

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **10-O-00094-RAP**
) (10-O-04247; 11-O-13553)
ANTHONY JOSEPH PARTIPILO,)
) **DECISION**
Member No. 55991,)
)
A Member of the State Bar.)

Introduction¹

In this contested disciplinary proceeding, respondent **ANTHONY JOSEPH PARTIPILO** is charged with 19 counts of professional misconduct involving three separate client matters. The charges include misleading advertising; accepting fees from a nonclient without the client's consent; failing to refund unearned fees; charging unconscionable fees; charging illegal fees; engaging in the unauthorized practice of law (UPL) in other jurisdictions; failing to account for unearned fees; failing to deposit client funds into a trust account; and operating an unlawful referral service.

As set forth *post*, the record establishes, by clear and convincing evidence, that respondent is culpable on only 6 of the 19 counts of charged misconduct. Moreover, the court concludes that the appropriate level of discipline for the found misconduct is two years' stayed suspension and three years' probation on conditions, including a 90 day actual suspension.

¹ Unless otherwise indicated, all references to rules are to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

Significant Procedural History

On April 15, 2013, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and served the notice of disciplinary charges (NDC) in this proceeding.

Respondent filed a response to the NDC on May 10, 2013.

The disciplinary trial was held on August 5, 6, and 7, 2013, and on September 9, 10, and 18, 2013. On the first day of trial (i.e., August 5, 2013), the parties filed a partial stipulation of facts and admission of exhibits. The court took the case under submission for decision at the conclusion of trial on September 18, 2013.

The State Bar is represented by Senior Trial Counsel Michael J. Glass. Respondent is represented by Attorney Ellen A. Pansky.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 29, 1973, and has been a member of the State Bar of California since that time. Respondent has no prior record of discipline.

Case No. 10-O-00094 -- The ACDG Website and The Brown Matter

The ACDG Website

In about 2007, respondent established America's Criminal Defense Group, A Professional Law Corporation (ACDG). At all relevant times, respondent was the *sole* owner, manager, and director of ACDG.

In about June 2008, respondent created, or caused to be created, an internet website for ACDG (ACDG website) to advertise ACDG's services and attract clients. The following three statements are examples of the types of statements that were on the ACDG website before about 2010:

America's Criminal Defense Group is a unified team of experienced, knowledgeable criminal defense attorneys from across the country.

At the core, America's Criminal Defense Group is a blend of outstanding criminal attorneys and creative administrators.

America's Criminal Defense Group is made up of a powerful team of criminal defense attorneys. We are a nationwide firm, and our associates are familiar with criminal law in every state.

Even though the ACDG website described ACDG as "nationwide firm," the website disclosed that ACDG's office was in Woodland Hills, California.

In 2011 during the State Bar's investigation of complaints filed against respondent regarding the Brown client matter, *post*, the State Bar contacted respondent about these and other misleading and deceptive statements on the ACDG website. Respondent and his attorneys cooperated fully with the State Bar and either deleted the misleading and deceptive statements or modified them as the State Bar suggested so that there were no longer any misleading or deceptive statements on the ACDG website. Accordingly, in September 2011, the State Bar closed its investigation and the complaints against respondent regarding the ACDG website and the Brown client matter without filing any disciplinary charges and apparently issued a warning letter for respondent's failure to register as an attorney referral service.² (Rules Proc. of State Bar, rule 2601.)

Notwithstanding the fact that the State Bar closed its investigation/complaints regarding the misleading and deceptive statements on the ACDG website and the Brown client matter in 2011, the State Bar now charges respondent with violating rule 1-400 based on the very statements that respondent deleted or modified in accordance with the State Bar's suggestions. Nevertheless, respondent has failed to establish that the State Bar improperly reopened the investigation/complaints without new material evidence or other good cause in violation of Rules of Procedure of the State Bar, rule 2603.

² See exhibit I at page 2.

Count One -- (Rule 1-400(D)(2)[Misleading Advertising]

In count one, the State Bar charges that respondent willfully violated rule 1-400(D)(2), which provides that an attorney communication or solicitation is not to “Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public.” As charged in count one, the record clearly establishes that respondent willfully violated rule 1-400(D)(2) when the ACDG website contained the three statements quoted *ante* before about 2010. Respondent knew that those statements were deceptive and misleading when they appeared on the website because respondent knew that ACDG did not employ an organized “unified team” of defense attorneys; because respondent never undertook to verify that the affiliated attorneys ACDG employed were “outstanding” (and not merely competent); and because respondent knew that ACDG was not a “nationwide firm” as that term is ordinarily used and understood when referring to law firms.

The principal characteristics of a nationwide law firm include a large number of attorneys (both attorneys who are partners/principals/shareholders who share in the profits and losses and associate attorneys or attorneys who are employees of the firm and who must be paid wages for their work even if the firm fails to make a profit) who practice law together exclusively or almost exclusively under the same firm name in multiple common offices across the country.

ACDG maintains only one office in the firm name of ACDG (i.e., the office in which respondent practices law in Woodland Hills, California). Moreover, except for respondent, no other ACDG attorney practiced law exclusively or almost exclusively with other ACDG attorneys. In fact, some ACDG attorneys sign pleadings in their ACDG cases under both the ACDG firm and another law firm unrelated to ACDG.

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The Brown Matter

In 2007, LaVerne Wright-Ochoa, a resident of the State of New York, contacted ACDG concerning a bail matter involving her son Lael Brown, who was then incarcerated in the State of West Virginia. Wright-Ochoa searched the web and logged onto the ACDG website. She also spoke with an ACDG representative who advised her on possible ways to raise money for bail and gave her a reference to a bank for a possible loan. Wright-Ochoa did not retain ACDG in her son's bail matter. Moreover, at all times material to his State Bar Court disciplinary proceeding, Brown was continuously incarcerated in West Virginia.

In June 2008, Brown telephoned his mother and complained about the public defender who was representing him in a criminal case pending against him in a Circuit Court of the State of West Virginia. Brown was upset because the public defender advised him to accept a plea bargain with the prosecutor.

Thereafter, Wright-Ochoa searched the web and again found and logged onto the ACDG website. She was impressed by the three above-quoted statements on the website. In light of those three statements, Wright-Ochoa believed that, if ACDG represented Brown, ACDG would send a team of lawyers to West Virginia to defend Brown in his criminal case, including a jury trial. Wright-Ochoa did not call any of the other law firms she located on the web.

Wright-Ochoa contacted ACDG and spoke with a representative and decided to retain ACDG to represent Brown. On June 16, 2008, Wright-Ochoa retained ACDG to represent Brown in his West Virginia criminal case for a flat (or fixed) fee of \$27,900.³ Wright-Ochoa and Robert Wright, who is Brown's grandfather, signed the ACDG fee agreement as "Payors." Even

³ The fee agreement improperly refers to the flat fee as a non-refundable retainer. Under California law, the only fee that is non-refundable is a true retainer, which is a retainer that is paid to ensure an attorney's availability to represent a client. Because a true retainer is not a payment for legal services to be performed, it is earned upon receipt even if the attorney never performs any legal services for the client. Any fee paid for actual legal services performed or to be performed (such as the \$27,900 flat fee in the Brown fee agreement) is not a true retainer.

though that fee agreement clearly identifies “Lael Browne” [*sic*] as the client, Brown never signed the retainer agreement. Nor did respondent ever obtain Brown’s informed written consent to accept compensation from Brown’s mother and grandfather.

