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<b>State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION</b>		
<p>Counsel for the State Bar</p> <p><b>Terese Laubscher</b> Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1239</p> <p>Bar # 272207</p>	<p>Case Number(s): <b>18-J-11755</b></p>	<p>For Court use only</p> <p style="text-align: center; font-size: 2em;"><b>PUBLIC MATTER</b></p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center;">✓</p> <p style="text-align: center; font-size: 1.2em;"><b>JAN 17 2019</b></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p><b>Carole J. Buckner</b> Procopio, Cory, Hargreaves &amp; Savitch LLP 525 B St, Ste 2200 San Diego, CA 92101-4474 (619) 906-5614</p> <p>Bar # 116267</p>	<p style="text-align: center;">kwiktag® 241 071 781</p> 	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>
<p>In the Matter of: <b>MARK REMAN HAMILTON</b></p> <p>Bar # 176374</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 5, 1995**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **17** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. It is recommended that (check one option only):

Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

Costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.

Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."

Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline:**
  - (a)  State Bar Court case # of prior case:
  - (b)  Date prior discipline effective:
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline:
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

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- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See attachment at page 13.**
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. **See attachment at page 13.**
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.

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- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No Prior Record of Discipline, see attachment at page 14.**  
**Extreme Emotional and Physical Difficulties, see attachment at page 14.**  
**Extraordinary Good Character, see attachment at page 14.**  
**Prefiling Stipulation, see attachment at page 14.**

**D. Recommended Discipline:**

- (1)  **Actual Suspension:**

Respondent is suspended from the practice of law for **two (2) years**, the execution of that suspension is stayed, and Respondent is placed on probation for **two (2) years** with the following conditions.

- Respondent must be suspended from the practice of law for the first **six (6) months** of the period of Respondent's probation.

- (2)  **Actual Suspension "And Until" Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation and until Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

- (3)  **Actual Suspension "And Until" Restitution (Single Payee) and Rehabilitation:**

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Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent makes restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(4)  **Actual Suspension "And Until" Restitution (Multiple Payees) and Rehabilitation:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum of the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until both of the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. Respondent provides proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(5)  **Actual Suspension "And Until" Restitution (Single Payee) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:

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- a. Respondent makes restitution to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ plus 10 percent interest per year from \_\_\_\_\_ (or reimburses the Client Security Fund to the extent of any payment from the Fund to such payee, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and,
- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(6)  **Actual Suspension "And Until" Restitution (Multiple Payees) with Conditional Std. 1.2(c)(1) Requirement:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent must be suspended from the practice of law for a minimum for the first \_\_\_\_\_ of Respondent's probation, and Respondent will remain suspended until the following requirements are satisfied:
  - a. Respondent must make restitution, including the principal amount plus 10 percent interest per year (and furnish satisfactory proof of such restitution to the Office of Probation), to each of the following payees (or reimburse the Client Security Fund to the extent of any payment from the Fund to such payee in accordance with Business and Professions Code section 6140.5):

<i>Payee</i>	<i>Principal Amount</i>	<i>Interest Accrues From</i>

- b. If Respondent remains suspended for two years or longer, Respondent must provide proof to the State Bar Court of Respondent's rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

(7)  **Actual Suspension with Credit for Interim Suspension:**

Respondent is suspended from the practice of law for \_\_\_\_\_, the execution of that suspension is stayed, and Respondent is placed on probation for \_\_\_\_\_ with the following conditions.

- Respondent is suspended from the practice of law for the first \_\_\_\_\_ of probation (with credit given for the period of interim suspension which commenced on \_\_\_\_\_).

**E. Additional Conditions of Probation:**

- (1)  **Review Rules of Professional Conduct:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional

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Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

- (2)  **Comply with State Bar Act, Rules of Professional Conduct, and Probation Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's probation.
- (3)  **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR, within ten (10) days after such change, in the manner required by that office.
- (4)  **Meet and Cooperate with Office of Probation:** Within 15 days after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 30 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the probation period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5)  **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's probation period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with probation conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6)  **Quarterly and Final Reports:**
- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the period of probation. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the probation period and no later than the last day of the probation period.
- b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
- c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as

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Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

**d. Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after either the period of probation or the period of Respondent's actual suspension has ended, whichever is longer. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

- (7)  **State Bar Ethics School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar 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 Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Ethics School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (8)  **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9)  **State Bar Client Trust Accounting School:** Within one year after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting 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 Respondent will not receive MCLE credit for attending this session. If Respondent provides satisfactory evidence of completion of the Client Trust Accounting School after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (10)  **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete \_\_\_\_\_ hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the Ethics School or the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (11)  **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the period of probation, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.



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- (12)  **Minimum Continuing Legal Education (MCLE):** Within \_\_\_\_\_ after the effective date of the Supreme Court order imposing discipline in this matter, Respondent must complete \_\_\_\_\_ hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE \_\_\_\_\_ and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity. If Respondent provides satisfactory evidence of completion of the hours of legal education described above, completed after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this condition.
- (13)  **Other:** Respondent must also comply with the following additional conditions of probation: \_\_\_\_\_
- (14)  **Proof of Compliance with Rule 9.20 Obligations:** Respondent is directed to maintain, for a minimum of one year after commencement of probation, proof of compliance with the Supreme Court's order that Respondent comply with the requirements of California Rules of Court, rule 9.20, subdivisions (a) and (c). Such proof must include: the names and addresses of all individuals and entities to whom Respondent sent notification pursuant to rule 9.20; a copy of each notification letter sent to each recipient; the original receipt or postal authority tracking document for each notification sent; the originals of all returned receipts and notifications of non-delivery; and a copy of the completed compliance affidavit filed by Respondent with the State Bar Court. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (15)  **The following conditions are attached hereto and incorporated:**
- Financial Conditions  Medical Conditions
- Substance Abuse Conditions

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 probation period, if Respondent has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

#### **F. Other Requirements Negotiated by the Parties (Not Probation Conditions):**

- (1)  **Multistate Professional Responsibility Examination Within One Year or During Period of Actual Suspension:** Respondent must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order imposing discipline in this matter or during the period of Respondent's actual suspension, whichever is longer, and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).) If Respondent provides satisfactory evidence of the taking and passage of the above examination after the date of this stipulation but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward Respondent's duty to comply with this requirement.
- (2)  **Multistate Professional Responsibility Examination Requirement Not Recommended:** It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination because \_\_\_\_\_
- (3)  **California Rules of Court, Rule 9.20:** Respondent must comply with the requirements of California Rules of Court, rule 9.20, and 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 imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

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For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*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, 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).)

- (4)  **California Rules of Court, Rule 9.20 – Conditional Requirement:** If Respondent remains suspended for 90 days or longer, Respondent must comply with the requirements of California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*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, 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).)

- (5)  **California Rules of Court, Rule 9.20, Requirement Not Recommended:** It is not recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, because
- (6)  **Other Requirements:** It is further recommended that Respondent be ordered to comply with the following additional requirements:

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: MARK REMAN HAMILTON

CASE NUMBER: 18-J-11755

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 18-J-11755 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On June 5, 1995, respondent was admitted to the practice of law in the State of California.
2. On April 4, 2017, the United States Bankruptcy Court, Central District of California, Santa Ana Division issued to respondent its Findings of Fact and Conclusions of Law in Support of the Granting of the U.S. Trustee's Motion for Order to Show Cause Why Attorney Mark R. Hamilton Should Not Be Referred to the Disciplinary Panel of the Central District of California in case number 8:16-bk-13472-ES. Respondent was found to have violated the following rules: Federal Rules of Bankruptcy Procedure Rule 9011(b) [Misrepresentation to the Court]; California Rules of Professional Conduct, rule 3-210 [Advising Violation of Law], and rule 5-200 [Seeking to Mislead a Judge].
3. On December 5, 2017, the Disciplinary Panel of the Central District of California issued to respondent its Order and Memorandum Decision Imposing Two Year Minimum Suspension with Conditions for Reinstatement in case number 2:17-mp-00108-PC. Thereafter, the Order became final.
4. The disciplinary proceedings in the United States Bankruptcy Court, Central District of California provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. Respondent was the attorney of record for the debtor in United States Bankruptcy Court, Central District of California, case number 8:16-bk-13472-ES.
6. On August 17, 2016, respondent filed a Verification of Master Mailing List of Creditors in which he and debtor each certified "under penalty of perjury" that the attached creditor matrix "is complete, correct, and consistent with the Debtor's schedules" and further that "I/we assume all responsibility for errors and omissions."
7. On September 28, 2016, the debtor's landlord filed a Motion for Relief from the Automatic Stay to be able to complete an unlawful detainer proceeding against the debtor. The debtor's landlord's motion noted that the debtor had omitted the landlord from the creditor matrix filed on August 17, 2016.

8. On October 11, 2016, respondent filed an amended creditor matrix adding the debtor's landlord, and an opposition to the landlord's Motion for Relief from the Automatic Stay. In the opposition, respondent submitted a declaration in which he stated under penalty of perjury that the landlord had been intentionally omitted from the matrix:

Debtor did not intend that her landlord should have any knowledge of her bankruptcy, which is the reason she left his name off the creditor list. Now that the landlord has found out about the bankruptcy, Debtor wishes to reaffirm her executory contract with the landlord.

The opposition included the debtor's declaration made under penalty of perjury which stated:

For fear of economic bias, I did not intend that my landlord should have any knowledge of this bankruptcy, which is the reason I left his name off the creditor list. Now that the landlord/owner has found out about the bankruptcy, I wish to reaffirm her [sic] executory contract with her [sic] landlord.

9. On October 20, 2016, a hearing on the Motion for Relief from the Automatic Stay was held before Judge Erithe Smith. On the record, respondent admitted that he knowingly filed the creditor matrix without including the landlord on the list of creditors. Respondent represented to the court that the failure to include the landlord on the list of creditors was his error and not the fault of the debtor. When asked by the court about the acknowledgement of omission by the debtor in her declaration, respondent responded, "I wrote that declaration for my client and it was in error." When asked by the court if he had filed a false declaration without making effort to correct it, respondent replied, "I apologize. I throw myself on the mercy of the court."

10. During the October 20, 2016 hearing, respondent stated that he believed omitting the landlord from the creditor list would be "inconsequential pursuant to what I read on the internet." When the court asked respondent to further explain what he had read on the internet, respondent stated, "I don't have the software to produce the forms. I purchased a [software] product designed for laypersons and it said not to answer the question. It was very confusing to me but I followed what it said." The court stated to respondent, "I have to say there are few times that I am completely speechless. I'm looking at a declaration that is very specific about an intent to leave the landlord off the list and that cannot be due to any software issues."

11. On February 14, 2017, the United States Trustee filed a motion seeking an Order to Show Cause and an Order referring respondent to the Disciplinary Panel of the Central District of California. Respondent did not file a response to the motion.

12. On March 16, 2017, a hearing on the Motion Seeking an Order to Show Cause was held. Respondent did not appear at the hearing.

13. On April 4, 2017, the court issued its written Findings of Fact and Conclusions of Law, granted the U.S. Trustee's motion, and referred the matter to the Disciplinary Panel of the Central District of California.

14. On May 8, 2017, Disciplinary Panel of the Central District of California began its disciplinary proceeding against respondent in case number 2:17-mp-00108-PC.

15. On September 1, 2017, respondent filed a memorandum stating that his error in omitting the debtor's landlord from the creditor's matrix was attributable to several situations which impaired his judgment. Respondent stated that the debtor was his girlfriend and that he suffered from "multiple medical and psychological issues" which respondent did not specify.

