

Filed December 4, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of)	Case No. 11-O-13518
)	
JAMES GREGORY MORRIS,)	OPINION
)	
A Member of the State Bar, No. 110955.)	
_____)	

Respondent James Gregory Morris is a seasoned trial attorney who practiced law for almost 25 years without discipline before his legal services crossed the ethical line at his peril. After learning about a default judgment entered against his client, a California corporation, Morris recorded a deed of trust against the company’s only asset to secure his past and future attorney fees, and recorded a second deed of trust on behalf of the company’s sole shareholder to secure unpaid loans she claimed she previously made to the company. In a lawsuit brought by the judgment creditor, the superior court ruled that both deeds of trust were voidable as fraudulent conveyances under the United Fraudulent Transfers Act (UFTA) because they were created to encumber the property to hinder and delay the collection of the default judgment. In affirming the trial court, the court of appeal observed: “This case presents the paradigm illustration of a fraudulent conveyance.”

The Office of the Chief Trial Counsel of the State Bar (State Bar) charged Morris with committing acts involving moral turpitude because the transfers were made as a scheme to defraud creditors. The hearing judge dismissed the charge, finding that Morris “honestly believed” that the two promissory notes and deeds of trust were proper, and therefore, even if erroneous and unreasonable, his honest belief precluded a finding of moral turpitude. The judge

also dismissed a charge that Morris failed to report a civil fraud judgment against him to the State Bar.

The State Bar seeks review. It asserts that the hearing judge failed to give the proper weight to the superior court's factual findings, and that clear and convincing evidence supports culpability for both dismissed charges. The State Bar asks that the case be remanded to the hearing judge to issue aggravation and mitigation findings. Morris supports the dismissal, and continues to argue that he honestly believed he was acting within the law to protect his client's investment and to secure payment for his prior and future fees.

We have independently reviewed the record (Cal. Rules of Court, rule 9.12), and find that Morris committed acts involving moral turpitude by abusing the legal system to assist his client in hindering and delaying a creditor's collection of its judgment. We do not find Morris culpable of failing to report a civil fraud judgment to the State Bar because no such judgment existed against him. Since aggravation and mitigation evidence was presented at the disciplinary hearing, there is no reason to remand this case. The record establishes three mitigating factors (no prior record of discipline, cooperation, and good character) and one aggravating circumstance (harm to opposing party). After considering the facts unique to this case, the applicable standards, and relevant case law, we conclude that a one-year period of suspension is the appropriate level of discipline to protect the public, courts, and legal profession.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Relying almost exclusively on the superior court findings in the fraudulent conveyance action, the State Bar charged Morris with violating Business and Professions Code section 6106¹ by fraudulently encumbering his corporate client's only asset in an attempt to hinder and delay

¹ This section provides that "[t]he commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." All further references to sections are to the Business and Professions Code unless otherwise indicated.

the judgment creditor from collecting on its judgment. The general rule is that a “civil verdict and judgment have no disciplinary significance apart from the underlying facts.” (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) But civil findings made under a preponderance of the evidence standard, as these were, are entitled to a strong presumption of validity in disciplinary proceedings if they are supported by substantial evidence. (*Ibid.*) The superior court findings are supported by substantial evidence, and we adopt them. Ultimately, we concur with the court of appeal’s conclusion that “the [superior] court’s statement of decision lays out a very cogent and convincing case that Morris, just like [his client], participated in the transfer with the ‘actual intent to hinder, delay, or defraud.’ ”

A. Factual Findings

Micromark is a California corporation whose sole shareholder is Ha-Chun Ying Cheung. During the relevant period, the company’s only asset was a commercial building located on Foothill Boulevard in Sylmar, California (Foothill Property). Micromark leased portions of the Foothill Property to B Five Corporation, which operated two businesses on the premises. After a fire substantially damaged the building in August 2004, the two companies became embroiled in litigation involving issues of insurance, repairs, and the habitability of the building.

From early 2005 through April 2006, Morris defended Micromark in a lawsuit against B Five, which sued for damages based on loss of use of its businesses. Due to a language barrier, Micromark replaced Morris with an attorney who was able to communicate with Cheung in her native language. His successor counsel was replaced with yet another attorney who subsequently died while B Five’s lawsuit was pending. In late October 2007, Micromark rehired Morris to represent it for all of its legal matters, including the B Five lawsuit.

