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**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

**IN BANK**

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

In the Matter of	)	Case No. 16-Q-13548
	)	
VICTOR JACOBOVITZ,	)	RECOMMENDATION ON
	)	RESIGNATION
A Member of the State Bar, No. 66297.	)	
_____	)	

Respondent Victor Jacobovitz has two prior records of discipline. On May 20, 2016, he filed a resignation with charges pending, and on July 19, 2016, the Office of the Chief Trial Counsel of the State Bar (OCTC) filed its report on the resignation, recommending that it be accepted.

OCTC, however, did not provide a sufficient explanation of its reasons for supporting the resignation given Jacobovitz's disciplinary history and present misconduct, which included misappropriating client funds and filing a false declaration. Accordingly, we ordered OCTC to provide a supplemental report specifying the reasons that accepting the resignation would not be inconsistent with the need to protect the public, the courts, and the legal profession, in light of respondent's disciplinary history and standard 1.8(b) of the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.<sup>1</sup> (Cal. Rules of Court, rule 9.21(c) & (d)(9).<sup>2</sup>)

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<sup>1</sup> Standard 1.8(b) provides for disbarment, under certain circumstances, where an attorney has two or more prior disciplines, unless "the most compelling mitigating circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct." All further references to standards are to this source.

<sup>2</sup> All further references to rules are to this source unless otherwise noted.

On September 12, 2016, OCTC filed its supplemental report. It acknowledged that standard 1.8(b) establishes disbarment as appropriate discipline for respondent's misconduct, but continued to support acceptance of the resignation based only on generalized rationale that would be present in most resignation cases, such as that Jacobovitz stipulated to his misconduct, resignation immediately removes him from the practice of law, and the public will be on notice of his wrongdoing. We ordered OCTC to provide a second supplemental report and, again, asked it to identify the reasons specific to respondent and his misconduct that weigh in favor of recommending acceptance of the resignation, such as taking the position that "the most compelling mitigating circumstances clearly predominate" (std. 1.8(b)).

On October 17, 2016, OCTC filed its second supplemental report and stated that the most compelling circumstances are not present, and further stated that "if this matter were brought as an original disciplinary proceeding, disbarment would be the appropriate sanction." (Original underlining.) Yet OCTC equivocated its position on the resignation and apparently misinterpreted our prior order: "If the State Bar Court so interprets Rule 9.21(d)(9) as disallowing or disfavoring resignations in instances where the discipline would ordinarily warrant disbarment, then [OCTC] would respectfully change its position and ask that the Review Department not recommend acceptance of Respondent's resignation." (Original underlining.) In fact, we do not so interpret rule 9.21(d)(9); rather, our order directed OCTC to identify reasons specific to *Jacobovitz* that weigh in favor of accepting the resignation in light of his misconduct and disciplinary history in the case before us.

Because OCTC did not articulate specific articulate reasons why Jacobovitz's resignation will protect the public, the courts, and the profession, and in light of the grounds set forth in rule 9.21(d), as detailed below, we recommend that the Supreme Court reject the resignation.

## I. BACKGROUND

Jacobovitz was admitted to practice law in California on December 18, 1975.

### A. First Record of Discipline

On September 4, 2014 (effective October 4, 2014), the Supreme Court ordered Jacobovitz suspended for one year, execution stayed, and placed on probation for two years subject to the conditions of probation, including an actual suspension for 30 days. (*In re Victor Jacobovitz on Discipline* (S218994), State Bar Court Case Nos. 12-O-12569 (12-O-14968; 12-O-18210); 13-O-11774 (13-O-13181).) Jacobovitz stipulated to misconduct occurring between August 2011 and May 2013. Specifically, he violated: (1) Business and Professions Code section 6106<sup>3</sup> for issuing, through gross negligence, 16 insufficient funds checks from his client trust account (CTA); (2) rule 3-110(A) of the Rules of Professional Conduct for failing to perform legal services competently; (3) rule 3-700(A)(2) of the Rules of Professional Conduct for withdrawing from employment without taking steps to avoid reasonably foreseeable prejudice to the rights of a client; (4) section 6068, subdivision (m), for failing to keep a client reasonably informed of significant developments; and (5) section 6068, subdivision (m), for failing to respond to status inquiries from a client. His misconduct was aggravated because it involved multiple acts and caused significant harm to a client. It was mitigated because Jacobovitz had practiced law for 36 years without discipline and entered into a stipulation of facts, law, and discipline.

### B. Second Record of Discipline

On June 19, 2015 (effective July 19, 2015), the Supreme Court ordered Jacobovitz suspended for two years, execution stayed, and placed on probation for three years subject to the conditions of probation, including an actual suspension for 90 days. (*In re Victor Jacobovitz on*

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<sup>3</sup> All further references to sections are to this source unless noted.

*Discipline* (S225505), State Bar Court Case Nos. 14-O-03330 (14-O-03830).) Jacobovitz stipulated to violating section 6106 for issuing, through gross negligence, four insufficient funds checks from his CTA between April 2014 and June 2014. His misconduct was aggravated by his prior record of discipline and his indifference. He again received mitigation for entering into a stipulation of facts, law, and discipline.

**C. Pending Charges**

Charges are currently pending against Jacobovitz. On February 18, 2016, OCTC filed a Notice of Disciplinary Charges in State Bar Court Case Nos. 15-O-10548 and 15-O-12276. In addition, there are two unfiled disciplinary matters (Case Nos. 15-O-15745, 16-O-11000).