16. On October 2, 2017, the Disciplinary Panel held its hearing, at which respondent was present with counsel, along with the U.S. Trustee's attorneys, and a witness, the attorney for the debtor's landlord. Respondent's counsel affirmed to the panel that respondent was not disputing the findings of facts and conclusions of law made by Judge Smith on April 4, 2017. Respondent testified to possible mitigating factors, including the psychological and medical conditions which he claimed impaired his judgement.

17. On December 5, 2017, the Disciplinary Panel issued its Memorandum Decision concluding that respondent must be suspended from the practice of law in the court for two years, and thereafter he may apply for reinstatement. In addition, before being reinstated, respondent must present admissible evidence of (a) rehabilitation from the psychological and physical impairments that allegedly have impaired his judgment, or any treatments or medications that are sufficient to mitigate or counteract the effects of those impairments on his judgment, and (b) that he has completed not less than three hours of continuing legal education on the topic of ethics, plus not less than six hours on the topic of bankruptcy. The court denied the U.S. Trustee's motion to award the debtor's landlord attorney fees because the court found that the landlord would have incurred the fees spent seeking relief from the stay whether it had been timely notified of the bankruptcy or not.

#### CONCLUSIONS OF LAW:

18. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in United States Bankruptcy Court, Central District of California warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's misconduct in the U.S. Bankruptcy Court, Central District of California, involves making multiple intentional misrepresentations to the court over a two month period of time, including the filing of a false creditor matrix and the filing of two false declarations. Respondent's multiple acts of misconduct are an aggravating circumstance.

**Significant Harm to Client, Public or Administration of Justice (Std. 1.5(j)):** In the U.S. Bankruptcy Court, Central District of California, respondent filed a creditor matrix which intentionally excluded the debtor's landlord, and made no attempt to correct the misrepresentation until after the landlord discovered the bankruptcy and filed a Motion for Relief from Stay. Thereafter, respondent filed two additional declarations with the court which respondent later admitted on the record were false. Respondent's actions mislead the court, the U.S. Trustee, the debtor's landlord, and undermined public confidence in the legal profession. Once respondent's misrepresentations came to light, the court had to expend further judicial resources in issuing its order to show cause and referral to the disciplinary panel.

## MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline:** On June 5, 1995, the State Bar of California admitted respondent to the practice of law in California. Respondent has no record of discipline prior to this matter. At the time of the misconduct, respondent had practiced law in California for twenty-one years without discipline, which is worth significant weight in mitigation. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's ten years of discipline-free practice warranted significant weight in mitigation].)

**Extreme Emotional and Physical Difficulties:** In 1980, respondent injured his back while weight training and was diagnosed with "military posture," a condition which made his spine more susceptible to serious injury. Respondent was involved in car accidents which resulted in injuries in 1986, 1987, 1992, 1993, 1994, and 2002. Respondent was diagnosed with post-traumatic stress disorder in 2006 following a divorce. In October 2017, during respondent's disciplinary panel hearing in the United States Bankruptcy Court, respondent sought treatment from Dr. Gregory Wolf, M.D. for his conditions and began a multimodal course of therapy. In November 2018, Dr. Wolf reported that respondent's conditions have stabilized, that his judgment is no longer impaired, and that further treatment is not necessary. At the time of the misconduct, respondent suffered from post-traumatic stress disorder and severe back pain caused by his spinal injuries. According to Dr. Wolf, these conditions impacted respondent's mood stability and decision making. Dr. Wolf reports that respondent is now clear headed and stable. (*In the Matter of Broderick* (Review Dept. 1994), 3 Cal. State Bar Ct. Rptr. 138, 150 [emotional difficulties that cause misconduct warrant mitigation if the attorney no longer suffers from the difficulty].)

**Extraordinary Good Character:** Fourteen character references attested to respondent's good character. Twelve of the character references have knowledge of the full extent of the underlying misconduct. The character references are professional colleagues, personal friends, and family members of respondent. The character references have known respondent an extended period of time ranging from 5 to 55 years. Ten of the references have known respondent over 10 years. The references attest to respondent's good moral character, integrity, and consistent willingness to help others. (*In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [three witnesses accorded significant weight in mitigation due to their observation of the attorney's daily conduct and mode of living]).

**Prefiling Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaitth* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

## AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, the U.S. Bankruptcy Court, Central District of California found respondent culpable of professional misconduct in the court, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent’s misconduct in the U.S. Bankruptcy Court, Central District of California demonstrates violations of Business and Professions Code sections 6068(d) and 6106; and Rules of Professional Conduct, former rule 3-210.

Standard 1.7(a) requires that where a respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanctions applicable are found in Standard 2.11 and 2.12(a). Standard 2.11, which is applicable to respondent’s violation of Business and Professions Code section 6106, provides:

Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member’s practice of law.

Standard 2.12(a), which is applicable to respondent’s violation of Business and Professions Code section 6068(d), provides:

Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or the duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).

In the U.S. Bankruptcy Court, Central District of California, respondent filed a creditor matrix which intentionally excluded the debtor’s landlord, and made no attempt to correct the misrepresentation until after the landlord discovered the bankruptcy and filed a Motion for Relief from Stay. Thereafter, respondent filed two additional declarations with the court which respondent later admitted on the record

were false. Respondent's actions mislead the court, the U.S. Trustee, the debtor's landlord, and undermined public confidence in the legal profession.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent committed multiple violations and harmed the administration of justice. Respondent has been afforded mitigation for his twenty-one years of discipline free practice, extraordinary good character, extreme physical and emotional difficulties, and entering into a prefiling stipulation. Given the balance of these factors, a six month period of actual suspension is appropriate.

In *Maltaman v. State Bar* (1987) 43 Cal. 3d 924, the California Supreme Court imposed a one year period of actual suspension to continue until the attorney passes the Multi-State Professional Responsibility Examination where an attorney willfully disobeyed court orders and sought advantage for his client by attempting to mislead a judicial officer. The court found no factors in mitigation and found that the attorney's conduct was aggravated by his lack of candor and insight.

Here, respondent repeatedly submitted pleadings to the court which contained deliberate misrepresentations, and in so doing, harmed the administration of justice. Unlike the attorney in *Maltaman*, respondent is being credited with mitigation for his twenty-one years of discipline free practice, good character, emotional and physical difficulties, and entering into a prefiling stipulation. Accordingly, a six month period of actual suspension is adequate.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of December 17, 2018, the discipline costs in this matter are \$2,585. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

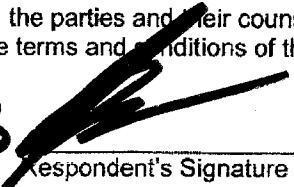


(Do not write above this line.)

In the Matter of: MARK REMAN HAMILTON	Case Number(s): 18-J-11755
--	-------------------------------

**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

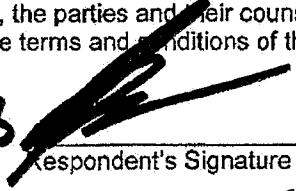
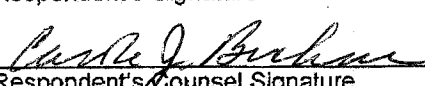
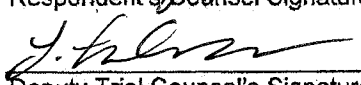
<u>12/28/18</u>		Mark R. Hamilton
Date	Respondent's Signature	Print Name
_____	_____	Carole J. Buckner
Date	Respondent's Counsel Signature	Print Name
_____	_____	Terese Laubscher
Date	Deputy Trial Counsel's Signature	Print Name

(Do not write above this line.)

In the Matter of: MARK REMAN HAMILTON	Case Number(s): 18-J-11755
--	-------------------------------

**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>12/28/18</u> Date	 Respondent's Signature	<u>Mark R. Hamilton</u> Print Name
<u>12/28/18</u> Date	 Respondent's Counsel Signature	<u>Carole J. Buckner</u> Print Name
<u>1-9-19</u> Date	 Deputy Trial Counsel's Signature	<u>Terese Laubscher</u> Print Name

(Do not write above this line.)

In the Matter of: MARK REMAN HAMILTON	Case Number(s): 18-J-11755
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### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

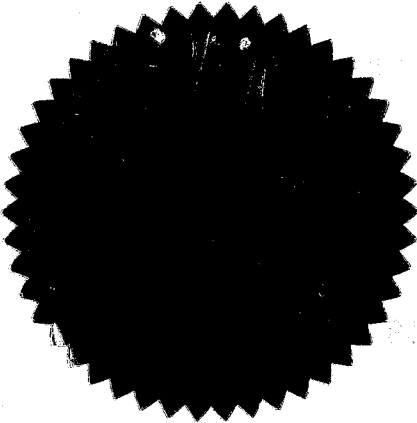
1. On page 1 of the Stipulation, at paragraph A.(3), line 3, "17" is deleted, and in its place is inserted "18."
2. The second page numbered "17" is renumbered "18."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after the filed date of the Supreme Court order. (See Cal. Rules of Court, rule 9.18(a).)**

Date January 17, 2019

Rebecca Meyer Rosenberg  
REBECCA MEYER ROSENBERG, JUDGE PRO TEM  
State Bar Court





**UNITED STATES BANKRUPTCY COURT**  
**Central District of California**

I hereby attest and certify that on 1-30-18 the attached reproduction(s),  
containing 3 pages, is a full, true and correct copy of the complete document  
entitled: Order Imposing Two Year Minimum Suspension  
With Conditions for Reinstatement

Case #: 2:17-MP-00108-PC Doc #: 24

which includes:  Exhibits  Attachments

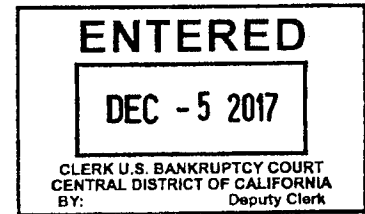
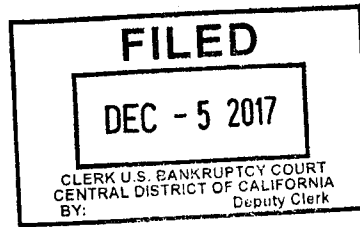
on file in my office and in my legal custody at the marked location:

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> 255 E. Temple Street, Suite 940<br>Los Angeles, CA 90012 | <input type="checkbox"/> 3420 Twelfth Street, Suite 125<br>Riverside, CA 92501-3819 |
| <input type="checkbox"/> 411 West 4th Street, Suite 2074<br>Santa Ana, CA 92701-4593         | <input type="checkbox"/> 1415 State Street<br>Santa Barbara, CA 93101-2511          |
| <input type="checkbox"/> 21041 Burbank Boulevard<br>Woodland Hills, CA 91367                 |   |

**KATHLEEN J. CAMPBELL**  
Clerk of Court

By: K. Campbell  
Deputy Clerk

**THIS CERTIFICATION IS VALID ONLY WITH THE  
UNITED STATES BANKRUPTCY COURT SEAL.**



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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

12 In re:  
13 The Disciplinary Proceeding of  
14 MARK R. HAMILTON

Case No: 2:17-mp-00108-PC

**ORDER IMPOSING TWO YEAR MINIMUM  
SUSPENSION, WITH CONDITIONS FOR  
REINSTATEMENT**

Disciplinary hearing:

Date: October 2, 2017

Time: 10:00 a.m.