Morris immediately began reviewing the files to determine the status of the B Five case and to determine what, if anything, needed to be done. In October 2007, he discovered from the

online court docket that Micromark was in default but he claims he could not “ascertain exactly what was going on in the case.” On November 16, 2007, he reviewed the court file and confirmed that Micromark was in default because the successor counsel failed to appear at court hearings. Morris researched the grounds to set aside the default, and realized “there was a good possibility it wouldn’t be set aside.” However, he did not contact the opposing counsel or take any other legal action to set aside the default.

Meanwhile, on December 14, 2007, the superior court entered judgment in favor of B Five and against Micromark for almost \$2.4 million as a result of the default. Morris learned about the default judgment when he reviewed the online court docket in late December 2007, but he did not know the judgment amount, nor did he take any steps to learn the amount. He did know, however, that B Five had initially sought at least \$1 million in damages in the lawsuit.

1. Morris’s and Cheung’s Promissory Notes and Fraudulent Transfers

By December 2007, Morris agreed to file a motion to aside the default. However, before he took any legal action in the B Five lawsuit, he and Cheung agreed to place two encumbrances on the Foothill Property securing two promissory notes totaling \$703,000.

As to the first promissory note, Morris wanted assurance that he would be paid his attorney fees in the B Five lawsuit. He was aware that Micromark was unable to pay its bills as they became due, and the company still owed him almost \$45,000 from his prior representation. Morris and Cheung agreed that Micromark would give him a promissory note to ensure payment for his past and future attorney fees. Although he was owed no more than \$53,000 in fees (past due bill plus services to date), Morris prepared the promissory note for \$500,000.² On December 31, 2007, Cheung executed the promissory note on behalf of Micromark that was secured with a \$500,000 deed of trust on the Foothill Property.

² The note obligated Micromark to pay up to \$300,000 for future attorney fees and an additional flat fee of \$200,000 if he successfully defended the B Five lawsuit.

When Cheung arrived at Morris's office to execute the \$500,000 promissory note on behalf of Micromark, she told Morris that she also wanted a promissory note from Micromark. Cheung claimed she was owed over \$203,000 for loans she made to Micromark two to three years earlier. Cheung's purported loans were never documented. Morris agreed to prepare a promissory note and deed of trust, but told Cheung she would have to provide proof of the loans before he recorded the deed. Although she subsequently provided tax returns and receipts reflecting the amounts she claimed she loaned, Morris never conducted any independent investigation as to the validity of the amounts or whether any repayment had been made on the purported loans. Cheung also executed the second promissory note on behalf of Micromark that was secured with a \$203,000 deed of trust on the Foothill property on December 31, 2007.

On January 8, 2008, Morris recorded his deed of trust. Morris testified that he recorded his deed first to "set up a priority interest" in the Foothill Property. On January 15, 2008, Morris filed the motion to set aside the default in the B Five lawsuit. He then recorded Cheung's deed of trust on January 17, 2008. Twenty days later, on February 6, 2008, B Five recorded its \$2.4 million abstract of judgment. The motion to set aside the default was heard on February 22, 2008, and denied.

2. Fraudulent Conveyance Action

On February 19, 2008, B Five filed a lawsuit against Micromark, Cheung, and Morris, asserting that the deeds of trust were fraudulent conveyances under the UFTA created to prevent B Five's collection of its almost \$2.4 million judgment.³ The superior court agreed.

³ A fraudulent conveyance under the UFTA involves " 'a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.' " (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 648.) A debtor's transfer "is fraudulent as to a creditor . . . if the debtor made the transfer . . . [¶] (1) With actual intent to hinder, delay, or defraud any creditor." (Civ. Code, § 3439.04, subd. (a).)

Morris testified in superior court that he recorded his deed of trust on the Foothill Property because it was the “only asset that Micromark was going to have. If I was going to get paid, that was it.” Morris claimed that the transfers were not fraudulent, but were legitimate preferences to creditors, i.e., Cheung and himself. At the time Cheung executed the notes totaling \$703,000, Morris claimed he was uncertain of the exact value of the Foothill Property, but he acknowledged that it could have been as low as \$500,000. In fact, at the time of the transfers, the property was worth about \$400,000.

