. From the January 6 letter it is clear that respondent was representing George Bruno. It is not clear, however, if he was representing the corporation at this time. [Exhibit 4.]

In the summer of 1999, George Bruno offered to purchase the 500 shares of stock that David Bruno owned in the corporation. The offer was reduced to written terms. [Exhibit 5] David Bruno does not know who reduced the terms to writing and respondent denies reducing the terms to writing. At trial there was no definitive evidence presented as to who drafted and wrote the offer. However, it is clear that respondent did not partake in any discussions between David and George Bruno at this point.

David Bruno took the offer to his tax accountant for review. The tax accountant informed David Bruno that the agreement, as written, would have unfavorable tax implications for him. As a result of the unfavorable tax implications, David Bruno made a counter offer. George Bruno reduced that counter offer to writing [See Exhibit 6], but David Bruno refused to sign the writing because he believed it did not contain all of the agreed upon terms of sale and did not conform to the corporation's buy-sell agreement.

Respondent did not participate in any of the conversations regarding the negotiation of the sale of stock between David and George Bruno until the Fall of 1999, when it became clear that David and George Bruno were unable to come to an agreement. On November 29, 1999, respondent sent a letter to David Bruno's attorney, David Lalli, stating that he was representing George Bruno in the sale of the corporation's stock from David Bruno to George Bruno.

The November 29 letter was followed by a December 2, 1999 letter from respondent reiterating his representation of George Bruno. Respondent testified that he was also representing the corporation during this time period. This court finds that beginning in November 1999, respondent was representing George Bruno, Phyllis Bruno and the corporation.

On January 6, 2000, David Bruno filed a complaint against the corporation and George and Phyllis Bruno, as individuals, in Madera Superior Court, Case No. CVO5134 (the David Bruno litigation). This complaint, among other things, alleged a breach of fiduciary duty by George and Phyllis Bruno, conversion of the corporation assets by George and Phyllis Bruno, and fraud by George and Phyllis Bruno in the initial formation of the corporation with David Bruno.

On January 26, 2000, respondent executed a fee agreement with the corporation, agreeing to represent the corporation up to trial in the David Bruno litigation. In the January 26 fee agreement, the corporation is identified as the client. The fee agreement stated that respondent would be paid an $80,000 flat fee for his services. The fee agreement was executed by George Bruno, for the corporation. [See Exhibit 14.]

Subsequently, respondent executed a second fee agreement with the corporation. In this agreement, respondent agreed to serve as trial counsel for the corporation in the David Bruno litigation. The corporation is identified as the client. The fee agreement stated that respondent would be paid a $50,000 flat fee for his services. The fee agreement was executed by George Bruno, for the corporation. [See Exhibit 15.]

On February 28, 2000, respondent filed a cross-complaint on behalf of Phyllis and George Bruno, and the corporation. George and Phyllis Bruno were officers and shareholders in the corporation and owed duties and obligations to the corporation. In the David Bruno litigation, respondent represented George and Phyllis Bruno in their individual capacity, while at the same time representing the corporation. Respondent did not execute a written conflict waiver with David Bruno, despite the fact that he owned 50% of the corporation's stock; nor did respondent execute written conflict waivers with George Bruno, Phyllis Bruno or any agent for the corporation.

The David Bruno litigation proceeded to trial. On June 11, 2004, the jury found in David Bruno's favor and the court entered a judgment of $600,000.00. Specifically the jury found that George Bruno had breached his fiduciary duty to the corporation and to its shareholder David Bruno and awarded David Bruno $500,000 in damages. As to Phyllis Bruno, the jury found that she breached her fiduciary duty to the corporation and its shareholder David Bruno and awarded David Bruno $50,000. Additionally, the jury found that George Bruno made an intentional

misrepresentation to David Bruno; that David Bruno reasonably relied on the misrepresentation; and that his reliance on the misrepresentation damaged him in the amount of $50,000. [See Exhibit 16.]

Count 1: Representation Adverse to Former Client (Rules Prof. Conduct, Rule 3-310(E))

Respondent is charged in Count One of the NDC with wilfully violating rule 3-310(E) of the California Rules of Professional Conduct,[3] by accepting and continuing employment adverse to a client or former client where, by reason of the representation of the client or former client, respondent had obtained confidential information material to the employment, without the informed written consent of the client or former client.