On June 9, 2016, the parties reached a stipulation as to facts and conclusions of law on all four pending matters, summarized as follows: Jacobovitz: commingled funds in his CTA on June 19 and 26, 2014, in violation of rule 4-100(A) of the Rules of Professional Conduct (15-O-10548); misappropriated \$1,800 in client funds through gross negligence, in violation of section 6106 and committed two violations of rule 4-100(A) of the Rules of Professional Conduct (15-O-12276); failed to keep a client reasonably informed of significant developments, in violation of section 6068, subdivision (m), and knowingly filed a false rule 9.20(c) declaration, in violation of section 6106 (15-O-15745); and (4) commingled funds in his CTA (16-O-11000).

The parties also stipulated that Jacobovitz twice attended and passed trust accounting school, as required by his earlier disciplines. The parties did not stipulate to *any* mitigating or aggravating circumstances.

**II. CONSIDERATION OF THE GROUNDS SET FORTH IN RULE 9.21(d)**

We have considered Jacobovitz's resignation under the grounds set forth in rule 9.21(d). We summarize below the relevant information for each ground:

**1. Whether the preservation of testimony is complete.**

OCTC reports that preservation of testimony is complete due to the stipulation.

**2. Whether after transfer to inactive status, Jacobovitz has practiced law or has advertised or held himself out as entitled to practice law.**

OCTC reports that it has no evidence that Jacobovitz has practiced law or held himself out as entitled to practice law since he tendered his resignation or since February 22, 2016, when he was placed on administrative leave for failure to timely take and pass the Multistate Professional Responsibility Examination, as required by his first discipline.

**3. Whether Jacobovitz performed the acts specified in rule 9.20(a)-(b).**

Jacobovitz filed a rule 9.20 compliance declaration stating that he had no clients, no client papers or other property to return, no unearned fees, and no pending client matters. Thus, OCTC attests that he was required to perform no acts under rule 9.20(a)-(b).

**4. Whether Jacobovitz provided proof of compliance with rule 9.20(c).**

Jacobovitz filed a rule 9.20 compliance declaration in this case on July 5, 2016.

**5. Whether the Supreme Court has filed a disbarment order.**

The Supreme Court has not filed a disbarment order.

**6. Whether the State Bar Court has filed a decision recommending disbarment.**

The State Bar Court has not filed a decision recommending Jacobovitz's disbarment.

**7. Whether Jacobovitz previously resigned or has been disbarred and reinstated to the practice of law.**

Jacobovitz has not previously resigned or been disbarred.

**8. Whether Jacobovitz entered into a stipulation with OCTC as to facts and conclusions of law regarding pending disciplinary matters.**

Jacobovitz and OCTC have entered into a stipulation as to facts and conclusions of law regarding pending disciplinary matters.

**9. Whether accepting Jacobovitz's resignation will reasonably be inconsistent with the need to protect the public, the courts, or the legal profession.**

As stated above, OCTC has filed three reports in this matter. We twice directed it to identify the reasons, specific to respondent and his misconduct, that weigh in favor of recommending acceptance. We did not receive such specificity.

Instead, OCTC provided a generalized rationale in support of its recommendation. For example, in its first report, OCTC: (1) noted that no Client Security Fund (CSF) claims were pending and that CSF had not paid any claims; (2) stated that under the circumstances "there is no reason to believe that public confidence . . . will be undermined in any way by the acceptance" of the resignation; but (3) did not address the import of Jacobovitz's disciplinary history or present misconduct.

Similarly, in its supplemental report, OCTC stated: (1) that the public is adequately protected because it has full notice of the misconduct; (2) Jacobovitz would need to show rehabilitation from all of the stipulated misconduct in order to be readmitted to the practice of law; (3) that other jurisdictions will be on notice about his discipline; (4) Jacobovitz recognizes his misconduct is "unworthy of the profession;" (5) a resignation, as opposed to a trial, results in Jacobovitz being placed immediately on inactive status; and (6) little would be gained by calling him a disbarred rather than resigned attorney.

Given a third chance to provide specific reasons, OCTC acknowledged that disbarment would be appropriate under standard 1.8(b), and then took the position that this court was interpreting rule 9.21(d)(9) as generally "disallowing or disfavoring resignations in instances where the discipline would ordinarily warrant disbarment." To be clear, we do not interpret

rule 9.21(d)(9) to mean that *all* cases that could result in disbarment or could likely result in disbarment will be rejected as resignations as a matter of course. But we do interpret the rule to require OCTC to articulate reasons, specific to the member and the member's misconduct, which explain why a resignation would protect the public, the courts, and the profession where disbarment is the presumptive discipline.

OCTC has not done so here. Thus, we conclude that acceptance of the resignation would be inconsistent with the need to protect the public, the courts, and the legal profession.

Jacobovitz has two prior records of discipline; the related misconduct occurred from August 2011 to June 2014 and included 20 instances of gross negligent moral turpitude for issuing NSF checks and the failures to perform with competence and communicate with a client. In the pending cases, he has stipulated to misconduct in four matters—most seriously, he misappropriated \$1,800 in client funds and filed a false rule 9.20(c) compliance declaration. The parties did not stipulate to *any* mitigating factors.

Under these circumstances, we find that Jacobovitz should not be allowed the benefit of resigning because it would undermine public confidence in the disciplinary system and the legal profession.

### III. RECOMMENDATION

We recommend that the Supreme Court decline to accept the resignation of Victor Jacobovitz, State Bar number 66297.

**PURCELL**

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Presiding Judge

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 23, 2016, I deposited a true copy of the following document(s):

### RECOMMENDATION ON RESIGNATION FILED NOVEMBER 23, 2016

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

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

**TIMOTHY V. MILNER  
3055 WILSHIRE BLVD STE 805  
LOS ANGELES, CA 90010**

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

**DREW D. MASSEY, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 23, 2016.



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**Jasmine Guladzyan**  
Case Administrator  
State Bar Court