Cheung also testified in superior court. She knew that B Five’s prayer for relief in the B Five lawsuit was a million dollars, and it was her understanding that the company wanted the Foothill Property. She expressly admitted that she authorized the notes and deeds on behalf of Micromark because she wanted to prevent B Five from getting her property.

3. Morris Assisted Cheung in Her Efforts to Hinder and Delay B Five’s Collection

Based on the overwhelming direct and indirect evidence, the superior court found that Cheung intended to hinder and delay B Five’s collection of its judgment by recording the two deeds of trust. More importantly, the court also concluded that “[a]ll of the facts and circumstances put Morris on notice that Micromark’s intent in the transfers was to make sure that Micromark did not have to pay the \$2,300,000 judgment, but would be able to pay its shareholder and attorney first.” The record before us fully supports the court’s findings.

As for Cheung’s intent, she testified at trial that the property was hers and the liens were to prevent B Five from taking it. Since she controlled Micromark, the intent of one was attributed to the other. Thus, the direct evidence established that Micromark’s actual intent was

to hinder or delay B Five from collecting on its judgment when the transfers were made to Cheung and Morris.⁴

4. The Transfers Were Not in Good Faith or for a Reasonably Equivalent Value

To prevent the transfers from being voided, the burden shifted to Cheung and Morris to prove that they were made in good faith⁵ and the liens were taken for a reasonably equivalent value. (Civ. Code, § 3439.08, subd. (a).) They failed to prove either.

To determine whether Morris acted in good faith, the superior court considered his knowledge of Cheung's intent at the time the notes and deeds of trust were executed and of facts that suggested the transfers were voidable. Although Morris argued then, as he does now, that his motivation was simply to get paid, the superior court held that "Morris's intent is not relevant, but it is his knowledge of Defendant Cheung's intent which is relevant." We agree with the superior court's conclusion that "Morris's knowledge of the facts and circumstances . . . preclude a finding of good faith" because:

- He knew Micromark was unable to pay its bills as they came due and was thus presumed insolvent;
- He knew Micromark was in default, and the default was unlikely to be set aside;
- He knew about B Five's judgment before recording the liens;

⁴ The court also considered the 11 nonexclusive statutory factors listed in the UFTA that are probative of intent and found seven of the 11 factors present in this case, further proving Micromark's intent to hinder or delay: Micromark gave the notes and deeds of trusts to insiders as Cheung was the sole shareholder and Morris its attorney; it retained possession of the Foothill Property after the liens were executed and Cheung retained control of the property; it was sued before the transfers; the liens exceeded \$700,000, which clouded all of the equity of the property; Micromark did not receive reasonably equivalent value for the liens since Morris took a \$500,000 note but had only rendered \$52,922 in legal services, and there was insufficient evidence to support Cheung's purported \$203,000 in loans; the transfers occurred shortly after the judgment in the B Five lawsuit; and Micromark was insolvent when the liens were recorded. (See Civ. Code, § 3439.04, subd. (b).)

⁵ The term "good faith" as used in Civil Code section 3439.08 "means that the transferee did not collude with the debtor or otherwise actively participate in the fraudulent scheme of the debtor." (Lewis v. Superior Court (1994) 30 Cal.App.4th 1850, 1858.)

- He knew that Cheung wanted a lien on the property to keep her only asset should B Five prevail;
- He had ample evidence that Cheung commingled Micromark’s corporate assets with her personal assets, and did not treat the corporation as a separate entity, which made it impossible for Cheung to put a lien on her own property to keep it from creditors;
- Although Cheung provided bills and receipts to support her \$203,000 promissory note, Morris failed to investigate or audit whether Micromark had repaid Cheung for expenditures in prior years; and
- The facts put Morris on notice that Cheung’s intent was to make sure that Micromark did not have to pay the \$2.3 million judgment, but would be able to first pay her (Micromark’s sole shareholder) and him (Micromark’s attorney).⁶