Wright-Ochoa did not read the retainer agreement before she signed it; she only glanced through it. She did notice that it stated that it was non-refundable. She was also aware ACDG was a California law firm.

Between June 16, 2008, and August 8, 2008, Brown’s family paid the entire \$27,900 flat fee to respondent.

On June 17, 2008, respondent sent a welcome letter to Wright-Ochoa at Wright-Ochoa’s New York address. In that letter, respondent identifies himself as “supervising attorney” and Todd Terry and Lisa Terry as the case managers in Brown’s criminal case in West Virginia. The letter included the following generic advice:

We would encourage you to keep the details of your case secret as any escaped communication could come back to negatively impact you in the future. From this point on let all communication about this case be left to your attorney(s). Report immediately to your attorney(s) any attempted contact with you by any police, government or private agencies regarding your case. Be sure and ask questions of your attorney(s) and be prepared to listen to what your attorney(s) have to say to you. Again, open communication is the key to any successful criminal defense strategy.

On June 18, 2008, ACDG and West Virginia Attorney John B. Brooks entered into an of-counsel agreement in which Attorney Brooks agreed to represent Brown in his West Virginia criminal case. Attorney Brooks acknowledged that he was required to follow ACDG’s case protocols when representing Brown and to maintain adequate communications with respondent and the ACDG case administrators assigned to Brown’s case. Furthermore, respondent listed Attorney Brooks as a named insured on ACDG’s professional liability policy with Liberty Mutual. Attorney Brooks regularly consulted with respondent about Brown’s case by telephone. Brooks never felt that it necessary for respondent to come to West Virginia to assist in Brown’s

defense. Attorney Brooks represented Brown as an employee of ACDG, and respondent provided reasonable supervision of Brooks work (see, generally, *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 682.)

When Attorney Brooks entered into the of-counsel agreement, Attorney Brooks had been a criminal defense attorney in West Virginia for about 11 years. Brooks did not immediately advise Brown to accept the plea bargain he was offered because Brooks wanted to investigate the case against Brown first. Attorney Brooks spoke with Brown's former counsel and obtained the case discovery.

When the independent state medical examiner in West Virginia changed his opinion of Brown's mental capacity, Attorney Brooks had consulted with and advised Brown to accept the plea bargain. Thereafter, on August 7, 2008, Brooks, Brown entered into a plea bargain with Assistant Prosecuting Attorney Perri Jo DeChristopher (APA DeChristopher). Attorney Brooks attended and represented Brown at the plea hearing and then later at the sentencing hearing. According to Attorney Brooks's and respondent's credible testimony, the plea bargain that they/ACDG negotiated for Brown was more favorable to Brown than the plea bargain that the public defender previously negotiated for Brown.

Out of the \$27,900 flat fee that respondent received from Brown's family, respondent paid Attorney Brooks a total of \$5,390 for representing Brown. Respondent kept the remaining balance of \$22,510 (\$27,900 less \$5,390) for himself/ACDG. At the trial in the present disciplinary proceeding, Attorney Brooks opined that the \$27,900 flat fee for representing Brown in the West Virginia criminal case was "high."

According to Wright-Ochoa, she was still expecting a team of lawyers to come to West Virginia on behalf of her son even after the sentencing hearing. Wright-Ochoa believes that respondent and ACDG performed very little work on behalf of Brown. According to Wright-

Ochoa, if she had known that ACDG was going to transfer Brown's defense to one West Virginia lawyer, she would not have retained ACDG.

On November 20, 2009, Wright-Ochoa and Brown's father sent a letter to respondent requesting a refund of unearned fees. Respondent received the letter.

On November 30, 2009, Wright-Ochoa filed a complaint against respondent and ACDG with the State Bar of California over respondent's conduct in Brown's West Virginia criminal case. In that lengthy complaint, Wright-Ochoa not only mentions locating the ACDG website on the internet and contacting ACDG, but Wright-Ochoa also unequivocally states multiple times that she retained ACDG based on misrepresentations made to her by ACDG representative Todd Terry, who Wright-Ochoa erroneously believed was an attorney. In her complaint, Wright-Ochoa simply makes no mention of any misleading statements on the ACDG website that led her to retain ACDG on behalf of her son.

On December 8, 2009, respondent sent Brown's father a letter stating that, since Brown elected to take the plea bargain, the "responsibilities under the contract per this case were fulfilled." Accordingly, ACDG and respondent declined to refund any of the \$27,900 flat fee to Brown or his family. Thereafter, on January 16, 2010, apparently on the suggestion of a State Bar Senior Trial Counsel, Brown sent respondent a letter requesting a refund of unearned fees. Thereafter, on February 22, 2010, respondent sent Brown an appropriate detailed accounting of the \$27,900 flat fee.

On September 28, 2011, a State Bar investigator sent a letter to Wright-Ochoa informing her that the State Bar had closed her complaint against respondent citing, among other reasons, that the retainer agreement states the firm "may use its discretion to hire and/or associate with other attorneys to assist in a client's case," and that the disputed plea bargain was, in fact, signed by Brown. In 2012, without a stated reason, the State Bar re-opened Wright-Ochoa's complaint.

In 2010, Brown and his family filed a civil lawsuit against respondent and ACDG asserting claims for breach of contract, fraud, and misrepresentation. Respondent's insurance carrier eventually settled the lawsuit by paying the plaintiffs a significant amount of money above the \$27,900 flat fee they paid ACDG.

Respondent has never been licensed to practice law in West Virginia. Nor was respondent ever admitted to appear *pro hac vice* in Brown's West Virginia criminal case.

Attorney Brooks credibly testified as follows: he does not recall that Brown's parents were trying to develop a mental insanity defense for trial; he does not recall Brown's parents opposing the plea bargain that Brown accepted; and he never heard Wright-Ochoa mention that she was waiting for a team of attorneys to come to West Virginia on behalf of Brown or that she was expecting respondent to come to West Virginia. Moreover, the State Bar does not allege that either Attorney Brooks or respondent failed to competently perform.

Count Two: (Rule 3-310(F) – [Accepting Fees From a Non-Client])

Rule 3-310(F) provides that an attorney shall not accept compensation for representing a client from one other than the client without complying with the requirement that the attorney obtain the client's informed written consent. The record clearly establishes that, as charged, respondent willfully violated rule 3-310(F) by accepting the \$27,900 flat fee from Brown's family without obtaining Brown's informed written consent.