The court does not find respondent culpable of the charged violation of rule 3-310(E). The burden of proof on the issue of culpability rests with the State Bar. While it is clear that respondent did not obtain the written consent of David Bruno, the State Bar produced no evidence whatsoever that during respondent's representation of David Bruno in a totally unrelated lawsuit, respondent obtained confidential information that was material to his subsequent representation of George Bruno. Consequently, the court does not find respondent culpable of violating rule 3-310(E), and this count is dismissed with prejudice.

Count 2: Conflict--Representing Multiple Clients (Rules Prof. Conduct, Rule 3-310(C)(1))

Rule 3-310(C)(1) provides that a member of the State Bar shall not accept representation of more than one client in a matter in which the interests of the clients potentially conflict without the informed written consent of each client.

The intent of this rule is clearly prophylactic. The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: "By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting

[3]References to rule(s) are to the current California Rules of Professional Conduct, unless otherwise stated.

himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent. [Citation]." (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; see *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

"The relationship between an attorney and client is a fiduciary relationship of the very highest character." (*Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) "It is . . . an attorney's duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter's free and intelligent consent given after full knowledge of all the facts and circumstances. [Citation]." (*Anderson v. Eaton, supra,* 211 Cal. 113, 116; see *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 350-351.)

Here, the David Bruno litigation alleged, inter alia, that George and Phyllis Bruno breached their fiduciary duties owed to the shareholders of the corporation, converted to their own use and benefit tangible and intangible property belonging to the corporation, and fraudulently induced David Bruno into investing and participating in the formation of the corporation. Yet respondent simultaneously represented the interests of the corporation, as well as those of George and Phyllis Bruno, in their individual capacity. Given the allegations contained in the David Bruno litigation, the court finds that a potential conflict clearly existed between the corporation, George Bruno and Phyllis Bruno.

By failing to obtain written conflict waivers from the corporation, George Bruno and Phyllis Bruno, respondent accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client. Therefore, the court finds, by clear and convincing evidence, that respondent is culpable of willfully violating rule 3-310(C)(1).

Count 3: Conflict--Representing Multiple Clients (Rules Prof. Conduct, Rule 3-310(C)(2))

Rule 3-310(C)(2) provides that a member of the State Bar shall not accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict without the informed written consent of each client. The State Bar charges that respondent

violated rule 3-310(C)(2) by representing Phyllis Bruno, George Bruno and the corporation in the David Bruno litigation without obtaining written waivers.

The court finds respondent culpable, by clear and convincing evidence of the charged violation of rule 3-310(C)(2). Respondent, as corporate counsel, owed a duty of loyalty to the corporation, not the individual shareholders. (See *In the Matter of Davis* (Review Dept. 2003) 4 Cal State Bar Ct. Rptr. 576, 592; and rule 3-600(A).) Yet, in a lawsuit against the corporation and two minority shareholders, respondent represented both the corporation and the minority shareholders, despite the fact that the minority shareholders were alleged to have breached their fiduciary duties owed to the corporation.

Respondent executed a fee agreement with the corporation naming it as his client, and at the same time represented two of the shareholders who were named as defendants in an individual capacity. Respondent did not execute written conflict waivers with the corporation, the two individual minority shareholders or David Bruno, the 50% shareholder who brought the lawsuit. Respondent's failure to get written conflict waivers from Phyllis Bruno, George Bruno, David Bruno or the corporation constitutes a willful violation of rule 3-310(C)(2).

C. The Diaz Matter

In June 2003, Richard Diaz (Diaz) retained respondent to represent him in the probate of his father's estate. Respondent's attorney's fees would be 3% of the estate assets. On June 13, 2003, respondent filed the notice of petition to administer the estate. On August 8, 2003, the court granted the petition and issued the letters testamentary, and Diaz was named as the personal representative for the estate**.**

In September 2003, Diaz provided respondent with a cashier's check for the appraisal of the estate property and assets. On December 11, 2003, respondent filed the final inventory and appraisal of the estate's assets.

In February 2004, Diaz returned to respondent's office seeking a status update on the probate matter. Respondent told Diaz that Helen, the staff person assigned to his matter, was no longer with the office and that he would need more time to review the file and get back to him.

In March 2004, Diaz returned to respondent's office seeking a status update on the probate matter, and respondent informed Diaz that he would have something for Diaz in approximately three weeks. Rather than making an appointment with Diaz, respondent told Diaz to come by his office.

From April 2004 through October 2004, Diaz would randomly drop by respondent's office. Diaz does not recall if during some of these random visits he met and spoke with respondent. In any event, in October 2004, Diaz returned to respondent's office and spoke with respondent. In December 2004, Diaz met with respondent again to discuss a status update on the probate matter. In February 2005, Diaz returned to respondent's office to again discuss the status of his probate matter.