Even if Morris had proven he acquired his \$500,000 promissory note and secured it in good faith, he still failed to show that the obligation was for a reasonably equivalent value. The \$500,000 note was nearly ten times the value of the services he had provided at the time the note was taken. The superior court rejected Morris’s argument that his note was intended as a line of credit for future fees, finding instead that it clouded title of the property for the full \$500,000 from the outset, and prevented satisfaction of other claims. Finally, Morris crafted the deed of trust so that it would remain in place until the conclusion of his future legal services *and* until he released it, thereby encumbering the property for an uncertain period of time and further hindering other creditors. Thus, having failed to show good faith and reasonable equivalent value, the court declared that the conveyances to Cheung and Morris were null and void.⁷

Morris appealed the superior court’s decision on his own behalf. He did not appeal on Micromark’s behalf because Cheung had admitted at trial that she created the encumbrances to

⁶ As the alter ego of Micromark, the court found that Cheung could not place a lien on her own property as a creditor to protect it from other creditors. She also intended to keep B Five from collecting on its judgment. Cheung “certainly failed to prove her good faith.”

⁷ Cheung also failed to prove she gave reasonably equivalent value for her note and deed. Since she was Micromark’s alter ego, it was impossible for her to be a legitimate creditor. Further, the court found that the loans were “questionable at best,” and even so, only \$98,763 was verifiable.

prevent B Five from obtaining the property. In March 2011, the court of appeal affirmed the superior court's decision. It rejected Morris's contention that his note and deed were merely devices to finance attorney fees, and instead summarized the case as one about "a lawyer who claims he is going to do a lot work in the future that will generate fees in the six figures and who was part and parcel, if not the mastermind, behind two fraudulent conveyances." We agree.

B. Culpability

1. Count One: Moral Turpitude, Dishonesty, Corruption (§ 6106)

The issue before us is whether the evidence establishes that Morris violated his ethical duties by creating the promissory notes and recording the deeds of trust to assist Cheung in hindering and delaying B Five's collection of its judgment. We conclude that it does. Morris's conduct exhibits his bad faith and dishonesty in violation of section 6106.

Morris sought to re-litigate the same issues in the hearing department that were rejected by the superior court and the court of appeal. He contends that his acts did not involve moral turpitude because he was only attempting to secure payment for his fees, and because he required Cheung to verify her loans before recording her deed of trust. Although the hearing judge accepted these arguments, we reject them. Morris recorded a deed for \$500,000, an amount that far exceeded the services he had provided and that clouded title for the full value of the property. We also find no merit to Morris's argument that the encumbrance was not actually for \$500,000 but only for the value of his legal services as they were rendered. His claim is contrary to the deed of trust filed in the recorder's office. The public record indicates the property was encumbered for \$500,000. Moreover, he continued to encumber the property for almost two years while he appealed the superior court's decision—*at a time he clearly knew Cheung's intent was to thwart her creditors and he was no longer representing Micromark's interest in the B Five lawsuit.*

In sum, Morris created obligations for Micromark and secured them with deeds of trust totaling \$703,000 when he knew Micromark was insolvent and its only asset was the Foothill Property, which he knew might be worth no more than \$500,000. He recorded the deeds shortly after he learned that B Five had obtained a default judgment for potentially \$1 million, and he made no effort to ascertain the actual judgment amount. Moreover, he knew the obligations and encumbrances were suspect because the notes and deeds of trust were out of all proportion to fees owed to him and there was insufficient documentation of the Cheung loans. The evidence surrounding the transfers establishes clear and convincing evidence that Morris's acts were designed to prevent B Five from collecting on its judgment. We find that such acts were shrouded in bad faith and dishonesty in violation of section 6106.

2. Count Two: Failure to Report a Civil Fraud Judgment (§ 6068, subd. (o)(2))

Morris was charged with violating section 6068, subdivision (o)(2), for failing to report to the State Bar “the entry of judgment against [him] in the fraudulent conveyance lawsuit.” The hearing judge found no culpability, and dismissed this count. We agree.

Section 6068, subdivision (o)(2), requires an attorney to report to the State Bar in writing within 30 days of the time the attorney has knowledge of “[t]he entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.” In 2003, the Legislature changed the language of the statute from “any civil” action for fraud to “a civil” action for fraud. (Stats. 2003, ch. 765, § 1.) The plain meaning of the phrase “a civil action for fraud” denotes a fraud cause of action. “Fraud is an intentional tort.” (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1999) 68 Cal.App.4th 445, 482.) The civil judgment in the fraudulent conveyance lawsuit is not a judgment against Morris in “a civil action for fraud” because no fraud cause of action was

brought against him. And more importantly, the superior court's decision made no finding that Morris had the intent to defraud. Thus, we affirm the hearing judge's dismissal of this charge.