Place: 255 E. Temple St. Rm. 1645  
Los Angeles, CA 90012

15  
16  
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18  
19 For the reasons set forth in the accompanying Memorandum Decision, it is  
20 hereby

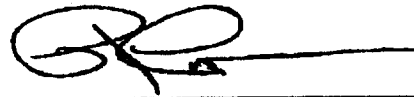
21 ORDERED that attorney Mark R. Hamilton, Esq. is suspended from admission to  
22 appear before any judge of this Bankruptcy Court for the Central District of California for  
23 a period of not less than two years from the date of entry of this order; and it is further

24 ORDERED that thereafter Mr. Hamilton may apply to the Chief Judge of this  
25 Bankruptcy Court for reinstatement, pursuant to the procedures set forth below and in  
26 Fourth Amended General Order 96-05 (as it may be further amended from time to time);  
27 and it is further  
28

1           ORDERED that to be eligible for reinstatement Mr. Hamilton must present  
2 admissible evidence of (a) rehabilitation from the psychological and physical  
3 impairments that allegedly have impaired his judgment as described in the  
4 accompanying Memorandum Decision, or any treatments or medications that are  
5 sufficient to mitigate or counteract the effects of those impairments on his judgment, and  
6 (b) that he has completed not less than three hours of continuing legal education on the  
7 topic of ethics, plus not less than six hours on the topic of bankruptcy; and it is further

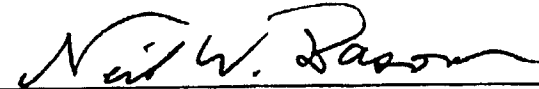
8           ORDERED that the request of the Office of the United States Trustee to award  
9 \$800 in attorney fees to Ikram Shah and Ikram Shah and Fauzia Shah Trustees Of The  
10 Shah Family Trust Dated August 15, 1996 (collectively, "Landlord") is hereby DENIED.

11  
12  
13 DATED: 12/05/2017



Peter H. Carroll, Presiding  
United States Bankruptcy Judge

14  
15  
16  
17 DATED: 12/05/2017



Neil W. Bason  
United States Bankruptcy Judge

18  
19  
20  
21 DATED: 12/05/2017



Scott H. Yun  
United States Bankruptcy Judge

22  
23  
24  
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27  
28

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled **ORDER IMPOSING TWO YEAR MINIMUM SUSPENSION, WITH CONDITIONS FOR REINSTATEMENT** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of December 5, 2017, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

**Frank Cadigan, Esq.** frank.cadigan@usdoj.gov

**Ron Maroko, Esq.** ron.maroko@usdoj.gov

William.Smelko@procopio.com, Kristina.terlaga@procopio.com;calendaring@procopio.com

**United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

Service information continued

on attached page

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

The State Bar of California  
Office of the Chief Trial Counsel  
Intake Department  
845 South Figueroa St.  
Los Angeles, CA 90017-2515

The State Bar of California

Elisabeth Mary Ziesmer  
8632 Orange Ave  
Orange, CA 92865

Debtor

Javier H Castillo, Esq.  
Castillo Law Firm  
145 E. Rowland St., Ste. A  
Covina, CA 91723

Attorney for Debtor

### **III. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR**

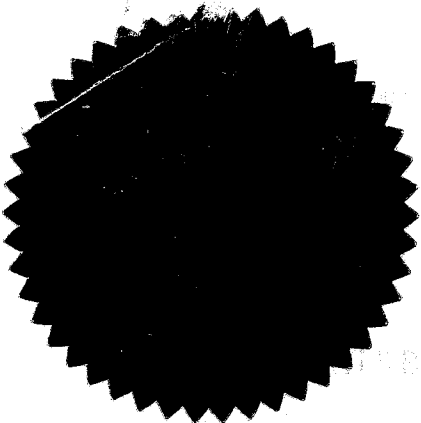
#### **EMAIL:**

##### **Overnight Mail:**

Mark R. Hamilton, Esq.  
3024 E Chapman Ave #322  
Orange, CA 92869

Carole J. Buckner, Esq.  
Procopio, Cory, Hargreaves & Savitch LLP  
525 B Street, Suite 2200  
San Diego, CA 92101





**UNITED STATES BANKRUPTCY COURT**  
**Central District of California**

I hereby attest and certify that on 1-30-18 the attached reproduction(s),  
containing 19 pages, is a full, true and correct copy of the complete document  
entitled: Memorandum Decision Imposing Two Year Minimum  
Suspension, with Conditions For Reinstatement

Case #: 2:17-MJ-00108-PC Doc #: 23

which includes:  Exhibits  Attachments

on file in my office and in my legal custody at the marked location:

255 E. Temple Street, Suite 940  
Los Angeles, CA 90012

3420 Twelfth Street, Suite 125  
Riverside, CA 92501-3819

411 West 4th Street, Suite 2074  
Santa Ana, CA 92701-4593

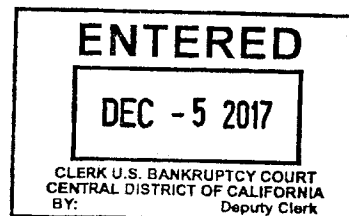
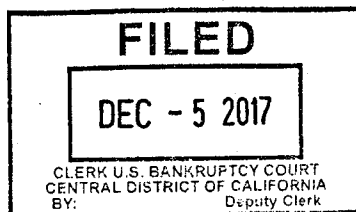
1415 State Street  
Santa Barbara, CA 93101-2511

21041 Burbank Boulevard  
Woodland Hills, CA 91367

**KATHLEEN J. CAMPBELL**  
Clerk of Court

By: K. Campbell  
Deputy Clerk

**THIS CERTIFICATION IS VALID ONLY WITH THE**  
**UNITED STATES BANKRUPTCY COURT SEAL.**



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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

12 In re:  
13 The Disciplinary Proceeding of  
14 MARK R. HAMILTON

Case No: 2:17-mp-00108-PC

**MEMORANDUM DECISION IMPOSING TWO  
YEAR MINIMUM SUSPENSION, WITH  
CONDITIONS FOR REINSTATEMENT**

Disciplinary hearing:

15 Date: October 2, 2017  
16 Time: 10:00 a.m.  
17 Place: 255 E. Temple St. Rm. 1645  
Los Angeles, CA 90012

18  
19 Attorney Mark R. Hamilton, Esq. was the attorney of record in the bankruptcy  
20 case of Elisabeth Mary Ziesmer ("Debtor") (Case No. 8:16-bk-13472-ES). In that case  
21 Mr. Hamilton (1) executed a creditor matrix that omitted Debtor's landlord; (2) executed  
22 his own declaration stating that the landlord had been intentionally omitted so as to hide  
23 the bankruptcy case from it; (3) prepared and filed Debtor's nearly identical declaration;  
24 and (4) at a subsequent hearing, asserted that these things were merely his innocent  
25 error – apparently because he believed, based on unspecified advice from "the internet"  
26 and/or unspecified bankruptcy preparation software, that omitting a creditor would be  
27 "inconsequential."  
28

1 When the judge presiding over the *Ziesmer* case raised concerns about Mr.  
2 Hamilton's submission of these false declarations – and pointed out that he had failed to  
3 correct those falsehoods until he was questioned about them by the judge – he did not  
4 address those concerns. Instead he made several generic apologies without  
5 acknowledging or appearing to recognize what he had actually done wrong.

6 Before this disciplinary panel Mr. Hamilton still has not squarely acknowledged  
7 his wrongdoing, let alone provided any assurance that he will avoid such conduct in  
8 future. We conclude that he must be suspended from practice before this Bankruptcy  
9 Court for a period of not less than two years, at which time he may petition for  
10 reinstatement, subject to conditions specified below and in the accompanying order  
11 implementing this Memorandum Decision.

#### 12 **1. BACKGROUND<sup>1</sup>**

13 On August 17, 2016 Mr. Hamilton filed a Verification Of Master Mailing List Of  
14 Creditors (case dkt. 1, at PDF pp. 8-11) in which he and Debtor each certify “under  
15 penalty of perjury” that the attached master mailing list of creditors (the “Creditor  
16 Matrix”) “is complete, correct, and consistent with the Debtor’s schedules” and further  
17 stating that “I/we assume all responsibility for errors and omissions.” In fact, the  
18 Creditor Matrix omitted Debtor’s landlord, Ikram Shah and Ikram Shah and Fauzia Shah  
19 Trustees Of The Shah Family Trust Dated August 15, 1996 (collectively, “Landlord”).

20 On September 28, 2016 Landlord, having found out about the bankruptcy case,  
21 filed a motion for relief from the automatic stay (§ 362(d)) to be able to complete an  
22 unlawful detainer proceeding against Debtor (the “R/S Motion,” case dkt. 20). On  
23 October 11, 2016, Mr. Hamilton filed an amended Creditor Matrix adding Landlord (case  
24

25  
26 <sup>1</sup> For brevity, documents are referred to by docket number rather than their full title (e.g., “mp dkt. \_\_\_” for  
27 documents filed in this miscellaneous proceeding, or “case dkt. \_\_\_” for documents filed in Debtor’s  
28 bankruptcy case itself). Unless the context suggests otherwise, references to a “Chapter” or “Section”  
29 (“§”) refer to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), a  
30 “Rule” means one of the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, or  
31 other federal or local rule, and other terms have the meanings provided in the Bankruptcy Code, the  
32 Rules, and the parties’ filed papers.

1 dkt. 27) and an opposition to Landlord's R/S Motion which states that Landlord had  
2 been intentionally omitted from the Creditor Matrix:

3 Debtor did not intend that her landlord should have any knowledge  
4 of her bankruptcy, which is the reason she left his name off the creditor  
5 list. Now that the landlord has found out about the bankruptcy, Debtor  
6 wishes to reaffirm her executory contract with the landlord. [Case dkt. 29,  
7 at PDF p. 4, ¶ 3, emphasis added.]

8 The opposition papers include Debtor's almost identical declaration:

9 For fear of economic bias, I did not intend that my landlord should  
10 have any knowledge of this bankruptcy, which is the reason I left his name  
11 off the creditor list. Now that the landlord/owner has found out about the  
12 bankruptcy, I wish to reaffirm her [sic] executory contract with her [sic]  
13 landlord. [Case dkt. 29, at PDF p. 5, ¶ 2, emphasis added.]

14 Prior to the hearing on the R/S Motion the presiding judge, The Honorable Erithe  
15 Smith, issued a tentative ruling granting the R/S Motion. At the hearing, on October 20,  
16 2016, Mr. Hamilton engaged in the following colloquy with Judge Smith:

17 MR. HAMILTON: ... It would appear that the Court is punishing my  
18 client for my error in failing to include Mr. Shah as a creditor ....

19 THE COURT: Hold on a minute. ... Could you just make that  
20 statement again?

21 MR. HAMILTON: It would appear that the Court is shining light on  
22 the fact that I made an error as the debtor's attorney. I filed a creditor  
23 matrix address list that did not include the landlord. ...

24 THE COURT: Let me stop you right there. ... I'm going to read [the]  
25 second sentence of the debtor's declaration.

26 "For fear of economic bias I did not intend that my landlord  
27 should have any knowledge of this bankruptcy which is the reason I  
28 left his name off the creditor list. Now that the landlord has found  
out about the bankruptcy, I wish to reaffirm the [sic] executory  
contract."

... So I'm not punishing your client for something you did. ... I'm  
responding to what she said she intentionally did.

MR. HAMILTON: Your Honor, I wrote that for my client and it was in  
error. ...

THE COURT: You submitted a declaration that is false? ... And you  
allow it to stand and you didn't correct it and she signed it?

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MR. HAMILTON: I apologize. I throw myself on the mercy of the court and --

THE COURT: And you were not going to tell the Court about this?

MR. HAMILTON: I'm here today, Your Honor.