Count Three: (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. In count three, the State Bar charges that respondent willfully violated rule 3-700(D)(2) because "To date, Respondent has failed to refund any portion of the approximately \$22,510 [(\$27,900 less the \$5,390 paid to

Attorney Brooks)] in unearned advanced fees paid by Brown's family on behalf of Brown." To support this charge, the State Bar alleges, inter alia, the following:

At no time alleged herein was Respondent licensed to practice law in West Virginia, or admitted *pro hac vice* to practice law in West Virginia on a limited basis. Respondent failed to make any appearance, prepare or file any legal papers, or provide Brown with any substantive legal services in the West Virginia criminal action. Respondent had no special knowledge of, or expertise in, West Virginia criminal defense law or practice. Any services purportedly provided by Respondent and/or the ACDG staff in the West Virginia criminal action were minimal and administrative in nature, rather than substantive criminal defense work. Thus, Respondent did not earn any portion of the advanced fees he retained.

The State Bar has failed to establish the charged violation of rule 3-700(D)(2) by clear and convincing evidence. As noted *ante*, the agreed upon fee in the Brown matter was a \$27,900 flat (or fixed) fee. ACDG earned the entire \$27,900 flat fee because it represented Brown until his West Virginia criminal case was concluded by Brown's conviction and sentencing.

Contrary to the allegation in the NDC, ACDG was not required to assign respondent as Brown's attorney of record in the West Virginia circuit court. ACDG assigned ACDG Of-counsel Attorney Brooks, who is licensed in West Virginia, to appear in that case as Brown's attorney of record. Thus, whether respondent was licensed or admitted *pro hac vice* in West Virginia, whether respondent appeared in court on Brown's behalf, and whether respondent had some expertise in West Virginia criminal law are irrelevant on the issue of whether ACDG earned the entire \$27,900 flat fee.

Second, as found *ante*, Attorney Brooks represented Brown as an ACDG associate or of-counsel attorney (i.e., an attorney employee). Moreover, the State Bar failed to clearly establish that Attorney Brooks was not an attorney employee of ACDG when Brooks represented Brown. In a disciplinary proceeding, a culpability determination must not be debatable. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 289.) Thus, "[a]ll reasonable doubts must be resolved in favor of the [respondent], and if equally reasonable inferences may be drawn from a proven fact, the

inference which leads to a conclusion of innocence rather than guilt will be accepted.

[Citation.]” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

Because Attorney Brooks represented Brown as an ACDG employee (and because the State Bar failed to establish that Attorney Brooks did not represent Brown as an ACDG employee), the fact ACDG paid Attorney Brooks wages totaling \$5,390 for representing Brown simply does not and cannot establish that all or part of the remaining \$22,510 of the \$27,900 flat fee was unearned by ACDG or respondent .⁴

In sum, count three is DISMISSED with prejudice for want of proof.

Count Four: (Rule 4-200(A) [Unconscionable Fee])

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. Rule 4-200(B) sets forth 11 nonexclusive factors to be considered in determining the conscionability of a fee.

In count four, the State Bar alleges, inter alia, that respondent willfully violated rule 4-200(A) because the advanced fee respondent collected in the Brown matter that totaled \$22,510 (\$27,900 less \$5,390 paid to Attorney Brooks) was wholly disproportionate to the value of the legal services, if any, that respondent personally provided to Brown. Respondent did not collect, charge, or accept the \$22,510 in advanced fees in the Brown matter. Again, ACDG’s agreed upon fee in the Brown matter was a \$27,900 flat fee, and ACDG and Brooks did not share or split the \$27,900 fee. Instead, ACDG paid Brooks’s wages totaling \$5,390 for representing Brown. In short, the dispositive issue under count four is whether the agreed upon \$27,900 flat fee was unconscionable. In that regard, the court finds that the record fails to establish, by clear and convincing evidence, that the \$27,900 fee was unconscionable. There is simply no evidence

⁴ Likewise, if a law firm charges a client \$250 one hour of legal services performed by one of the firm’s associate attorneys, the fact that the firm pays the associate wages of only \$50 an hour, does establish that all or part of the remaining \$200 of the \$250 fee was unearned or unconscionable.

in the record regarding the conscionability of the \$27,900 flat fee for defending Brown against felony charges in West Virginia.

The court accepts Attorney Brooks's opinion testimony that the \$27,900 flat fee in the Brown matter was high, but the Supreme Court has made clear that a high fee is not the same as an unconscionable fee. (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 285.)

The State Bar alleges that a factor supporting its contention that the purported \$22,510 advanced fee respondent accepted is unconscionable fee is that respondent accepted the \$22,510 when respondent was not licensed to practice law in West Virginia. The court cannot agree. Even if respondent had collected \$22,510 in advanced legal fees in the Brown matter, attorneys routinely charge and collect advanced fees for representing clients in jurisdictions in which the attorneys are not admitted to practice before filing motions to be admitted or to appear in legal proceedings *pro hac vice*. The State Bar has not cited any authority prohibiting such a practice and this court is unaware of any. Moreover, other than the foregoing, the State Bar failed to present the court with an analysis of the 11 nonexclusive factors to be considered in determining the conscionability of a fee that are set forth in rule 4-200(B).

The parties in the Brown matter consented to a flat fee of \$27,900, which included a trial if necessary. No additional fee could be charged for any reason without the express consent of the client or clients. Had the matter gone to trial, the time and labor required would have been extensive, based on the nature of the felony charges pending against Brown. The State Bar argues that the fees paid far exceed the value of the work actually performed by ACDG, i.e., \$27,900 for a plea bargain. However, rule 4-200(B) specifically requires that the unconscionability of a fee be determined on the basis of the facts and circumstances existing at the time the agreement is entered into. The State Bar has not provided any evidence that suggests, much less establishes by clear and convincing evidence, that at the time the fee

agreement was entered into that the \$27,900 flat fee was an unconscionable fee in the State of West Virginia.

The amount of the fee involved was high, and the end result was a plea bargain. Although Wright-Ochoa wanted a trial in her son's matter, she was not in control of the litigation. Brown was the client, and he determined after consultation with his attorney that entering into the plea bargain was in his best interest.

Brooks was an experienced criminal defense attorney who had the requisite skills to competently perform the legal services he provided. There is no allegation or evidence that he or respondent failed to perform.

Finally, it is clear that the conscionability of a legal fee is not be measured or defined by the attorney's profit margin. (*Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1001.) Thus, even assuming arguendo that ACDG's payments totaling \$5,390 to Attorney Brooks were not wages, but expenses so that ACDG would have made a "profit" of \$22,510 by representing Brown, the profit would not establish that respondent received or collected an unconscionable fee.

In short, count four is DISMISSED with prejudice for want of proof.