II. AGGRAVATION AND MITIGATION

The offering party bears the burden of proof for aggravation and mitigation. The State Bar must establish aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)⁸ Morris has the same burden to prove mitigating circumstances. (Std. 1.2(e).) Since the hearing judge did not find Morris culpable of any charges, he made no aggravation or mitigation findings, but the parties introduced evidence of and argued aggravating and mitigating circumstances. Since we conduct independent review, we have made the following findings in aggravation and mitigation based on the completed record.

A. One Aggravating Factor

We find one aggravating factor—significant harm to B Five. In order to set aside the transfers, B Five had to retain an attorney to file the fraudulent conveyance action and to respond to Morris's appeal. B Five's president took out a home equity line of credit to pay the resulting approximately \$114,011 in fees. This is a significant aggravating factor.

During the disciplinary hearing, the State Bar argued that Morris's misconduct was also aggravated by multiple acts and bad faith. We decline to find these two additional factors. We have already considered the totality of Morris's bad faith misconduct in this one client matter in finding him culpable of moral turpitude, and thus do not find these factors in aggravation. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68 [where factual findings used to find culpability, improper to again consider them in aggravation].)

⁸ All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

B. Three Mitigating Factors

We find three mitigating factors: no prior record of discipline, cooperation with the State Bar, and good character. We assign substantial credit for Morris's 25 years of discipline-free practice before he committed his misconduct. (Std. 1.2(e)(i); *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [significant mitigation for over 10 years of discipline-free practice].)

Morris is also afforded credit for cooperating with the State Bar by entering into a partial stipulation of facts and admission of documents prior to trial. (Std. 1.2 (e)(v).) But we assign minimal weight to this factor since he stipulated to facts that were easily provable. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation accorded those who admit culpability as well as facts].)

Finally, Morris is entitled to significant credit for his good character as established by seven character witnesses and evidence of his community service. (Std. 1.2(e)(vi).) Morris presented the testimony of four witnesses and three declarations to establish his good character. The four witnesses consisted of two attorneys, a business owner, and a professional fiduciary who serves as a court-appointed trustee or conservator, and the declarations were by Morris's paralegal, a certified public accountant, and a legal secretary. The two attorneys knew Morris for 15 and 25 years. They each had knowledge of his misconduct, but regardless their opinion of him did not change. We give considerable consideration to attorney witnesses because they have a "strong interest in maintaining the honest administration of justice." (*In the Matter of Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 309, 319.) The character witnesses all stated that Morris is trustworthy and honest, and has high moral standards.

In addition, Morris has provided meaningful community service over many years. From 1986 to the present, he performed pro bono work for seniors four times a year through the San Fernando Bar Association. He is also a founding member of the Board of Economic Alliance of

the San Fernando Valley, where he was in charge of workforce preparedness and assisted with organizing a labor program. Since 2000, he has maintained a scholarship program at Crestview High School for boys without fathers. He was a founding member of the Picoima Federal Credit Union, and sat on the board from 2000 until 2007. This credit union offers bank services to low-income individuals who are unable to obtain such services except through check-cashing facilities. Since 2001, he has served as a director and secretary for the San Fernando Valley Small Business Financial Development Corporation, a nonprofit that assists low- to moderate-income individuals with developing businesses, obtaining loans, and workforce training. Since 2010, he has served as a settlement officer in the Van Nuys probate court where he mediates cases five times per year. Finally, he is a Cub Scout leader in Sherman Oaks and a children's football and baseball coach for the Van Nuys Sherman Oaks Park.

III. DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.3.) We balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) Our analysis begins with the standards. The Supreme Court has instructed that we should follow them “whenever possible” (*Id.* at p. 267, fn. 11), and give them great weight to promote “the consistent and uniform application of disciplinary measures” (*In re Silverton* (2005) 36 Cal.4th 81, 91-92, internal quotations and citation omitted).