THE COURT: No. ... [T]hat should have been the first thing out of your mouth that you submitted a declaration for your client that was false. ... [T]his is very specific ... [and so is] your declaration. [The Court quotes from both declarations.] ...

MR. HAMILTON: I'm not understanding, Your Honor. Is it the Court's opinion that a landlord is allowed to punish a tenant for filing bankruptcy?

THE COURT: Is it your understanding that a debtor does not disclose all her creditors and liabilities?

MR. HAMILTON: It was my understanding. I misjudged what I saw on the internet. I haven't been before this Court in ten years and I apologize for my error. I have had problems with the computer trying to interface with your software ....

THE COURT: What on earth [] does that have to do with the requirement that is on the face of the petition that a debtor disclose all creditors and all liabilities?

MR. HAMILTON: I didn't read it in ten years, Your Honor. ...

THE COURT: [T]his is completely unexpected. So basically now I have two declarations under penalty of perjury that are false? ... There's yours and the debtor's.

MR. HAMILTON: I told her to give me all of her creditors. We filed on an emergency basis. All of the creditors were not listed. I thought that it would be [] inconsequential pursuant to what I read on the internet and I was wrong .... I trusted a source on the internet as to this issue [and] it was incorrect ....

THE COURT: What did the internet tell you to do?

MR. HAMILTON: ... I don't have software to produce the forms. I purchased a product designed for laypersons and ... it said not to answer the question ... it was very confusing to me but I [] followed what it said.

THE COURT: ... I have to say there are few times that I am completely speechless. ... I'm looking at a declaration that is very specific about an intent to leave the landlord off the list and that cannot be due to any software issues ....

MR. HAMILTON: So the Court is very [] clearly punishing that act, that someone is to be evicted if they leave out their landlord in a

1 bankruptcy [] petition they are automatically evicted at that point. Is that  
the law?

2 THE COURT: For the second time this morning I am completely  
3 speechless and incredulous. ... [Y]ou're not fully appreciating the  
4 enormity of what you've done here. You know, our entire system, at least  
5 in this district, relies on the efficacy of sworn statements that are []  
6 provided to the Court and I have before me two declarations under penalty  
7 of perjury that apparently are completely false according to your  
8 representation to the Court today. And these declarations were submitted  
9 to the Court and there was no attempt to advise the Court that there was  
10 anything inaccurate or false about these documents until you started  
11 making the argument that I was punishing your client for something you  
12 did and I pointed out that your client has submitted a declaration saying  
13 she deliberately [had] not listed her landlord because she didn't want her  
14 landlord to know anything about the bankruptcy. ... [T]he debtor does not  
15 have a right to intentionally not list certain creditors because she doesn't  
16 want to. ...

11 \* \* \*

12 THE COURT: ... Mr. Hamilton, I'm going to [] be referring this  
13 matter to our Court's disciplinary panel because I think what you've done  
14 here today, submitting declarations that were false and not alerting [] the  
15 Court to the inaccuracy of the declaration[s] is completely not acceptable.  
16 It's not appropriate and I don't think you should be practicing in this district  
17 if you're not going to familiarize yourself with the Rules and be  
18 completely forthright and transparent when you're submitting sworn  
19 statements to the Court.

16 MR. HAMILTON: Your Honor, I apologize. I was doing *pro bono*  
17 work. I haven't done this for ten years.

18 THE COURT: Well, ... I commend you for doing *pro bono* work but  
19 I cannot condone submitting a declaration that is false. Two declarations.  
20 [Tr. 10/20/16 (case dkt. 39), at pp. 3:8-9:16 and pp. 11:22-12:22]

21 On February 14, 2017 the Office of the United States Trustee ("UST") filed a  
22 motion seeking to have Mr. Hamilton referred to this disciplinary panel for "filing false  
23 bankruptcy commencement documents, and specifically a false Verification [of the  
24 Creditor Matrix,]" and "not alerting the Court as to their falsity." Case dkt. 52, pp. 1:26-  
25 2:3. The UST's motion attached and quoted extensively from the above-referenced  
26 documents and transcript, and also cited and quoted the relevant ethical rules and this  
27 Bankruptcy Court's Amended General Order 96-05, all described in the discussion  
28 below.

1 Mr. Hamilton did not file any written opposition or appear at the hearing on the  
2 UST's motion. On April 4, 2017 Judge Smith issued her written findings of fact and  
3 conclusions of law (case dkt. 58), her order (case dkt. 59) granting the UST's motion,  
4 and the Statement Of Cause (case dkt. 60) referring this matter to this disciplinary  
5 panel.

6 Judge Smith's detailed findings of fact and conclusions of law include the  
7 following:

8 5. The Court concludes that the intentional omission of the landlord  
9 on the mailing matrix was done for an improper purpose, specifically, to  
10 hide from the landlord the fact that his tenant had filed a bankruptcy case.  
11 The intentional omission of the landlord from the mailing matrix has  
12 caused unnecessary delay and needless increase in the cost of litigation.

13 6. The Court concludes that counsel's actions have violated the  
14 provisions of F.R.B.P. Rule 9011.

15 7. Pursuant to the California Rules of Professional Conduct  
16 ("CRPC") Rule 3-210, a lawyer is prohibited from advising the violation of  
17 any law, rule or ruling or a tribunal unless he or she believes in good faith  
18 that such law, rule or ruling is invalid. ....

19 8. Pursuant to the California Rules of Professional Conduct Rule 5-  
20 200, in presenting a matter to a tribunal, a member (B) Shall not seek to  
21 mislead the judge, judicial officer, or jury by an artifice or false statement  
22 of fact or law.

23 9. The American Bar Association ("ABA") Model Rules prohibit  
24 lawyers from knowingly counseling or assisting clients to commit a crime  
25 or fraud.

26 10. Although California has not yet adopted a version of the ABA  
27 Model Rules, Model Rule 3.3 requires candor from an attorney towards  
28 the tribunal. Specifically Model Rule 3.3 subsection (a) provides that a  
lawyer shall not knowingly (1) make a false statement of fact or law to a  
tribunal or fail to correct a false statement of material fact or law previously  
made to the tribunal by the lawyer.

11. The Court concludes from the evidence presented, which  
includes the declarations filed by counsel and the Debtor along with the  
skeletal petition filed on August 17, 2016 and the Verification of Master  
Mailing List of Creditors, signed under penalty of perjury by both the  
Debtor and attorney Mark R. Hamilton, attesting to the truth and accuracy  
of the list of creditors, that both the Debtor and attorney Mark R. Hamilton  
knew that the Master Mailing List of Creditors was false.

1 12. The Court concludes that Mr. Hamilton knowingly signed and  
2 permitted his client to sign under penalty of perjury a document they knew  
was false.

3 13. The Court concludes that Mr. Hamilton made representations  
4 on the record at the October 20, 2016 hearing that call into question the  
5 veracity of the sworn statements he filed with the Court on behalf of  
himself and the Debtor.

6 14. The Court concludes that attorney Mr. Hamilton violated the  
7 California Rules of Professional Conduct, and specifically CRPC Rule  
3.210; CRPC Rule 5-200, and F.R.B.P. Rule 9011.

8 15. Mr. Hamilton filed no response or opposition to the OSC, nor  
9 did he appear at the hearing. Pursuant to Local Bankruptcy Rule ("LBR")  
9013-1(h), failure of a party to timely file and serve documents may be  
deemed by the Court as consent to the relief requested.

10 16. The Court concludes that there is cause to refer Mr. Hamilton to  
11 the Disciplinary Panel of the Central District of California with a  
12 recommendation that he be suspended from the practice of bankruptcy  
13 law in the Bankruptcy Court of the Central District of California and such  
other and further relief that the Disciplinary Panel deems appropriate.  
[Findings Of Fact And Conclusions Of Law (case dkt. 58), pp. 5:16-7:8]

14 On May 8, 2017 this disciplinary proceeding was opened. On September 1,  
15 2017 Mr. Hamilton filed a memorandum of points and authorities (mp dkt. 9) arguing  
16 that his "error" in "submitting the Master Mailing List which omitted reference to creditor  
17 Ikram Shah" was attributable to his judgment having been impaired for various reasons.  
18 *Id.*, p. 4:4-6. One asserted reason was his emotional involvement in the dispute  
19 between Landlord and Debtor, whom he describes as his girlfriend. *Id.*, p. 4:6-11.  
20 Another asserted reason is "multiple medical and psychological issues," which are not  
21 specified. *Id.* Mr. Hamilton also did not specify or even raise those issues as reasons  
22 for his "error" in response to the R/S Motion, or at the hearing before Judge Smith, or in  
23 response to the UST's motion seeking to have him referred to this disciplinary panel.  
24 Nevertheless, as described below, we permitted him to testify as to those issues in this  
25 disciplinary proceeding.

26 Mr. Hamilton's memorandum also argues:

27 Hamilton made a timely, good faith effort to rectify the  
28 consequences of his misconduct, by amending the list to include the  
landlord as a creditor when it was brought to his attention. Otherwise,  
Hamilton has practiced in bankruptcy court, and otherwise, without



1 incident since 1995, had a discipline-free practice record other than an  
2 incident in 2004 .... [He does not describe that incident except to say that  
3 it "did not involve the practice of law or any clients and arose from the  
negative effects of a prescription drug" and resulted in an unspecified  
"Agreement in Lieu of Discipline"].

4 Hamilton recognizes the seriousness of his error and expressed  
5 remorse to the court when he apologized. Given the *pro bono* nature of  
6 this matter, he had no selfish motive. Accordingly, an admonition from the  
court is the appropriate sanction to deter. [Mr. Hamilton's Memorandum  
(mp dkt. 9), pp. 2:13-20 & 5:19-20]

7 Mr. Hamilton asserts that there are mitigating factors including the following:

8 Here, Hamilton's conduct involved a single incident, the filing of the  
9 [Creditor Matrix] without including the landlord, which did not involve a  
10 pattern of misconduct involving multiple incidents across multiple matters.  
Hamilton has no prior record of discipline other than entering into an  
11 Agreement in Lieu of Discipline on a matter unrelated to the practice of  
12 law. The matter did not cause significant harm to the administration of  
justice, because he rectified the error by filing an amended [Creditor  
Matrix] including the landlord as a creditor. Hamilton acknowledged his  
error and apologized to the court, asking for the court's mercy.

13 In mitigation, the court may consider the absence of a prior  
14 disciplinary record, absence of a dishonest or selfish motive, personal or  
emotional problems, timely good faith effort to rectify consequences of  
15 misconduct, full and free disclosure to disciplinary board or cooperative  
attitude toward proceedings; inexperience in the practice of law, character  
16 or reputation; physical disability or mental disability, remorse and the  
remoteness of prior offenses, spontaneous candor and cooperation  
17 displayed to the victims of the misconduct, prompt objective steps,  
demonstrating spontaneous remorse and recognition of the wrongdoing  
18 and timely atonement. [Mr. Hamilton's Memorandum, (mp dkt. 9)  
pp. 8:20-9:6 (citation omitted)]

19 On September 25, 2017 Mr. Hamilton filed his declaration stating, among other  
20 things, that "I corrected the matrix to add the missing landlord as soon as I knew the  
21 creditor matrix had been filed incorrectly" and "due to the attorney client privilege, and  
22 due to my duty of loyalty to my former client, the Debtor, I cannot further explain the  
23 circumstances that lead to the filing of the matrix without the landlord being listed  
24 without disclosure of confidential client communications." Mp dkt. 15, p. 2:6-15. He  
25 asserts that his judgment had been impaired due to unspecified medical issues, and  
26 that he did not appear at the hearing on the UST's motion seeking sanctions because  
27 he had read the court's tentative ruling and did not have anything to add, and also  
28

1 "[b]ecause of extreme stress and back pain I left the court without appearing at the  
2 hearing." *Id.*, p. 2:22-25.