During these periodic meetings, respondent and Diaz discussed the progress of Diaz's probate matter. Respondent advised Diaz that based upon the current economic conditions there was no rush to close the estate. Diaz agreed and instructed respondent not to take any action on closing the estate because the real estate market was depressed, and the cost of the sale of Diaz's father's home with the payoff of the mortgage would have generated a loss on the sale of the property.[4] Respondent was told that during the real estate downturn Mr. Diaz's sister would live in the house because she had just sold her house.

On January 27, 2006, State Bar investigator Jeanne Isola (Isola) wrote to respondent regarding a complaint Diaz filed with the State Bar in August of 2005. On February 24, 2006, respondent spoke to Isola over the telephone. In this conversation, respondent informed Isola that he had received her January 27 letter, but that it was misaddressed, stating that his office is located on South "I" street and not "I" street. Isola gave respondent an extension of two weeks to respond in writing to the allegations in the Diaz matter.

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[4]Diaz's testimony on this subject differed greatly, as Diaz testified that he wanted to promptly probate his father's estate. Diaz further testified that he repeatedly asked respondent when the probate would be completed and that did not know that his father's house had to be sold in order to complete probate.

Respondent wrote and mailed a written response to Isola on March 8, 2006. [Exhibit L.] However, the State Bar never received a copy of respondent's March 8 response.[5] Respondent did not hear from the State Bar again until the NDC was filed May 30, 2007.

Count 4: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

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

The State Bar charges that respondent violated rule 3-110(A) by failing to complete the Diaz probate matter and finalize the distribution of assets. It is clear that Diaz's father's will required that the family home be sold by the administrator of the will and the proceeds distributed to his three children. Diaz was the administrator of the will. It is uncontradicted that respondent filed a proper notice of petition to administer the estate and final inventory and appraisal of the estate's assets.

The primary issue is whether respondent and Diaz agreed to delay the sale of Diaz's father's home. The court finds respondent's testimony on this subject to be credible. The court, however, finds Diaz's testimony to be equally credible. Because the court is unable to resolve the conflicting testimony, respondent shall be given the benefit of the doubt. (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 438 [any reasonable doubts must be resolved in respondent's favor].)

The court notes that respondent's testimony is further bolstered by additional evidence supporting his version of events. First, Diaz's sister was living in the house at the time of these discussions. This fact gives credence to the possibility that Diaz was not looking to immediately sell the property.[6]

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[5]The State Bar contends that respondent's March 8 response [Exhibit L] is a fabrication because: (1) the State Bar did not receive it, and (2) respondent did not produce a copy of his March 8 response to the State Bar until one week prior to trial. The court, however, found respondent's testimony on this subject to be credible and notes that there is no indication that respondent failed to cooperate or participate in any other aspect of either the State Bar's investigation or the proceedings before the State Bar Court.

[6]Diaz's sister could have helped to clarify this issue, but she did not testify in this proceeding.

Second, the real estate market improved dramatically during the period of time that the sale was delayed. In the Fall of 2003, the house appraised for $179,000. Ultimately, in February of 2006, the house sold for $372,500. It appears that by waiting two and one half years, the value of Diaz's father's home increased by $193,500.

Third, when Diaz's father's probate ultimately did close, Diaz received $57,225.24.[7] Since the main asset in Diaz's father's estate was the house, Diaz's share of the estate would have been greatly diminished if the sale of the house had been effectuated in 2003.

Because Diaz's father's house needed to be sold in order to complete probate, and the evidence indicates that respondent and Diaz had agreed to intentionally delay the sale of the house, the court finds that the State Bar has not met its burden of proving, through clear and convincing evidence, that respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A). This count is therefore dismissed with prejudice.

Count Five : Improper Withdrawal from Employment (Rules of Prof. Conduct, rule 3-700(A)(2))

Rule 3-700(A)(2) states that a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client. As discussed above, the court found credible respondent's explanation regarding his agreement with Diaz to delay the sale of Diaz's father's home. The court further finds that respondent did not withdraw from his employment with Diaz until Diaz requested a substitution of attorney. The State Bar failed to prove by clear and convincing evidence that respondent improperly withdraw from his employment with Diaz. Therefore, the court does not find respondent culpable of violating rule 3-700(A)(2), and this count is dismissed with prejudice.

Count Six: Failure to Respond to Client Inquiries (Bus. & Prof. Code, § 6068, subd. (m))

Business and Professions Code section 6068, subdivision (m),[8] provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients in matters with regard to

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[7]Diaz received these proceeds in March 2007.