Count Five: (Rule 1-300(B) [Engaging in UPL in Another Jurisdiction])

Rule 1-300(B) provides that an attorney must not engage in the unauthorized practice of law (UPL) in another jurisdiction. The State Bar argues that respondent engaged in UPL in violation of West Virginia Code section 30-2-4 when he sent the June 17, 2008, welcome letter to Wright-Ochoa in New York because it included legal advice, which is quoted *ante*, to keep the details of the case secret and to leave all communications regarding the case to the attorneys. The court cannot agree. The court is at a loss to understand how a letter concerning a West

Virginia criminal case sent by a California attorney to a resident of New York can constitute the UPL in violation of West Virginia Code section 30-2-4.

The State Bar further contends that “[b]y accepting employment with Wright-Ochoa to represent Brown in the West Virginia criminal matter, and holding himself out as entitled to practice law in West Virginia in order to perform legal services on behalf of Brown in the West Virginia criminal action, Respondent practiced law in a jurisdiction where he is not admitted, and thereby violated the regulations of the profession in that jurisdiction.” As the court understands the charges, the State Bar effectively contends (1) that a California professional law corporation cannot represent an out-of-state client in a lawsuit in any jurisdiction other than California even by a shareholder or employee of the corporation that is licensed in the other jurisdiction in which the lawsuit is pending and (2) that a California professional law corporation cannot appoint one of its shareholders who is licensed only in California to supervise one of the corporation’s attorney employees representation of an out-of-state client in a lawsuit in a jurisdiction other than California. The State Bar has not cited any authority to support either of these novel contentions, and this court is unaware of any.

Moreover, the record fails to establish, by clear and convincing evidence, that respondent either practiced law in West Virginia or held himself out as entitled to practice law in West Virginia. Because Attorney Brooks is licensed to practice law in West Virginia, respondent’s supervision of ACDG’s Employee Attorney Brooks’s representation of Brown does not and cannot constitute the UPL under West Virginia Code section 30-2-4.

Even though respondent occasionally had telephone conversations with one or two of Brown’s family members does not establish that respondent engaged in UPL in West Virginia because those conversations typically involved respondent answering general questions about the criminal charges or the status of Brown’s case.

In sum, count five is DISMISSED with prejudice for want of proof.

Count Six: (Rule 4-200(A) [Illegal Fee])

Rule 4-200(A) provides that an attorney must not charge, collect or enter into an agreement for an illegal or unconscionable fee. In count six, the State Bar charges that the \$22,510 in fees respondent charged and collected in the Brown matter were illegal fees because he was not admitted to practice in West Virginia. The court cannot agree.

First, the dispositive issues are (1) not whether the \$22,510 is an illegal fee, but whether the \$27,900 flat fee was an illegal fee and (2) not whether respondent was admitted to practice in West Virginia, but whether ACDG or respondent charged and collected the \$27,900 for legal services provided while they were engaging in UPL in West Virginia. In other words, the illegal fee charge is premised on respondent being found culpable of engaging in UPL in West Virginia. Under count five, *ante*, the court found that the record fails to establish that respondent engaged in UPL in West Virginia in the Brown matter. Accordingly, the record also fails to establish, by clear and convincing evidence, that respondent either entered into an agreement for, charged, or collected an illegal fee in the Brown matter.

In short, count six is DISMISSED with prejudice for want of proof.

Case No. 10-O-04247 – The Taylor Matter

In 2004, Mark Taylor was convicted of a crime in the State of Illinois. Mark Taylor's mother, Rhoda Taylor (Ms. Taylor), was not happy with how the appeal of her son's conviction was being handled. Sometime in 2007, Ms. Taylor began looking for an attorney to take over the appeal.

Ms. Taylor located the ACDG website on the internet and decided to contact ACDG. She spoke with Todd Terry by telephone. Ms. Taylor was aware that ACDG was located in California, but her family had used local attorneys who had not helped her son.

On June 13, 2007, Ms. Taylor signed a fee agreement with ACDG in the capacity of the “Payor.” According to that fee agreement, ACDG was retained for the limited purpose of performing an “Evaluation of Appellate possibilities for Mark F. Taylor.” On the first page of the June 13, 2007, fee agreement, “Rhoda & Mark Taylor,” who are the parents of Mark Taylor, are identified as the clients, but on the signature page of that agreement (i.e., on the last page of the agreement), the name “Mark F. Taylor” is typed in the space provided for the “Client’s Printed Name,” and “In Custody” is typed in the space provided for the “Client’s Signature.” Also, on June 13, 2007, Ms. Taylor paid respondent’s \$5,000 flat fee. Just like the fee agreement in the Brown matter (see footnote 3 *ante*), the fee agreement in the Taylor matter improperly refers to the \$5,000 flat fee as a non-refundable retainer.

Also, on June 13, 2007, respondent sent a welcome letter to Ms. Taylor, which identified Paula Hutchinson as the attorney assigned to her son’s case, Todd Terry as the case manager, and respondent as the supervising attorney. The letter also includes the following advice:

We would encourage you to keep the detail of your case secret as any escaped communication could come back to negatively impact you in the future. From this point on let all communication about this case be left to your attorney(s). Report immediately to your attorney(s) any attempted contact with you by any police, government or private agencies regarding your case. Be sure and ask questions of your attorney(s) and be prepared to listen to what your attorney(s) have to say to you. Again, open communication is the key to any successful criminal defense strategy.

For the reasons cited in the Brown matter *ante*, the court finds that the sending of the letter to Ms. Taylor does not constitute the unauthorized practice of law.

In October 2007, respondent informed Ms. Taylor that there were appealable issues Mark could raise on appeal. Respondent offered to perform the appellate work for \$34,900 with credit given for the \$5,000 flat fee paid under the first fee agreement. And, on October 16, 2007, Ms. Taylor hired respondent to take over Mark’s appeal and signed a second fee agreement with ACDG.

When she retained ACDG, Ms. Taylor was under the impression that respondent would be in charge of Mark's appeal and that all decisions would go through respondent, including the hiring of any other attorney to work on her son's appeal.

On October 16, 2007, Ms. Taylor paid respondent's the remaining balance due of \$29,900 on the \$34,900 flat fee. Respondent never obtained Mark's informed written consent before accepting compensation from Ms. Taylor to provide legal services to Mark Taylor.

On May 17, 2007, ACDG entered into an of-counsel agreement with Paula Hutchinson, who is licensed to practice law only in Nebraska. Under that agreement, Attorney Hutchinson agreed to serve as the ACDG counsel to appeal Mark Taylor's Illinois conviction. At the time respondent retained Attorney Hutchinson to handle Mark Taylor's appeal, Attorney Hutchinson was not licensed to practice law in Illinois. But, in April 2008, Hutchinson applied for admission *pro hac vice* to practice law in Illinois on a limited basis. The court granted Hutchinson's application to appear *pro hac vice* in Mark Taylor's appeal.

Between June 13, 2007, and July 2008, respondent paid Attorney Hutchinson wages totaling \$6,500 for handling Mark Taylor's appeal and reimbursed her for some costs she incurred in connection with ACDG's filing a petition for re-hearing on behalf of Taylor in the Third District Appellate Court of Illinois.