3 The UST's response states, among other things, "No attempt was made by Mr.  
4 Hamilton to correct the [Creditor Matrix] until responses were filed [by him] to the  
5 [Landlord's R/S Motion]." Mp dkt. 18, p. 2:10-11. The UST also argues that Mr.  
6 Hamilton's "unspecified medical issues" that allegedly impaired his judgment suggest  
7 "that he is a danger to the public, if he continues to practice law." *Id.* p. 4:12-14. The  
8 UST recommends suspension from the practice of law in this Bankruptcy Court as well  
9 as preconditions to any reinstatement, such as evidence of rehabilitation, mandatory  
10 legal education in the area of ethics, and possibly public reproof.

11 On October 2, 2017 this disciplinary panel held its hearing. Mr. Hamilton was  
12 present, represented by counsel. The UST's attorneys were present, along with a  
13 witness: the attorney for Landlord.

14 At the commencement of the hearing this panel noted that Mr. Hamilton did not  
15 appear to be "taking issue with any of the findings of fact or conclusions of law made by  
16 Judge Smith." Tr. 10/2/17 (mp dkt. 22), p. 9:4-6. Mr. Hamilton's counsel affirmed that  
17 this was so and that "the issue that's really before this panel is whether [this disciplinary  
18 panel] should accept the recommendation of Judge Smith with regard to a suspension,  
19 as the appropriate remedy for the violations that Judge Smith has set forth in the  
20 findings and conclusions," or alternatively accept Mr. Hamilton's recommendation that  
21 any sanction imposed not be more than a reprimand. *Id.*, p. 9:7-17.

22 Mr. Hamilton testified, and that testimony was expressly limited to the issue of  
23 possible mitigation. Tr. 10/2/17 (mp dkt. 22), p. 13:9-24. He testified that there is "some  
24 disagreement" as to the exact nature of his psychological conditions, but it could be  
25 characterized as "post traumatic stress disorder" and it "causes a lapse of reasoning  
26 ability." *Id.* p. 15:3-8. In addition, he testified that he had "degenerative disc disease"  
27 and "multiple disc hernias" causing overwhelming pain all of which greatly impaired his  
28 performance in Debtor's bankruptcy case. *Id.* pp. 15:25-16:10. In addition, he testified

1 that "I am not in control of my adrenaline" which means "I can't control this energy that I  
2 have." *Id.* p. 17:7-12. He added, "[M]y apology is sincere. My behavior was abhorrent.  
3 I'm aware of it. I have great difficulty reading the transcript. It's very embarrassing. I'm  
4 sorry." *Id.* p. 17:15-17.

5 The UST called Landlord's attorney, Fritz J. Firman, Esq. He testified that  
6 Landlord became aware of Debtor's bankruptcy at some point after filing an unlawful  
7 detainer complaint, and thereafter was delayed by the bankruptcy petition and incurred  
8 the expenses of attorney fees and costs in seeking relief from the automatic stay.

9 In closing arguments Mr. Hamilton's counsel argued, among other things, that  
10 "he trusted a source on the internet" and "he made a mistake," which "does not negate  
11 what he did, but it does give some more perspective to the entire situation." Tr. 10/2/17  
12 (mp dkt. 22), p. 28:5-10. As to the false verification of the original Creditor Matrix, Mr.  
13 Hamilton's counsel argued that he could not divulge attorney-client communications but  
14 that the record already showed that "[h]e told her, give me all your creditors[,] [a]nd  
15 beyond that, we don't have anything specific that gets into whether he told her to violate  
16 the law." *Id.* p. 29:2-5.

17 The UST's counsel argued that what Mr. Hamilton is "trying to do here is take  
18 findings that Judge Smith found involving intentional conduct, and saying, it's really a  
19 mistake." Tr. 10/2/17 (mp dkt. 22), p. 35:8-10. The UST renewed its recommendation  
20 for suspension rather than simply an admonition.

21 This matter was submitted at the conclusion of the disciplinary hearing.

## 22 **2. JURISDICTION, VENUE AND AUTHORITY**

23 This panel has jurisdiction and venue is proper under 28 U.S.C. §§ 1334 and  
24 1408. This panel also has the authority to enter a final judgment or order. See 28  
25 U.S.C. § 157(b)(2)(A); *Stern v. Marshall*, 131 S. Ct. 2594 (2011); *Wellness Int'l Network,*  
26 *Ltd. v. Sharif*, 135 S.Ct. 1932 (2015).

27  
28

1 **3. DISCUSSION**

2 **a. This Disciplinary Panel**

3 "In the federal system there is no uniform procedure for disciplinary  
4 proceedings." *In re Lehtinen*, 564 F.3d 1052, 1062 (9th Cir. 2009) (citation omitted).  
5 But the proceedings must be fair; evidence must support any factual findings; and the  
6 penalty imposed must be reasonable. *In re Nguyen*, 447 B.R. 268, 276 (9<sup>th</sup> Cir. BAP  
7 2011) (citations and footnote omitted).

8 To meet the foregoing standards, and in keeping with recommendations by the  
9 Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP"), this Bankruptcy Court has  
10 established this disciplinary panel. *See In re Brooks-Hamilton*, 400 B.R. 238, 253 (9th  
11 Cir. BAP 2009). These disciplinary proceedings are governed by Fourth Amended  
12 General Order 96-05 (included in mp dkt. 5).

13 **b. Ethical Standards**

14 Rule 9011 (Fed. R. Bankr. P.) provides in relevant part:

15 **(b) Representations to the Court.** By presenting to the court (whether by  
16 signing, filing, submitting, or later advocating) a petition, pleading, written  
17 motion, or other paper, an attorney or unrepresented party is certifying  
18 that to the best of the person's knowledge, information, and belief, formed  
19 after an inquiry reasonable under the circumstances,—

20 (1) it is not being presented for any improper purpose, such as to  
21 harass or to cause unnecessary delay or needless increase in the  
22 cost of litigation;

23 \* \* \*

24 (3) the allegations and other factual contentions have evidentiary  
25 support or, if specifically so identified, are likely to have evidentiary  
26 support after a reasonable opportunity for further investigation or  
27 discovery;

28 \* \* \*

**(c) Sanctions.** If, after notice and a reasonable opportunity to respond,  
the court determines that subdivision (b) has been violated, the court  
may, subject to the conditions stated below, impose an appropriate

1 sanction upon the attorneys, law firms, or parties that have violated  
2 subdivision (b) or are responsible for the violation.

3 **(1) How Initiated.**

4 \* \* \*

5 **(B) On Court's Initiative.** On its own initiative, the court may  
6 enter an order describing the specific conduct that appears  
7 to violate subdivision (b) and directing an attorney, law firm,  
8 or party to show cause why it has not violated subdivision (b)  
9 with respect thereto.

10 **(2) Nature of Sanction; Limitations.** A sanction imposed for  
11 violation of this rule shall be limited to what is sufficient to deter  
12 repetition of such conduct or comparable conduct by others  
13 similarly situated. Subject to the limitations in subparagraphs (A)  
14 and (B), the sanction may consist of, or include, directives of a  
15 nonmonetary nature, an order to pay a penalty into court, or, if  
16 imposed on motion and warranted for effective deterrence, an order  
17 directing payment to the movant of some or all of the reasonable  
18 attorneys' fees and other expenses incurred as a direct result of the  
19 violation.

20 (A) Monetary sanctions may not be awarded against a  
21 represented party for a violation of subdivision (b)(2).

22 (B) Monetary sanctions may not be awarded on the court's  
23 initiative unless the court issues its order to show cause  
24 before a voluntary dismissal or settlement of the claims  
25 made by or against the party which is, or whose attorneys  
26 are, to be sanctioned.

27 **(3) Order.** When imposing sanctions, the court shall describe the  
28 conduct determined to constitute a violation of this rule and explain  
the basis for the sanction imposed.

In addition, federal courts look to the ethical rules in the State in which they sit,  
as well as model and national ethical rules, guidelines, and general principles. See,  
*e.g., In re Nguyen*, 447 B.R. 268 (9<sup>th</sup> Cir. BAP 2011).

Rule 3-210 of the California Rules of Professional Conduct (the "California  
Rules") prohibits a lawyer from advising the violation of any law, rule, or ruling of a  
tribunal unless the lawyer believes that authority is invalid in which event the lawyer  
may take appropriate steps in good faith to test its validity. Declarations are required to

1 be true and correct, under penalty of perjury (28 U.S.C. § 1746), and Mr. Hamilton has  
2 not argued that such requirements are invalid. See California Rule 3-210. See UST's  
3 Request for Judicial Notice ("RJN") (case dkt. 53), Ex. J (copy of Cal. Rule 3-210).

4 California Rule 5-200 states that in presenting a matter to a tribunal a lawyer  
5 shall employ such means only "as are consistent with the truth." California Rule  
6 5-200(A) & (B). It also provides that a lawyer "shall not seek to mislead the judge" by  
7 any false statement of fact. *Id.*

8 The American Bar Association ("ABA") has promulgated model rules regarding  
9 ethics (the "Model Rules")<sup>2</sup> Model Rule 3.3(a) prohibits lawyers from knowingly making  
10 any false statement of fact to a tribunal, or failing to correct a false statement of material  
11 fact previously made to the tribunal by the lawyer. Model Rule 1.2(d) prohibits lawyers  
12 from knowingly counseling or assisting clients to commit a fraud. See Model Rule  
13 1.2(d) and UST's RJN (case dkt. 53), Ex. I (copy of official Comments to Model Rule  
14 1.2, in particular Comments "[9]" and "[10]").

15 Finally, and more broadly, this disciplinary panel takes into consideration all of  
16 the relevant facts and circumstances. Without detailing every consideration, when an  
17 attorney is alleged to have violated ethical standards we generally look to:

18 (1) whether the duty violated was to a client, the public, the legal system,  
19 or the profession, (2) whether the attorney acted intentionally, knowingly  
20 or negligently, (3) the seriousness of the actual or potential injury caused  
21 by the attorney's misconduct, and (4) the existence of aggravating and  
mitigating factors. [*Nguyen*, 447 B.R. 268, 277 (summarizing ABA  
standards).]

22 With these standards in mind we return to Mr. Hamilton's conduct in Debtor's  
23 case, the findings of fact and conclusions of law by Judge Smith, and our analysis of the  
24 arguments and evidence in this disciplinary proceeding.

25  
26  
27  
28 <sup>2</sup> Model Rule 1.2(d) is available at:  
[https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct.html](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html) (last checked 11/20/17).

1           **c. Mr. Hamilton's False Statements And Lack Of Acknowledgement Of His**  
2           **Wrongdoing Warrant A Minimum Two Year Suspension**

3           Judge Smith found and concluded that "both the Debtor and attorney Mark R.  
4 Hamilton knew that the Master Mailing List of Creditors was false." Findings Of Fact  
5 And Conclusions Of Law (case dkt. 58), pp. 5:16-7:8. Mr. Hamilton has agreed that he  
6 is not contesting Judge Smith's findings of fact and conclusions of law, and in any event  
7 the record is clear that he knew he and Debtor were falsely declaring, under penalty of  
8 perjury, that the Mailing Matrix was complete and correct, when in fact it omitted  
9 Landlord. Both Mr. Hamilton and Debtor later declared, again under penalty of perjury,  
10 that Debtor "did not intend that her landlord should have any knowledge" of the  
11 bankruptcy case, which was "the reason she left his name off the creditor list." Case  
12 dkt. 29, at PDF pp. 4 ¶3 & 5 ¶2.