[8]All references to section(s) are to the Business and Professions Code, unless otherwise stated.

which the attorney has agreed to provide legal services. The State Bar alleges that from April 2004 through October 2004, respondent failed to respond promptly to his client's reasonable status inquiries in a matter which respondent had agreed to provide legal services.

Other than Diaz's complaint to the State Bar, there is no independent evidence that respondent failed to respond to Diaz's inquiries. Diaz frequently stopped by respondent's office unannounced and discussed his probate matter with respondent.[9] The court finds that the State Bar did not present clear and convincing evidence demonstrating that respondent failed to promptly respond to Diaz's inquiries. Therefore, the court does not find respondent culpable of violating section 6068, subdivision (m), and this count is dismissed with prejudice.

Count Seven: Failure to Cooperate (Bus. & Prof. Code, § 6068, subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. The State Bar alleges that by not providing a written response to a single letter from Isola, respondent failed to cooperate and participate in a disciplinary investigation.

There is insufficient evidence in the record to suggest that respondent's March 8, 2006 letter is a fabrication. The court finds respondent's testimony regarding his March 8, 2006 letter to be credible. Therefore, the court does not find respondent culpable of violating section 6068, subdivision (i), and this count is dismissed with prejudice.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)[10] There are some compelling mitigating factors.

Respondent was admitted to the practice of law in California in June 1983 and has no prior

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[9]There is nothing in section 6068, subdivision (m) that requires a lawyer to make formal appointments with his clients.

[10]All further references to standard(s) are to this source.

record of discipline. Respondent's seventeen years of discipline-free practice at the time of his misconduct in 2000 is a strong mitigating factor. (Standard 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.) A lengthy period of practice without misconduct, such as respondent's, is a significant indicator of the lack of potential for future misconduct. (See *In the Matter of Respondent K*, *supra*, 2 Cal. State Bar Ct. Rptr. 335, 363.) Thus, respondent's seventeen years of blemish-free practice is entitled to significant weight in mitigation.

Respondent testified as to his pro bono and community service activities. (See *In the Matter of Crane & DePew* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 139, 158, fn. 22 [a respondent's own testimony regarding his or her community service may be considered as some evidence in mitigation, notwithstanding that it does not meet the requirement that good character be established by a wide range of references].) Here, respondent also produced other people in the community to substantiate his claim of community service.

For the past sixteen years, respondent has performed considerable pro bono work in criminal and juvenile law, including work in the areas of adoption and reunification. Respondent has also provided pro bono services relating to violations of the Brown Act. Additionally, respondent worked in various community service organizations including the Lion's Club. He was also a member of the Arts Counsel for ten years. Respondent has routinely donated his time and money to the Madera SPCA since 1991.

Respondent presented testimony from four character witnesses: the Honorable Thomas Bender, Mark Scalzo, Donald Holley and Nancy Epstein. The Honorable Thomas Bender has been a Superior Court Judge for thirteen years. He also served as the trial judge in the David Bruno litigation. Judge Bender has known respondent for approximately twenty years and spoke to the honesty and veracity of respondent's character.

Mark Scalzo is a former mayor and councilman for the City of Madera. He attested to respondent's truthfulness and honesty. Mr. Scalzo also testified to respondent's commitment to pro bono work and civil rights. The court, however, was unclear if Mr. Scalzo was fully aware of the charged misconduct.

Donald Holley is a former member of the Madera County Commission. He is also a past President of the NAACP. Mr. Holley has known respondent for approximately fifteen years and testified to respondent's honesty and truthfulness. Mr. Holley also testified regarding respondent's pro bono work and his efforts to make local government transparent and accountable. The court, however, was unclear if Mr. Holley was fully aware of the charged misconduct.

Nancy Epstein has lived in Madera County for 61 years. She has been an attorney in the State of California for over 35 years. She primarily works in the area of family law. Ms. Epstein has known respondent for approximately fifteen years. In the past two years, she has had approximately four or five cases where respondent served as opposing counsel. Ms. Epstein testified that respondent is held in high regard in the legal community and has a good reputation for honesty and civic involvement.

The court finds that respondent's four character witnesses represent a limited range of character witnesses. (See *In the Matter of Respondent K*, *supra*, 2 Cal. State Bar Ct. Rptr. 335, 359.) Respondent's presentation of good character testimony was also somewhat diminished by the fact that two of the four witnesses did not evidence an awareness of the full extent of respondent's misconduct. (See *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 538.) Therefore, the court affords respondent's good character evidence some, but not extensive consideration in mitigation.