According to Ms. Taylor, Attorney Hutchinson visited her son in prison and began work on the appeal.

On April 3, 2008, in her capacity as an of-counsel attorney with ACDG, Hutchinson filed a petition for re-hearing on behalf of Taylor in the Third District Appellate District Court of Illinois. And on April 24, 2008, the Illinois Court of Appeal for the Third District denied that petition.

On June 20, 2008, Taylor sent respondent a letter requesting that ACDG provide different counsel in lieu of Hutchinson. Respondent received the letter, and on June 24, 2008, respondent's legal assistant, Christopher Hoglin, sent Taylor a letter stating that ACDG would do so.

On July 16, 2008, ACDG entered into an "Of Counsel Attorney Agreement" with Illinois attorney Ross Engle pursuant to which ACDG employed Engle as an of-counsel attorney to represent Mark Taylor.

On January 26, 2009, in his capacity as an ACDG of-counsel attorney, Engle filed a petition for leave to appeal on behalf of Mark Taylor in the Illinois Supreme Court. And, on May 28, 2009, the Illinois Supreme Court denied that petition.

Between July 16, 2008, and June 2009, respondent paid Engle wages totaling \$5,000 for representing Mark Taylor and reimbursed Engle for some costs he incurred in connection with ACDG's filing of the petition for leave to appeal in the Illinois Supreme Court.

ACDG/respondent retained the \$23,400 (\$34,900 less \$6,500 paid to Attorney Hutchinson less \$5,000 paid to Attorney Engle) balance of the \$34,900 flat fee in the Taylor matter. Respondent was not licensed to practice law in Illinois at any pertinent time herein.

Ms. Taylor testified that, at some point, she expected respondent to come to Illinois, but he never did. In November 2009, Ms. Taylor telephoned respondent and left a voicemail message for him requesting a refund and accounting. Respondent denies ever receiving a request from Ms. Taylor for an accounting.

On December 7, 2009, respondent sent Mark Taylor a letter advising him that ACDG had "satisfied" its representation pursuant to the fee agreement. On January 15, 2010, respondent sent Mark Taylor another letter informing him that ACDG's representation had ended.

To date, respondent has declined to refund any portion of the \$34,900 flat fee paid by Taylor's family on behalf of Mark Taylor. Nor has respondent ever provided an accounting of the \$34,900 flat fee even though, under even respondent's version of the events, he has known for months that the Taylors requested/wanted an accounting.

On October 3, 2011, the State Bar notified Mark Taylor that his complaint against respondent was being closed because the flat fee was specific in its scope and designed to cover motions for remand to the trial court and because the fee agreement clearly indicated that ACDG may associate with other/outside attorneys and may divide the flat fee with such attorneys; thus fee splitting does not apply. The matter was later re-opened by the State Bar.

The State Bar procured testimony from Ms. Taylor concerning her reliance on the claims on ACDG website when deciding to retain ACDG to represent her son. However, the State Bar did not charge respondent with a violation of rule 1-400(D) in the Taylor matter. Therefore, the court does not make any findings concerning any misleading advertisement in the Taylor matter.

Count Seven: (Rule 3-310(F) [Accepting Fees From Non-Client])

The record clearly establishes that, as charged, respondent willfully violated rule 3-310(F) by accepting the flat fees totaling \$34,900 from Mark Taylor's family without obtaining Mark Taylor's informed written consent.

Count Eight: (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

In count eight, the State Bar charges that \$23,400 of the flat fees totaling \$34,900 in the Taylor matter are unearned fees and that respondent violated rule 3-700(D)(2) by failing to refund the \$23,400 to the Taylors. For the reasons set forth under count three in the Brown matter *ante*, the record fails to establish the charged rule 3-700(D)(2) violation by clear and convincing evidence.

ACDG earned the flat fees totaling \$34,900 flat fee because it evaluated Mark Taylor's appellate possibilities and filed two separate appeals for him. ACDG did not promise a particular result from the filing of the appeals. Furthermore, both Attorneys Hutchinson and Engle were experienced appellate attorneys who represented Mark Taylor as ACDG associate or of-counsel attorneys (i.e., attorney employees of ACDG). Moreover, the State Bar failed to clearly establish that Attorneys Hutchinson and Engle were not attorney employees of ACDG.

Because Attorneys Hutchinson and Engle represented Mark Taylor as ACDG associate or of-counsel attorneys (or because the State Bar failed to establish that that Attorneys Hutchinson and Engle did not represent Mark Taylor as ACDG employees), the fact ACDG paid Attorneys Hutchinson and Engle wages totaling \$11,500 (\$6,500 plus \$5,000) for representing Taylor simply does not and cannot establish that all or part of the remaining \$23,400 of the flat fees totaling 34,500 was unearned by ACDG or respondent.

Count eight is DISMISSED with prejudice for want of proof.

Count Nine: (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. Under rule 4-100(B)(3), attorneys have a duty to attorneys maintain adequate records of and to account for the legal fees they received and how (and when) they are earned. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 758.)

The record clearly establishes that respondent failed to render an appropriate accounting to a client, in willful violation of rule 4-100(B)(3), by failing to render an accounting of fees totaling \$34,900 in the Taylor matter.

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Count Ten: (Rule 4-200(A) [Unconscionable Fee])

The State Bar contends that Respondent collected \$23,400 from the fees paid by Ms. Taylor for the representation of Taylor in the Illinois criminal matter. However, the amount of the fee paid by Taylor to respondent was \$34,900. Again, the State Bar provided no evidence that the wages totaling \$11,500 that ACDG paid to its of-counsel employees Hutchinson and Engle was the true or proper fee in the Taylor matter. The State Bar provided no evidence concerning whether the \$34,900 flat fee was high or unconscionable for a like criminal appeal in Illinois. And the State Bar failed to present the court with an analysis of the 11 nonexclusive factors to be considered in determining the conscionability of a fee that are set forth in rule 4-200(B).

Ms. Taylor, who is a high school graduate with some additional courses in photography, had retained counsel on behalf of her son for his appeal prior to retaining ACDG and thus had some experience in dealing with appellate attorneys. ACDG was retained to file an appeal of Taylor's criminal conviction in Illinois after prior Taylor's prior counsel had filed unsuccessful appeals on his behalf. There is no evidence on the record that Hutchinson or Engle failed to perform with competence nor is respondent charged with failure to perform with competence in the Taylor matter.

Ms. Taylor read the retainer agreement before executing the document and consented to the fee. The court would agree the fee was high. But the State Bar failed to produce clear and convincing evidence that the fee was unconscionable.

For these reasons and for the reasons set forth under count four in the Brown matter, *ante*, the record fails to establish, by clear and convincing evidence, that the flat fees totaling \$34,900 in the Taylor matter were unconscionable. Accordingly, count ten is DISMISSED with prejudice for want of proof.

Count Eleven: (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction's Professional Regulations])

For the reasons set forth under count five in the Brown matter, *ante*, the record fails to establish, by clear and convincing evidence, that respondent engaged in the UPL in Illinois. Accordingly, count eleven is DISMISSED with prejudice for want of proof.