13           Mr. Hamilton does not squarely acknowledge these facts. He appears to argue  
14 that he can characterize his omission of Landlord from the Creditor Matrix as a  
15 "mistake" or "error" because he purportedly believed, based on unspecified advice from  
16 "the internet" and/or unspecified bankruptcy preparation software, that omitting a  
17 creditor would be "inconsequential." To reach that conclusion he has to ignore at least  
18 the following:

19                   (1) the actual text of the verification that he and Debtor signed, certifying  
20                   "under penalty of perjury" that the Creditor Matrix is "complete" and "correct";

21                   (2) his obligations under Rule 9011 to assure that this factual  
22                   representation is adequately supported, and that the verified Creditor Matrix is  
23                   not presented for any improper purpose such as concealing the bankruptcy case  
24                   from Landlord;

25                   (3) his obligations under the California Rule 3-210 prohibiting a lawyer  
26                   from advising Debtor to violate the requirement that declarations be true and  
27                   correct (28 U.S.C. § 1746);  
28

1 (4) his obligations under California Rule 5-200 to employ such means only  
2 "as are consistent with the truth," and not to seek to mislead the court by any  
3 false statement of fact; and

4 (5) his obligations under Model Rules 3.3(a) and 1.2(d) not to make false  
5 statements of fact to the court, or fail to correct material false statements, or  
6 counseling or assisting clients to commit a fraud, including a fraud upon the  
7 court.

8 Mr. Hamilton points to the fact that he filed an amended Creditor Matrix listing  
9 Landlord. He only did so after Landlord had already discovered the bankruptcy case  
10 and filed its R/S Motion.

11 At the hearing on the R/S Motion Mr. Hamilton attempted to recharacterize the  
12 issue as Judge Smith punishing "a tenant for filing bankruptcy," rather than addressing  
13 the facts that (a) he had filed false declarations for himself and Debtor and (b) he failed  
14 to correct those falsehoods (until after the court raised them). He continues to evade  
15 that issue in this disciplinary proceeding. As argued by the UST's counsel at the  
16 disciplinary hearing, Mr. Hamilton has attempted to re-characterize as negligence the  
17 conduct that Judge Smith found was intentional.

18 The duties violated by Mr. Hamilton have very serious implications. First, at the  
19 disciplinary hearing the UST's counsel noted that false statements by Debtor may result  
20 in the UST seeking to deny her a bankruptcy discharge, so he has jeopardized his own  
21 client's interests. Second, as Judge Smith pointed out, the bankruptcy system depends  
22 on the accuracy of representations to the Bankruptcy Court, especially when those  
23 representations are made under penalty of perjury, such as his and Debtor's verification  
24 of the Creditor Matrix. By filing false declarations Mr. Hamilton has undermined the  
25 ability of the public to rely on anything filed by him, and he has undermined public  
26 confidence in the profession. Third, Mr. Hamilton continues to evade any actual  
27 acknowledgment of his wrongdoing, let alone provide any assurance that he can be  
28 trusted to behave differently in future.



1 In mitigation, Mr. Hamilton's testimony provided evidence of some severe  
2 physical and psychological impairments, all of which appear to have affected his  
3 judgment. On the other hand, as the UST has argued, that cuts both ways because the  
4 alleged ongoing nature of those problems suggests that Mr. Hamilton will continue for  
5 an indefinite time to be impaired and a danger to the public and the bankruptcy system.  
6 Those considerations suggest that Mr. Hamilton should be eligible for reinstatement  
7 after a minimum period of suspension if he can provide persuasive evidence that his  
8 physical and psychological impairments have been mitigated or counteracted so that  
9 they will not similarly impair his judgment in future.

10 **4. CONCLUSION**

11 We conclude that Mr. Hamilton must be suspended, and that the period must be  
12 at least two years, and thereafter he may apply to the Chief Judge of this court for  
13 reinstatement. In addition, before being reinstated he must present admissible  
14 evidence of (a) rehabilitation from the psychological and physical impairments that  
15 allegedly have impaired his judgment, or any treatments or medications that are  
16 sufficient to mitigate or counteract the effects of those impairments on his judgment, and  
17 (b) that he has completed not less than three hours of continuing legal education on the  
18 topic of ethics, plus not less than six hours on the topic of bankruptcy. We, however,  
19 deny UST's request to award Landlord \$800 in attorney's fees. Those fees were  
20 incurred because Landlord sought relief from the automatic stay, and there is no  
21 evidence that those fees would not have been incurred were it not for Mr. Hamilton's  
22 misconduct. An order incorporating the foregoing is being issued concurrent with this  
23 memorandum decision.

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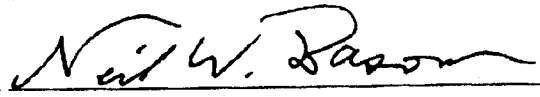
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28 Peter H. Carroll, Presiding

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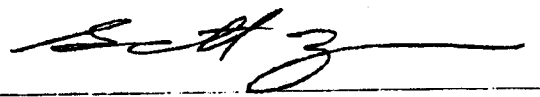
DATED: 12/05/2017



Neil W. Bason

United States Bankruptcy Judge

DATED: 12/05/2017



Scott H. Yun

United States Bankruptcy Judge

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
255 E. Temple Street, Los Angeles, CA 90012

A true and correct copy of the foregoing document entitled (*specify*): Case No; 2:17-mp-00108-PC  
Memorandum Decision Imposing Two Year Minimum Suspension, With Conditions For Reinstatement

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 12/05/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Frank Cadigan frank.cadigan@usdoj.gov  
Ron Maroko ron.maroko@usdoj.gov  
William.Smelko@procopio.com, Kristina.terlaga@procopio.com;calendaring@procopio.com  
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 12/05/2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Elisabeth Mary Ziesmer	Javier H Castillo, Esq.
8632 Orange Ave	Castillo Law Firm
Orange, CA 92865	145 E Rowland St., Ste. A
	Covina, CA 91723

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 12/05/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Overnight Mail:	Mark R. Hamilton, Esq.	Carole J. Buckner, Esq.
	3024 E Chapman Ave #322	Procopio, Cory, Hargreaves & Savitch LLP
	Orange, CA 92869	525 B Street, Suite 2200
		San Diego, CA 92101

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/05/2017  
Date

Jennifer Kohout  
Printed Name

Jennifer Kohout  
Signature

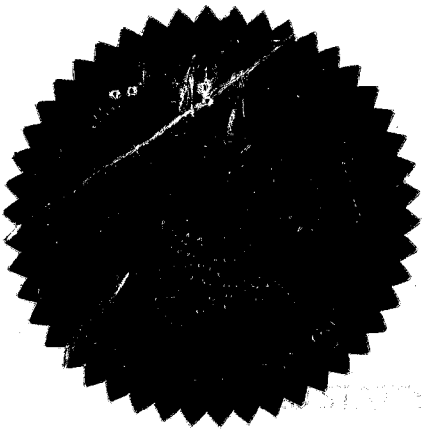
This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

**2:17-mp-00108-PC**

**Certificate of Service Continued**

The State Bar of California  
Office of the Chief Trial Counsel  
Intake Department  
845 South Figueroa St.  
Los Angeles, CA 90017-2515

The State Bar of California



**UNITED STATES BANKRUPTCY COURT**  
**Central District of California**

I hereby attest and certify that on 06/12/2018 the attached reproduction(s), containing 7 pages, is a full, true and correct copy of the complete document entitled: Findings of Fact and conclusions of law in support of the granting . . . .

Case #: 016BK-13472ES Doc #: 58

which includes:  Exhibits  Attachments

on file in my office and in my legal custody at the marked location:

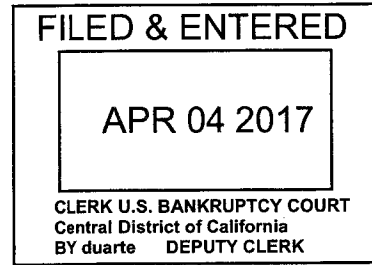
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|---|---|
| <input type="checkbox"/> 255 E. Temple Street, Suite 100<br>Los Angeles, CA 90012               | <input type="checkbox"/> 3420 Twelfth Street, Suite 125<br>Riverside, CA 92501-3819 |
| <input checked="" type="checkbox"/> 411 West 4th Street, Suite 2074<br>Santa Ana, CA 92701-4593 | <input type="checkbox"/> 1415 State Street<br>Santa Barbara, CA 93101-2511          |
| <input type="checkbox"/> 21041 Burbank Boulevard<br>Woodland Hills, CA 91367                    |   |

**KATHLEEN J. CAMPBELL**  
Clerk of Court

By:   
Deputy Clerk

**THIS CERTIFICATION IS VALID ONLY WITH THE  
UNITED STATES BANKRUPTCY COURT SEAL.**

1 PETER C. ANDERSON  
United States Trustee  
2 Frank M. Cadigan (Bar No. 095666)  
Assistant U.S. Trustee  
3 Ronald Reagan Federal Building  
and United States Courthouse  
4 411 West Fourth Street, Suite 7160  
Santa Ana, CA 92701-8000  
5 Telephone: (714) 338-3400  
Facsimile: (714) 338-3421  
6 Email: frank.cadigan@usdoj.gov



8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SANTA ANA DIVISION

11 In re:

12 ELISABETH MARY ZIESMER,

15 Debtor.

CASE NUMBER: 8:16-bk-13472-ES

CHAPTER 7

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW IN SUPPORT OF THE GRANTING OF  
THE U.S. TRUSTEE'S MOTION FOR ORDER  
TO SHOW CAUSE ("OSC") WHY ATTORNEY  
MARK R. HAMILTON SHOULD NOT BE  
REFERRED TO THE DISCIPLINARY PANEL  
OF THE CENTRAL DISTRICT OF CALIFORNIA

Date: March 16, 2017  
Time: 10:30 A.M.  
Courtroom: "5A"

22 The matter of the United States Trustee's ("U.S. Trustee's") Motion for Order to Show  
23 Cause ("OSC") Why Attorney Mark R. Hamilton Should Not Be Referred to the Disciplinary Panel of the  
24 Central District of California [Docket #52], having come on regularly for hearing at the date and time  
25 indicated above, and Frank M. Cadigan having appeared for the U.S. Trustee and no opposition having  
26 been filed to the Motion and no appearance having been made by Attorney Mark R. Hamilton, and for the  
27 reasons stated on the record and in the tentative ruling, the Court makes the following Findings of Fact and  
28

1 Conclusions of Law in support of the Order Granting U.S. Trustee's Motion for Order to Show Cause  
2 Why Attorney Mark R. Hamilton Should Not Be Referred to the Disciplinary Panel of the Central District  
3 of California, filed concurrently with these findings.