B. Aggravation

There is one aggravating factor. (Standard 1.2(b).)

The State Bar requests that the court find respondent culpable of uncharged misconduct based upon respondent's violations of rule 3-300 as evidenced by the testimony of George Bruno and Phyllis Poe. The court may consider evidence of uncharged misconduct in aggravation when the evidence is elicited for a relevant purpose and where the determination of uncharged misconduct is based on the attorney's own evidence. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36; and *In re Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840.)

Here, the evidence of respondent's violations of rule 3-300 is based primarily on the testimony of respondent's witness, George Bruno. George Bruno testified that respondent has

obtained liens on George Bruno's home and personal aircraft without disclosing the terms of the agreement in writing pursuant to the requirements of rule 3-300. George Bruno further testified that his bankruptcy trustee sought to invalidate said liens due to the fact that respondent did not comply with rule 3-300. The court finds, by clear and convincing evidence, that respondent is culpable of violating rule 3-300. Further, because this evidence was relevant to the proceeding and was introduced through the testimony of one of respondent's witnesses, it warrants consideration as a factor in aggravation.

V. Discussion

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

Respondent's misconduct involved a single-client matter. The standards for respondent's misconduct provide a broad range of sanctions ranging from reproval to suspension, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6 and 2.10.)

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has been long-held that the Supreme Court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges that the court impose a period of actual suspension. The respondent is calling for an admonition. The court finds that a public reproval represents the appropriate level of discipline for the instant misconduct.

There is clearly a lack of case authority directly on point with the instant misconduct. The court, however, finds *In the Matter of Davis*, *supra*, 4 Cal State Bar Ct. Rptr. 576, to be somewhat helpful.

A central issue in *Davis* involved the ethical responsibilities of an attorney who represents a corporation. In *Davis*, the respondent was hired as "corporate counsel" by one shareholder after a conflict arose between a corporation's two 50% shareholders. (*Id*. at 582.) The respondent took the position that the three board members appointed by the other 50% shareholder were "hopelessly conflicted." (*Id*. at 583.) Therefore, respondent pursued a course of action, including filing bankruptcy on behalf of the corporation, without those three board members' knowledge or consent. The Review Department noted that although respondent conceded that the corporation was his client, the respondent considered the board members appointed by the other 50% shareholder to be "the enemy." (*Id*. at 586.) In doing so, respondent "arrogated to himself the authority to choose sides between the Board's competing factions" and failed to consider or protect the interests of the corporation as expressed through a majority of the board. (*Id*.)

The misconduct involved in *Davis*, however, was much more egregious than that found in the instant case. The respondent in *Davis* was found culpable of failing to maintain client funds in a trust account, failing to provide an accounting for monies received on behalf of the client and misappropriating nearly thirty thousand dollars in client funds.[11] The respondent's violation of rule 3-310 was only considered in aggravation as additional uncharged misconduct. Therefore, while *Davis* is helpful for understanding the duties owed by corporate counsel, it provides little insight in determining the appropriate level of discipline in the instant case.

As mentioned above, there is a lack of case law involving stand-alone violations of rule 3-310(C). The handful of cases that do include a violation of the rules relating to conflicts inevitably also involve additional serious misconduct. (See *Rosenthal v. State Bar* (1987) 43 Cal.3d 612; and *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.)

Therefore, the court turns its focus to the standards, as well as the mitigation and aggravation found in this case. As previously noted, the standards call for a level of discipline ranging from reproval to suspension. Considering respondent's seventeen years of discipline-free practice, his

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[11]The Review Department's recommended discipline included a four-year suspension, stayed, with a four-year probation, and a two-year actual suspension.

extensive pro bono and community service activities, and his good character evidence, the court believes that the instant misconduct is aberrational and unlikely to be repeated. Therefore, the court finds that the appropriate level of discipline is a public reproval.

VI. Discipline Order

Accordingly, it is ordered that respondent **STEVEN A. GERINGER** is hereby publicly reproved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public reproval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reproval imposed in this matter. Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to his public reproval for a period of one year following the effective date of the public reproval imposed in this matter:

1. During the one-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within thirty (30) days after the effective date of his public reproval, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reproval. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the one-year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request.

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

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to his reproval within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproval; and

6. Within one year of the effective date of this public reproval, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.).

It is further ordered 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 Office of Probation, within one year after the effective date of the public reproval imposed in this matter. 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 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. Costs

The court orders that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IT IS SO ORDERED.

Dated: April 7, 2008

PAT McELROY
Judge of the State Bar Court