Count Twelve: (Rule 4-200(A) [Illegal Fee])

For the reasons set forth under count six in the Brown matter, *ante*, the record fails to establish, by clear and convincing evidence, that respondent either entered into an agreement for, charged, or collected an illegal fee in the Taylor matter. Accordingly, count twelve is DISMISSED with prejudice for want of proof.

Case No. 11-O-13553 – The Landsiedel Matter

In December 2007 Christopher Landsiedel (Mr. Landsiedel) was searching the web in an attempt to find an attorney to represent his son, Nicholas Landsiedel, who had been arrested in the State of Washington. Mr. Landsiedel located ACDG website and was impressed with the firm's national practice. Mr. Landsiedel called ACDG and spoke with Todd Terry and discussed his son's criminal matter and what ACDG could do his son. No fees were discussed. At some point in the conversation, Landsiedel spoke privately with Terry.

About a week later, Mr. Landsiedel and his son called ACDG and spoke with Terry and respondent about Nicholas Landsiedel's case and what ACDG could do for him. Mr. Landsiedel recalls someone saying that respondent would be there for Nick's trial.

A few days later, Mr. Landsiedel spoke with Terry about the fee for his son's case. On January 30, 2008, Nicholas Landsiedel retained ACDG to represent him in a criminal action in King County, Washington.

At no time was respondent admitted to practice law in Washington, or admitted *pro hac vice* to practice law in Washington on a limited basis.

On January 30, 2008, Mr. Landsiedel paid respondent's flat fee of \$24,900 plus \$3,000 for costs on behalf of his son. Thereafter, Mr. Landsiedel spoke to Terry. Terry informed Mr. Landsiedel that ACDG would be hiring local counsel, which surprised Mr. Landsiedel because he thought ACDG already had local counsel.

On January 30, 2008, respondent's bookkeeper deposited the \$27,900 paid by Mr. Landsiedel into ACDG's general operating account at Wells Fargo Bank. Respondent did not deposit the \$3,000 advance for costs into a designated trust account. However, on April 1, 2008, respondent transferred \$3,000 from ACDG's general operating account into ACDG's client trust account at Well Fargo Bank (CTA). On that same day, ACDG case manager Christopher Hoglin sent a \$3,000 client trust account check to Dr. Bruce Al Olson as payment for a psychosexual evaluation of Nicholas Landsiedel in connection with the criminal case in Washington.

Between January 30, 2008, and April 1, 2008, the \$3,000 paid for costs was not maintained in ACDG's client trust account.

On January 22, 2008, ACDG entered into an "Of Counsel Agreement" with Washington Attorney Ron Gomes, pursuant to which Gomes agreed to serve as ACDG counsel to represent Nicholas Landsiedel at trial in the criminal case. From January 30, 2008, and until the conclusion of that criminal trial on May 13, 2009, Attorney Gomes, in his capacity as an of-counsel attorney with ACDG, represented Landsiedel in the Washington criminal matter.

At the time of his retention, Attorney Gomes had been a criminal attorney in the State of Washington for about seven years (since 2001). In January 2008, Attorney Gomes was contacted by respondent concerning Gomes's interest in becoming a local of-counsel attorney for ACDG. Gomes expressed interest in becoming local counsel. Sometime later, respondent and Gomes agreed that Gomes would become local of counsel for ACDG.

During the time he worked for ACDG on the Landsiedel matter, Gomes spoke with respondent, but spoke mainly with Terry. There was never any discussion concerning whether another attorney from ACDG would be on the case. Attorney Gomes was not aware what, if any, legal work respondent performed in the Landsiedel criminal matter. Gomes recalls four or five phone conversations with respondent pre-trial, mostly short discussions concerning evidence and emails, etc. Also, Attorney Gomes spoke to respondent about the expert witness report and trial strategies. Attorney Gomes was aware that respondent was also speaking with Mr. Landsiedel during this period.

Attorney Gomes was not aware of the financial arrangements between ACDG and expert witness Dr. Olson, who Attorney Gomes described as a prominent and respected sexual deviancy evaluator in Washington. However, Dr. Olsen was not a witness at the criminal trial because Nicholas Landsiedel had failed two lie-detector tests, and Dr. Olsen's testimony would not have been helpful. Ultimately, another expert witness was used at trial, but according to Attorney Gomes, the new expert witness's testimony was not very helpful because Nicholas Landsiedel had failed yet another lie detector examination.

At the conclusion of Nicholas Landsiedel's criminal case, Attorney Gomes requested about \$5,000 in fees from ACDG. However, respondent refused to pay any additional fees to Attorney Gomes because of a dispute over fees in another matter in which Gomes was of counsel to ACDG and represented a Washington state resident.

Attorney Gomes was contacted by the Washington State Bar Association concerning the Landsiedel criminal matter. At the conclusion of the criminal trial, Attorney Gomes filed a notice of appeal on behalf of Nicholas Landsiedel. Attorney Gomes stated he filed the notice of appeal to protect Landsiedel's appeal rights. However, Attorney Gomes never followed through with the appeal and did not respond to notices from the Washington Court of Appeals. On April

29, 2010, Gomes responded to the Washington Bar letter. Among other things, Gomes stated that ACDG “drained that poor family” concerning the fee Mr. Landsiedel paid to ACDG and that “ACDG grossly overcharged the Landsiedel family”.

Attorney Gomes testified that he was “shocked” when he first learned of the amount of the fee Mr. Landsiedel paid ACDG. However, it is also clear that Gomes and respondent had, and still have, a disagreement over fees paid by ACDG to Gomes in the Landsiedel matter when Gomes was responding to a Washington Bar inquiry into his conduct in the Landsiedel matter.

Gomes believes that attorney fees in the Landsiedel matter should not have been more than \$15,000.

Gomes made all the court appearances, including trial, in the Landsiedel criminal matter. Trial lasted from 5 to 7 days and Landsiedel was found guilty and was later sentenced to over 5 years in a state prison. The State Bar does not allege that respondent or Gomes failed to perform with competence.

Respondent paid Gomes \$750 in wages for representing Nicholas Landsiedel in the Washington criminal case. Additional wages in the amount of approximately \$5,000 was withheld by ACDG as an off-set for disputed wages ACDG previously paid Gomes.

ACDG/respondent retained the \$24,150 (\$24,900 less \$750 paid to Attorney Gomes) balance of the \$24,900 flat fee Mr. Landsiedel paid on behalf of his son. ACDG has not refunded any portion of the \$24,900 flat fee.

Sometime in November 2011, the State Bar closed the investigation in the Landsiedel matter and the re-opened the investigation in 2012.

Sometime in 2013, respondent provided Landsiedel with an accounting for the \$24,900 flat fee and the \$3,000 costs advance.