4 **FINDINGS OF FACT:**

- 5 A. On August 17, 2016, the Debtor filed a skeletal individual voluntary Chapter 7 bankruptcy  
6 petition. [ELECTRONIC DOCKET at Docket Entry #1 ["Docket # 1"] and the United States  
7 Trustee's Request for Judicial Notice Re: Notice of Motion and Motion for Order to Show  
8 Cause Why Attorney Mark R. Hamilton Should Not Be Referred to the Disciplinary Panel of  
9 the Central District of California ("RJN") Exhibit A, at bates stamp page 001] [Docket #53].
- 10 B. The attorney of record for the Debtor was Mark R. Hamilton. RJN Exhibit B, at bates stamp  
11 page 017.
- 12 C. Attached to the skeletal petition was a *Verification of Master Mailing List of Creditors* which  
13 was filed in accordance with LBR 1007-1(a). [RJN Exhibit C, at bates stamp pages 018-021].
- 14 D. The Master Mailing List omitted any reference to or listing for one Ikram Shah and Ikram  
15 Ushahand Fauzia Shah Trustee of the Shah Family Trust Dated August 15, 1996, (the "Shah  
16 Family Trust"). RJN Exhibit C, at bates stamp pages 018-02; Declaration of Elisabeth Mary  
17 Ziesmer, Docket #29; RJN Exhibit F, at bates stamp page 045 paragraph 2, lines 4-5;  
18 Declaration of Mark R. Hamilton, Docket #29; RJN Exhibit F, at bates stamp page 044  
19 paragraph 3, lines 8-10.
- 20 E. On September 29, 2016, The Shah Family Trust filed a Motion for Relief from the Automatic  
21 Stay seeking to terminate the Debtor's right to occupy residential real property located at 1822  
22 Kilmer Drive, Placentia, CA. 92870. Docket #20; RJN Exhibit D, at bates stamp page 022-  
23 040.
- 24  
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- 1 F. On October 11, 2016, the Debtor filed a Response to the Motion for Relief from the Automatic  
2 Stay (“Stay Response”) attaching, in support of the Response, two declarations, one from the  
3 Debtor and a second from her counsel Mark R. Hamilton both stating that the landlord of the  
4 Debtor, who is a creditor, was intentionally left off the creditor mailing matrix because it was  
5 the Debtor’s intent that the landlord not have any knowledge of the bankruptcy proceeding.  
6 Docket #29; RJN Exhibit F, at bates stamp page 044, lines 8-10 and bates stamp page 045, lines  
7 4-5.  
8
- 9 G. The declaration of Mr. Hamilton states in part: “Debtor did not intend that her landlord should  
10 have knowledge of the bankruptcy, which is the reason she left his name off the creditor list.”  
11 Docket #29; RJN Exhibit F, at bates stamp page 044, lines 8-10.  
12
- 13 H. The declaration of the Debtor states in part: “For fear of economic bias, I did not intend that  
14 my landlord should have any knowledge of this bankruptcy, which is the reason I left his name  
15 off the creditor list.” Docket #29; RJN Exhibit F, at bates stamp page 045, lines 4-5.  
16
- 17 I. Also on October 11, 2016 the Debtor filed an *Amended Verification of Master Mailing List of*  
18 *Creditors* this time listing Ikram Shah on the mailing matrix. Docket #27.  
19
- 20 J. At the hearing on October 20, 2016 on the motion for stay relief, Mr. Hamilton admitted he  
21 knowingly filed the creditor matrix without including the landlord on the list of creditors. See  
22 Transcript Dated October 20, 2016 [RJN Exhibit H, at bates stamp page 063, lines 21-25.]  
23
- 24 K. At the hearing on October 20, 2016, Mr. Hamilton also represented to the Court that that failure  
25 to include the landlord on the list of creditors was his error and not the fault of the Debtor. See  
26 Transcript Dated October 20, 2016 [RJN Exhibit H, at bates stamp page 063, lines 21-25.]  
27
- 28 L. When asked by the Court about the acknowledgement of the omission by the Debtor in her  
declaration, Mr. Hamilton responded, “I wrote that declaration for my client and it was in



1 error.” See Transcript Dated October 20, 2016 [RJN Exhibit H, at bates stamp page 064, lines  
2 18-19.]

3 M. When asked by the Court if he had filed a false declaration without making effort to correct it,  
4 Mr. Hamilton responded, “I apologize. I throw myself on the mercy of the Court.” See  
5 Transcript Dated October 20, 2016 [RJN Exhibit H, at bates stamp page 064, lines 21-25 and  
6 page 065, line 1.]

7  
8 N. Throughout the course of the October 20, 2016 hearing, Mr. Hamilton appeared not to fully  
9 appreciate the seriousness or ethical ramifications of his admitted errors. See, generally,  
10 Transcript Dated October 20, 2016 [RJN Exhibit H, at bates stamp pages 063-73].

11 O. On February 14, 2017 the U.S. Trustee filed his OSC [Docket #52] seeking an Order referring  
12 Attorney Mark R. Hamilton to the Disciplinary Panel of the Central District of California and  
13 concurrently therewith, a Request for Judicial Notice. Docket #53.

14  
15 P. Attorney Mark R. Hamilton did not file any opposition to the OSC nor did he appear at the  
16 hearing. See Electronic Filing Docket in Case No.: 8:16-bk-13472-ES and Order Granting U.S.  
17 Trustee Motion Re: OSC filed concurrently herewith.

18 **CONCLUSIONS OF LAW:**

- 19  
20 1. The Court concludes that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
21 1334.
- 22 2. The Court concludes that the Fourth Amended General Order 96-05 establishes a process for  
23 court wide discipline of attorneys in the bankruptcy court. If a bankruptcy judge wishes to  
24 initiate proceedings under this general order, that judge (the “Referring Judge”) shall prepare  
25 and file with the Clerk of the Court a written Statement of Cause setting forth the judge’s basis  
26 for recommending discipline and a description of the discipline the referring judge believes is  
27 appropriate.  
28

1 3. The Court concludes that Attorney Mark R. Hamilton violated *F.R.B.P. Rule 9011 (b)*. This  
2 Rule provides as follows:

3 (b) *Representations to the Court*. By presenting to the court (whether by signing,  
4 filing, submitting, or later advocating) a petition, pleading, written motion, or other paper,  
5 an attorney or unrepresented party is certifying that to the best of the person's knowledge,  
6 information, and belief, formed after an inquiry reasonable under the circumstances,--

7 (1) It is not presented for any improper purpose, such as to harass, or to cause unnecessary  
8 delay or needless increase in the cost of litigation.

9  
10 4. The Court concludes that, based upon the sworn statements set forth in the declarations  
11 executed by each of them, Mr. Hamilton and the Debtor have admitted to intentionally leaving  
12 off the name of the landlord in the mailing matrix, based on the Debtor's fear of "economic  
13 bias". Only after the landlord found out about the bankruptcy proceeding and filed a motion  
14 for stay relief, did the parties own up to the omission.

15  
16 5. The Court concludes that the intentional omission of the landlord on the mailing matrix was  
17 done for an improper purpose, specifically, to hide from the landlord the fact that his tenant had  
18 filed a bankruptcy case. The intentional omission of the landlord from the mailing matrix has  
19 caused unnecessary delay and needless increase in the cost of litigation.

20  
21 6. The Court concludes that counsel's actions have violated the provisions of *F.R.B.P. Rule 9011*.

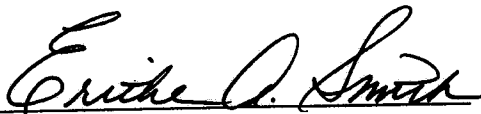
22 7. Pursuant to the California Rules of Professional Conduct ("CRPC") Rule 3-210, a lawyer is  
23 prohibited from advising the violation of any law, rule or ruling or a tribunal *unless* he or she  
24 believes in good faith that such law, rule or ruling is invalid. Also see ABA Form. Opn. 85-  
25 352-ethical standards governing lawyer's advice re tax matters are identical to those governing  
26 other civil matters.  
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- 1 8. Pursuant to the California Rules of Professional Conduct Rule 5-200, in presenting a matter to a  
2 tribunal, a member (B) Shall not seek to mislead the judge, judicial officer, or jury by an  
3 artifice or false statement of fact or law.
- 4 9. The American Bar Association (“ABA”) Model Rules prohibit lawyers from knowingly  
5 counseling or assisting clients to commit a crime or fraud.
- 6 10. Although California has not yet adopted a version of the ABA Model Rules, Model Rule 3.3  
7 requires candor from an attorney towards the tribunal. Specifically Model Rule 3.3 subsection  
8 (a) provides that a lawyer shall not knowingly (1) make a false statement of fact or law to a  
9 tribunal or fail to correct a false statement of material fact or law previously made to the  
10 tribunal by the lawyer.
- 11 11. The Court concludes from the evidence presented, which includes the declarations filed by  
12 counsel and the Debtor along with the skeletal petition filed on August 17, 2016 and the  
13 Verification of Master Mailing List of Creditors, signed under penalty of perjury by both the  
14 Debtor and attorney Mark R. Hamilton, attesting to the truth and accuracy of the list of  
15 creditors, that both the Debtor and attorney Mark R. Hamilton knew that the Master Mailing  
16 List of Creditors was false.
- 17 12. The Court concludes that Mr. Hamilton knowingly signed and permitted his client to sign  
18 under penalty of perjury a document they knew was false.
- 19 13. The Court concludes that Mr. Hamilton made representations on the record at the October 20,  
20 2016 hearing that call into question the veracity of the sworn statements he filed with the  
21 Court on behalf of himself and the Debtor.
- 22 14. The Court concludes that attorney Mr. Hamilton violated the California Rules of Professional  
23 Conduct, and specifically CRPC Rule 3.210; CRPC Rule 5-200, and *F.R.B.P. Rule 9011*.
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- 1 15. Mr. Hamilton filed no response or opposition to the OSC, nor did he appear at the hearing.  
2 Pursuant to Local Bankruptcy Rule ("LBR") 9013-1(h), failure of a party to timely file and  
3 serve documents may be deemed by the Court as consent to the relief requested.
- 4 16. The Court concludes that there is cause to refer Mr. Hamilton to the Disciplinary Panel of the  
5 Central District of California with a recommendation that he be suspended from the practice of  
6 bankruptcy law in the Bankruptcy Court of the Central District of California and such other  
7 and further relief that the Disciplinary Panel deems appropriate.
- 8 17. The Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).
- 9 18. To the extent that any Conclusions of Law set forth above constitute a Finding of Fact or vice  
10 versa, this Court also concludes or finds as appropriate.  
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24 Date: April 4, 2017

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26 Erithe Smith  
27 United States Bankruptcy Judge  
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## USCS Bankruptcy R 9011

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## Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

(a) **Signature.** Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) **Representations to the court.** By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[,]—

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How initiated.*

(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of sanction; limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

**(d) Inapplicability to discovery.** Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

**(e) Verification.** Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

**(f) Copies of signed or verified papers.** When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

History

(As amended March 30, 1987, eff. Aug. 1, 1987; April 30, 1991, eff. Aug. 1, 1991; April 11, 1997, eff. Dec. 1, 1997.)

Annotations

Notes

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

⚡ **Other provisions:**

⚡ **Explanatory notes:**

⚡ **Other provisions:**

**Notes of Advisory Committee. Note to Subdivision (a).** Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word "document" is used in this subdivision to refer to all papers which the attorney or party is required to sign.

**Note to Subdivision (b).** Subdivision (b) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 Fed. R. Civ. P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C. § 1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) Fed. R. Civ. P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

**Notes of Advisory Committee on 1987 amendments.** The statement of intention of the debtor under § 521(2) of the Code is added to the documents which counsel is not required to sign.

**Notes of Advisory Committee on 1991 amendments.** Subdivision (a) is amended to conform to Rule 11 Fed. R. Civ. P. where appropriate, but also to clarify that it applies to the unnecessary delay or needless increase in the cost of the administration of the case. Deletion of the references to specific statements that are excluded from the scope of this subdivision is stylistic. As used in subdivision (a) of this rule, "statement" is limited to the statement of financial affairs and the statement of intention required to be filed under Rule 1007. Deletion of the reference to the Chapter 13 Statement is consistent with the amendment to Rule 1007(b).