The most relevant standard for Morris's misconduct is standard 2.3. This standard provides for actual suspension or disbarment for violations involving an act of moral turpitude, depending upon the extent of the harm to the victim, the magnitude of the act of misconduct, and

the degree to which it relates to the member's acts within the practice of law. (Std. 2.3.) Morris drafted and recorded encumbrances on Micromark's sole asset to prevent B Five from collecting on its judgment. B Five's costs increased when it had to file an action to void the transfers and defend against Morris's appeal. Morris had no legitimate basis for maintaining the encumbrances on the property, yet he maintained them while he pursued an appeal. Morris's misconduct was serious, significantly harmed B Five, and was directly related to his practice.

In light of the broad range of potential discipline for Morris's misconduct, we look to case law for further guidance. In cases of similar misconduct, the Supreme Court has suspended attorneys for 90 days and for three years. (See *Coppock v. State Bar* (1988) 44 Cal.3d 665, 687 (*Coppock*); *Townsend v. State Bar* (1948) 32 Cal.2d 592, 598 (*Townsend*)). In *Coppock*, our Supreme Court suspended an attorney for 90 days because he opened a client trust account (CTA) so his client could conceal funds from his creditors. Coppock relinquished control of the account and failed to supervise it for two years, allowing his client to use the account in a scheme to defraud. (*Coppock, supra*, 44 Cal.3d at p. 671.) The Court found that Coppock opened the account for a dishonest purpose, and his lack of knowledge that his client misused the account was a dereliction of duty. (*Id.* at pp. 680, 682.) The Court awarded minimal mitigation for the lack of a prior record, lack of harm to clients, and good character. (*Id.* at pp. 686-687.) Additional mitigation was given for cooperation with the State Bar and remorse, and there was no aggravation. (*Ibid.*)

We also look to *Townsend*, where the Supreme Court suspended an attorney for three years for advising his client to convey her property to her mother to prevent the client's creditor from recovering on a judgment. After the conveyance, Townsend took steps to conceal that the deed would be returned to him. (*Townsend, supra*, 32 Cal.2d at pp. 594-595.) The Court found no mitigating factors but two prior records of discipline seriously aggravated the misconduct.

(*Id.* at p. 597.) In the first prior, Townsend was suspended for one year for allowing his name to be used by an “ambulance chasing” adjustment agency. (*Ibid.*) In the second, he was suspended for six months for making false statements in a sworn declaration for his candidacy for a superior court judge. (*Ibid.*)

Morris’s misconduct falls between that in *Coppock* and *Townsend*. His misconduct was more serious than the attorney committed in *Coppock*. Although Coppock opened his CTA to help his client conceal funds from creditors, he himself was not involved in the scheme to defraud, and his misconduct involved gross negligence. Morris was actively involved in the plan to frustrate B Five’s collection of the judgment and he intentionally promoted the scheme to hinder collection for four years. Thus, a 90-day suspension is insufficient here. But a three-year suspension is too severe. Although the misconduct in this case is similar to that in *Townsend*, the attorney in that case received a three-year suspension due in large part to his prior record of two disciplines. Townsend also took steps to conceal his involvement. Morris has no prior discipline in 25 years of practice, along with additional mitigating factors. This lengthy period of discipline-free practice is significant and clearly distinguishes this case from *Townsend*. And although Morris’s legal positions are untenable, he did not attempt to conceal his actions. Thus, based on the facts and circumstances of this case, the standards, and relevant precedent, we find the appropriate level of discipline is a one-year suspension.

IV. RECOMMENDATION

For the foregoing reasons, we recommend that James Gregory Morris be suspended from the practice of law for two years, that execution of that suspension be stayed, and that Morris be placed on probation for two years with the following conditions:

1. He must be suspended from the practice of law for a minimum of the first year of the period of his probation.

2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.
4. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
5. He must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if he has complied with all conditions of probation, the two-year period of stayed suspension will be satisfied and that suspension will be terminated.

We further recommend that Morris be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to

provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

We also recommend that Morris be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Finally, we recommend that costs be awarded to the State Bar pursuant to section 6086.10, and are enforceable both as provided in section 6140.7 and as a money judgment.

REMKE, P. J.

WE CONCUR:

EPSTEIN, J.

PURCELL, J.