The State Bar procured testimony from Mr. Landsiedel concerning his reliance on the claims on the ACDG website when deciding to retain ACDG to represent his son. However, the State Bar did not charge respondent with a violation of rule 1-400(D) in the Landsiedel matter. Therefore, the court does not make findings concerning any misleading advertisement on the ACDG website in the Landsiedel matter.

Count Thirteen: (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

The court finds that there is clear and convincing evidence that respondent failed to maintain client funds in a trust account, in willful violation of rule 4-100(A), by failing to deposit \$3,000 in advanced costs into his CTA upon receipt of the funds.

Count Fourteen: (Rule 4-200(A) [Unconscionable Fee])

The State Bar contends that respondent collected an unconscionable fee by receiving \$24,150 in fees in the Landsiedel matter. However, the fee in the Landsiedel matter was a \$24,900 flat fee. ACDG paid Attorney Gomes wages of \$750 and credited him with an off-set in another matter in which he was an ACDG attorney employee. The State Bar produced no evidence to show that the amount ACDG paid Gomes was the true or proper fee in this case. The court does not find Attorney Gomes's testimony that the fee should not have been more than \$15,000 credible. Again, the State Bar failed to present the court with an analysis of the 11 nonexclusive factors to be considered in determining the conscionability of a fee that are set forth in rule 4-200(B).

The amount of the fee was \$24,900 for an investigation and a five to seven-day jury trial. Mr. Landsiedel is a high school graduate and an aero-space worker, installing electrical systems

in large commercial aircraft who read and understood the retainer agreement when executed.

ACDG was retained to represent Landsiedel in a difficult felony jury trial. ACDG charged a fee of \$24,900 with no guarantee or result at trial. Both Mr. Landsiedel and his son consented to fee before executing the agreement.

Gomes is an experienced criminal defense attorney and there is no allegation that Gomes or respondent failed to perform legal services with competence.

For the forgoing reasons and for reasons set forth in count four under the Brown matter, the court finds that the State Bar has failed to produce clear and convincing evidence that respondent charged, collected, or contracted for an unconscionable fee in the Landsiedel matter.

Count fourteen is DISMISSED with prejudice for want of proof.

Count Fifteen: (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

For the reasons set forth in count three under the Brown matter, *ante*, the record fails to establish that respondent failed to refund an unearned fee in the Landsiedel matter. Accordingly, count fifteen is DISMISSED with prejudice for want of proof.

Count Sixteen: (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

The record clearly establishes that respondent willfully violated rule 4-100(B)(3) as charged by failing to promptly account to the Landsiedels for the \$24,900 flat fee and the \$3,000 costs advance.

Count Seventeen: (Rule 1-300(B) [Prohibition on Practicing Law in Violation of Other Jurisdiction's Professional Regulations])

On February 11, 2008, respondent sent a welcome letter to Nicholas Landsiedel, which identified respondent as the supervising attorney; Attorneys Robert Coppola and Ron Gomes as the trial attorneys; and Todd Terry and Christopher Hoglin as the case managers. The letter also included the following advice:

We would encourage you to keep the detail of your case secret as any escaped communication could come back to negatively impact you in the future. From this point on let all communication about this case be left to your attorney(s). Report immediately to your attorney(s) any attempted contact with you by any police, government or private agencies regarding your case. Be sure and ask questions of your attorney(s) and be prepared to listen to what your attorney(s) have to say to you. Again, open communication is the key to any successful criminal defense strategy.

The State Bar contends that by sending this letter to Landsiedel that identified himself as supervising attorney and including the above language that contains legal advice, respondent was practicing law in another jurisdiction, Washington state, where he is not licensed to practice law.

The court does not agree. Gomes was hired by ACDG as an of-counsel attorney on January 22, 2008, before Landsiedel retained respondent to represent him in his Washington state criminal matter. After Landsiedel retained ACDG, and before respondent sent the February 11, 2008, letter to Landsiedel, respondent assigned Gomes to the Landsiedel. Therefore, respondent's identifying himself as supervising attorney in the letter was a proper identification, and a fact already known to Landsiedel. Also, there is no evidence on the record to suggest that Gomes did not endorse the disputed language in the letter before it was sent to Landsiedel.

The February 11, 2008, letter is a welcome to the firm letter and the disputed paragraph informs the new client not to talk to the police, listen to his attorney, and to employ open communication with his attorneys. ACDG in-state counsel had already been assigned. Given the facts and circumstances in this case, to find that the disputed language constitutes UPL would expose every attorney in the State of California who supervises out-of-state attorneys on behalf of out-of-state clients to possible disciplinary action for giving even rudimentary directions directly to an out-of-state client.

The State Bar also contends that by discussing Washington State criminal statutes with Nicholas Landsiedel and with Attorney Gomes when he is not licensed to practice law in

Washington, respondent was practicing law in a jurisdiction where he is not licensed. The court does not agree.

The State Bar has not produced any evidence that a supervising attorney cannot discuss with out-of-state counsel or out-of-state clients the meaning of the out-of state statute, i.e., it is a felony statute that would require substantial jail time. Also, the State Bar has not cited any authority that provides that a California supervising attorney cannot discuss trial strategy or theories with out-of-state counsel in an out-of-state matter or cannot confer with out-of-state witnesses in out-of-state matters.

For the foregoing reasons and the for the reasons set forth in count five under the Brown matter, *ante*, the record fails to establish, by clear and convincing evidence, that respondent engaged in UPL in the State of Washington. Accordingly, count seventeen is DISMISSED with prejudice for want of proof.

Count Eighteen: (Rule 4-200(A) [Illegal Fee])

For the reasons set forth in count six under the Brown matter, the court finds that the State Bar has failed to produce clear and convincing evidence that respondent charged, collected, or contracted for an illegal fee in the Landsiedel matter.

Count eighteen is DISMISSED with prejudice for want of proof.

Case Nos. 10-O-00094; 10-O-04247; and 11-O-13553

The State Bar alleges that by soliciting clients from states in which respondent was not admitted to practice law; by accepting clients from those states and accepting legal fees from those clients; by entering into agreements with attorneys from those states in which respondent was not admitted for those attorneys to handle cases for clients; and by paying those attorneys in the other states a part of the consideration paid to respondent by the clients, respondent was

improperly and unlawfully acting as a lawyer referral service, in violation of Business and Professions Code section 6155.

The only evidence produced by the State Bar is that neither respondent nor ACDG has registered with the State Bar as an attorney referral service and that ACDG advertises on its website that it is a national law firm.

The State Bar failed to produce any evidence that respondent's or ACDG's employment of Counsel attorneys to represent out-of-state clients violates any statute or rule in any jurisdiction, including California. The evidence in this matter shows that respondent or ACDG did not refer any attorneys to clients but assigned ACDG of Counsel attorneys to three out-of-state clients. Of counsel attorneys followed ACDG protocols and communicated with ACDG staff concerning the representation of their clients.

In the NDC, the State Bar contends that by soliciting clients from states in which respondent was not admitted to practice law; by accepting clients from those states and accepting legal fees from those clients; by entering into agreements with attorneys from those states in which respondent was not admitted for those attorneys to handle the cases for clients; and by paying those attorneys in the other states a part of the consideration aid to respondent by the client, respondent was improperly and unlawfully acting as an lawyer referral service.

The State Bar failed to cite any authority that provides that a criminal defense legal corporation is prohibited from soliciting clients on the internet; that a criminal defense legal corporation was prohibited from accepting clients from states in which they are not licensed; that a criminal defense legal corporation was prohibited from entering into of-counsel agreements with attorneys from those states in which respondent was not admitted for those attorneys to handle the cases for clients; and a criminal defense legal corporation was prohibited from paying

those attorneys in the other states a from the fee paid to the criminal defense legal corporation by the client.

The State Bar did not cite to any case law or any state statute to support its sweeping allegation nor did it prove that any part of their allegation, taken piece by piece, violates any rule or statute.

The State Bar's argument that respondent or ACDG was operating an illegal attorney referral service is not supported by the evidence produced at trial and is without merit.

Count Nineteen: (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])(Section 6155) [Rule 1-600) Unlawful Referral Services]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California.

The court finds that there is not clear and convincing evidence that respondent operated an unlawful referral service, in willful violation of section 6068, subdivision (a); section 6151; and rule 1-600, and this count is DISMISSED with prejudice for want of proof.

Aggravation⁵

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's misconduct evidences multiple acts of misconduct.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent has been an attorney since 1973 has no prior record of discipline. Even though respondent's misconduct must be considered serious, his almost 40 years of misconduct-free practice is a very significant mitigating circumstance. (Std. 1.2(e)(i); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme

⁵ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Court has repeatedly applied standard 1.2(e)(1) in cases involving serious misconduct and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent cooperated in the State Bar investigation and entered into an extensive stipulation to facts and admission of documents at trial.

Other

In the late 1980s, respondent was the two time president of California State University-Northridge Alumni Association and received the California State University- Northridge Volunteer Award.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) states, in pertinent part, “If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be the more or most severe of the different applicable sanctions.”

The applicable sanction in the present proceeding is found in standard 2.2(b), which provides:

Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Notwithstanding standard 2.2(b)'s seemingly mandatory three-month minimum suspension, standard 2.2(b) is a guideline and is not strictly applied. (*Dudugjian v. State Bar*, *supra*, 52 Cal.3d at p. 1100; *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387 [noting that former rule 8-101 (now rule 4-100) violations have not always resulted in actual or even stayed suspensions].) Nonetheless, standard 2.2(b) reflects rule 4-100's important purpose, which is “ “ “to provide against the probability in some cases, the possibility in many cases, and the danger in all cases that ... commingling will result in the loss of client's money.” ” ” [Citations.]” (*Hamilton v. State Bar* (1979) 23 Cal.3d 868, 876.)

Nothing in the record supports recommending less than the 90-day actual suspension provided for in standard 2.2(b). On balance, the court concludes that the appropriate level of discipline for the found misconduct is two years' stayed suspension and three years' probation on conditions, including a 90-day period of actual suspension.

Recommendations

The court recommends respondent **ANTHONY JOSEPH PARTIPILO**, State Bar Number 55991, be suspended from the practice of law in California for two years, that execution of the two-year suspension be stayed, and he be placed on probation for three years subject to the following conditions:

1. Partipilo is suspended from the practice of law for the first 90 days of probation.

2. Partipilo is to comply with the provisions of the State Bar Act, the State Bar Rules of Professional Conduct, and all of the conditions of this probation.
3. Within the first 30 days of his probation, Partipilo is to contact the State Bar's Office of Probation in Los Angeles and to schedule a meeting with Partipilo's assigned probation deputy to discuss the terms and conditions of his probation. Upon the direction of the Office of Probation, Partipilo is to meet with the probation deputy either in-person or by telephone. Thereafter, Partipilo is to promptly meet with the probation deputy as directed and upon request of the Office of Probation.
4. Partipilo is to maintain, with the State Bar's Membership Records Office in San Francisco and with the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes (Bus. & Prof. Code, § 6002.1, subd. (a)(1)). In addition, Partipilo is to maintain, with the State Bar's Office of Probation, his current home address and telephone number (Bus. & Prof. Code, § 6002.1, subd. (a)(5)). Partipilo's home address and telephone number are not to be made available to the general public unless his home address is also his official address on the State Bar's Membership Records. (Bus. & Prof. Code, § 6002.1, subd. (d).) Partipilo must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
5. Partipilo is to submit written quarterly reports to the State Bar's Office of Probation in Los Angeles. The reports must be *received* by the Office of Probation or be *postmarked* no later than each January 10, April 10, July 10, and October 10. In each report, Partipilo must state, under penalty of perjury under the laws of the State of California, whether he has complied with the State Bar Act, the State Bar Rules of Professional Conduct, and all conditions of this probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to the quarterly reports, Partipilo is to submit a final report containing the same information. The final report must be *received* by the Office of Probation no earlier than 10 days before the last day of the probation period and no later than the last day of probation period.

6. Subject to the assertion of any applicable privilege, Partipilo is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions of this probation.
7. Within the first year of his probation, Partipilo is to attend and satisfactorily complete the State Bar's Ethics School and to provide satisfactory proof of his successful completion of that program to the State Bar's Office of Probation in Los Angeles. The program is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 845 South Figueroa Street, Los Angeles, California 90017-2515. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Partipilo's Minimum Continuing Legal

Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)

8. Within the first year of his probation, Partipilo is to attend and satisfactorily complete the State Bar's Ethics School -- Client Trust Accounting School and to provide satisfactory proof of his completion of that program to the State Bar's Office of Probation in Los Angeles. The program is offered periodically both at 180 Howard Street, San Francisco, California 94105-1639 and at 845 South Figueroa Street, Los Angeles, California 90017-2515. Arrangements to attend the school must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Partipilo's MCLE requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this school. (Accord, Rules Proc. of State Bar, rule 3201.)
9. This probation will commence on the effective date of the Supreme Court order in this matter. At the expiration of the period of this probation, if Partipilo has complied with all the terms of probation, the order of the Supreme Court suspending him from the practice of law for two years will be satisfied and that suspension will be terminated.

Professional Responsibility Examination

The court further recommends that respondent **ANTHONY JOSEPH PARTIPILO** be ordered to 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 to provide proof of his passage of that examination to the State Bar's Office of Probation in Los Angeles within one year after the effective date of the Supreme Court order in this matter. Failure to pass the MPRE within the specified time may result, without further hearing, in respondent's suspension until passage. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; but see Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rules 5.161(A)(2), 5.162(A)&(E).)

California Rules of Court, Rule 9.20

The court further recommends that respondent **ANTHONY JOSEPH PARTIPILO** be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in

subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.⁶

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: December 17, 2013.

RICHARD A. PLATEL
Judge of the State Bar Court

⁶ Partipilo is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this matter. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)