**Notes of Advisory Committee on 1997 amendments.** This rule is amended to conform to the 1993 changes to Fed. R. Civ. P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to Fed. R. Civ. P. 11.

The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

**GAP Report on Rule 9011.** The proposed amendments to subdivision (a) were revised to clarify that a party not represented by an attorney must sign lists, schedules, and statements, as well as other papers that are filed.

⚡ **Explanatory notes:**

The comma in subdivision (b) has been enclosed in brackets to indicate the probable intent to remove it.

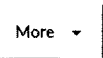
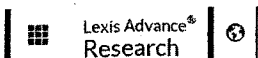
**INTERPRETIVE NOTES AND DECISIONS**

⚡ **I. IN GENERAL**

⚡ **1. Generally**

⚡ **2. Purpose**

⚡ **3. Relationship to other laws and rules**



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### Cal. Rules of Prof'l Conduct, Rule 3-210

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[California Court Rules](#) [RULES OF THE STATE BAR OF CALIFORNIA](#) [Rules of Professional Conduct](#) [Chapter 3. Professional Relationship With Clients](#)

#### Rule 3-210 Advising the Violation of Law

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

#### History

Rule 3-210 approved by Supreme Court November 28, 1988, operative May 27, 1989.

#### Historical Derivation:

Former Prof Cond rule 7-101.

#### ▼ Annotations

#### Commentary

##### Discussion:

##### 1988

Rule 3-210 is intended to apply not only to the prospective conduct of a client but also to the interaction between the member and client and to the specific legal service sought by the client from the member. An example of the former is the handling of physical evidence of a crime in the possession of the client and offered to the member. (See *People v. Meredith* (1981) 29 Cal.3d 682 [175 Cal.Rptr. 612].) An example of the latter is a request that the member negotiate the return of stolen property in exchange for the owner's agreement not to report the theft to the police or prosecutorial authorities. (See *People v. Pic'l* (1982) 31 Cal.3d 731 [183 Cal.Rptr. 685].)

#### Case Notes

##### ⚡ Decisions Under Current Rule

##### ⚡ 1. Disqualification

##### ⚡ 2. Illustrative Cases

##### ⚡ Decisions Under Former Rule

##### ⚡ 1. Illustrative Cases

##### ⚡ Decisions Under Current Rule

##### ⚡ 1. Disqualification

Law firm's preparation of a promissory note on behalf of a borrower did not compel the firm's disqualification as a matter of law under Prof Cond Rule 3-210 in an action brought by the borrower alleging usury; the firm did not advise the lender to violate the usury laws. *Hetos Investments, Ltd. v. Kurtin* (2003, Cal App 4th Dist) 110 Cal App 4th 36, 1 Cal Rptr 3d 472, 2003 Cal App LEXIS 985, review denied, (2003) 2003 Cal. LEXIS 6961.

In an action on a disability insurance policy under California law, defense counsel's ex parte contacts with the insured's consulting physician did not warrant disqualification of counsel; there was no violation of U.S. Dist. Ct., S.D. Cal., Civ. R. 83.4, which required attorneys to comply with California professional conduct rules, defense counsel did not violate [Cal. R. Prof. Conduct 3-210](#) by advising any illegal act, defense counsel was not required to notify the insured's counsel before contacting the consulting physician, and communication



about the relevant medical condition was permissible under [Ev. C. § 996](#) because confidentiality was waived. [Crenshaw v. Mony Life Ins. Co. \(2004, SD Cal\) 318 F Supp 2d 1015, 2004 US Dist LEXIS 9682.](#)

## ¶ 2. Illustrative Cases

Because an optometrist's communications with other optometrists inviting pursuit of prospective legislation concerning mail order contact lens sales and the optometrist's discussions with a contact lens sales corporation's attorney fell within one or more of the categories under [CCP § 425.16\(a\)](#), which defined acts in furtherance of petition or free speech rights, the trial court properly found that the corporation's action against the optometrist for inducing breach of contract and fiduciary duty arose from acts in furtherance of the optometrist's rights of petition or free speech; because (1) the corporation did not establish a probability of prevailing on its breach of contract claim, given that the evidence did not show that the optometrist's agreement to work with the corporation's attorney would have caused any such breach, (2) this tortious charge was precluded by [CC § 47\(b\)\(1\)](#), the litigation privilege, (3) there was no showing that the optometrist, who was also an attorney, either knowingly assisted in any violation of Prof Cond Rules 1-120, 3-210, nor did such rules create a cause of action, pursuant to Prof Cond Rule 1-100(A), and (4) there was insufficient evidence that the optometrist knew that the attorney was going to breach a fiduciary duty to the corporation or intended to assist in such a wrong, and any violation by the attorney of Utah Rules of Prof's Conduct 1.6(a), 1.9, also did not give rise to a cause of action, the trial court properly struck the complaint pursuant to [CCP § 425.16\(b\)\(1\)](#). [1-800 Contacts, Inc. v. Steinberg \(2003, Cal App 2d Dist\) 107 Cal App 4th 568, 132 Cal Rptr 2d 789, 2003 Cal App LEXIS 458, review denied, \(2003\) 2003 Cal. LEXIS 4501.](#)

## ¶ Decisions Under Former Rule

### ¶ 1. Illustrative Cases

Where attorney knowingly advised his client to make conveyance to defraud creditor, suspension of three years was not excessive in view of fact that party to such conveyance was guilty of misdemeanor, and in view of his prior record. [Townsend v. State Bar of California \(1948\) 32 Cal 2d 592, 197 P2d 326, 1948 Cal LEXIS 251.](#)

Evidence that accused attorney, while representing persons mentioned in annulment actions, prepared complaint so as to falsely allege promise of children before marriage and refusal to cohabit after marriage, and that, while there was child or children as result of marriages involved, attorney instructed spouses in one case not to disclose child's existence and in other case prepared property settlement agreement mentioning children, sustained charge of violating this rule. [Paonessa v. State Bar of California \(1954\) 43 Cal 2d 222, 272 P2d 510, 1954 Cal LEXIS 242.](#)

Disbarment was appropriate discipline for an attorney, where he had fraudulently transformed an assignment of contract form into a confession of judgment and knowingly offered it as genuine, and had filed false involuntary bankruptcy petitions, for the purpose of harassment and delay, where he advised clients to make their deposition testimony unavailable, despite court orders, where he had made an unwarranted charge of bias and prejudice against all the superior court judges in a county and had prepared a declaration for a client containing offensive descriptions of opposing parties and counsel, where he had communicated with a judge in the absence of opposing counsel, concerning the merits of a contested action, and had given deliberately evasive deposition testimony and failed to answer proper questions, and where, though his asserted defense that his mental and emotional state was such that he was unable to use his independent judgment and was under the influence of one of his clients, possibly explained his actions, it neither justified them nor exonerated him from bearing the responsibility for his professional misconduct. [Snyder v. The State Bar \(1976\) 18 Cal 3d 286, 133 Cal Rptr 864, 555 P2d 1104, 1976 Cal LEXIS 353.](#)

## Research References & Practice Aids

### Collateral References:

[Cal Jur 3d \(Rev\) Attorneys at Law § 222.](#)

[Rutter, Cal Practice Guide, Professional Responsibility §§ 8:272 et seq.](#)

### Law Review Articles:

[Legal ethics, client perjury and the privilege against self-incrimination. 13 Hast Const LQ 545.](#)

[Legal Ethics and Professionalism Symposium. 12 San Diego LR 245.](#)

[Ethics Year in Review. 44 Santa Clara LR 1309.](#)

### Hierarchy Notes:

[Rules of Professional Conduct Note](#)

[Chapter 3 Note](#)

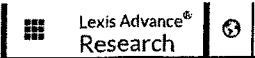
Deering's California Codes Annotated

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### Cal. Rules of Prof'l Conduct, Rule 5-200

Copy Citation

This document reflects changes received through January 26, 2018.

**California Court Rules** **RULES OF THE STATE BAR OF CALIFORNIA** **Rules of Professional Conduct** **Chapter 5. Advocacy and Representation**

#### Rule 5-200 Trial Conduct

In presenting a matter to a tribunal, a member:

- (A) Shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth;
- (B) Shall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law;
- (C) Shall not intentionally misquote to a tribunal the language of a book, statute, or decision;
- (D) Shall not, knowing its invalidity, cite as authority a decision that has been overruled or a statute that has been repealed or declared unconstitutional; and
- (E) Shall not assert personal knowledge of the facts at issue, except when testifying as a witness.

#### History

Rule 5-200 approved by Supreme Court November 28, 1988, operative May 27, 1989.

#### Historical Derivation:

Former Prof Cond rule 7-105.

#### ▼ Annotations

#### Case Notes

##### ⚙ Decisions Under Current Rule

- ⚙ 1. Generally
- ⚙ 2. Illustrative Cases

##### ⚙ Decisions Under Former Rule

- ⚙ 1. Evidence
- ⚙ 2. Discipline
- ⚙ 3. Illustrative Cases

##### ⚙ Decisions Under Current Rule

##### ⚙ 1. Generally

An attorney has a duty to employ, for the purpose of maintaining the causes confided to him or her, such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law (B & P C § 6068 (d)). Further, a member of the California State Bar may not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law (Prof Cond Rule 5-200(B)). Honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense. Williams v. Superior Court (1996, Cal App 2d Dist) 46 Cal App 4th 320, 53 Cal Rptr 2d 832, 1996 Cal App LEXIS 538, review denied, Williams v. Los Angeles County Superior Court (1996) 1996 Cal. LEXIS 5549.

##### ⚙ 2. Illustrative Cases

A defense attorney has an ethical obligation not to present perjured testimony, and the attorney's refusal to participate in such presentation does not deny the client effective assistance of counsel. Here, defense counsel apparently believed that he had persuaded his

client to testify truthfully to the limited questions he was asking on direct examination. Counsel chose this solution to the conflict dilemma and represented to the court that defendant agreed with such solution. While the trial court should perhaps have inquired personally of defendant as to his understanding of and agreement with counsel's representations, such failure to do so was not prejudicial. People v. Jennings (1999, Cal App 4th Dist) 70 Cal App 4th 899, 83 Cal Rptr 2d 33, 1999 Cal App LEXIS 208, review denied, (1999) Supreme Court Minute 06-03-1999, 1999 Cal. LEXIS 3826.

Court agreed with state bar court findings that an attorney repeatedly lied to the court in claiming to be unaware of the time of oral argument in a particular case prior to receiving a telephone call from the clerk of court, and the evidence showed that the attorney knew of the date and told another associate that they did not need to appear; to lie in statements made to the court was a serious breach pursuant to B & P C § 6068(d), Cal. R. Prof. Conduct 5-200(B), and clearly constituted contempt of court under CCP § 1209(a)(3), and the attorney was fined under CCP § 1218 and referred pursuant to B & P C § 6086.7(a), (c), for this and other conduct, to the California State Bar for further investigation and, if necessary, the imposition of additional sanctions. In re Aguilar (2004) 34 Cal 4th 386, 18 Cal Rptr 3d 874, 97 P3d 815, 2004 Cal LEXIS 9030, reh'g denied, Aguilar v. Lerner (2004) 2004 Cal. LEXIS 10763.

Parties were not entitled to a stipulated reversal under CCP § 128(a)(8) as part of the posttrial settlement of an attorney fee dispute where they failed to explain their reasons in accordance with Cal. Ct. App., First Dist., R. 8, and, because the trial court made findings regarding false statements to the court and representation of conflicting interests, where they might have been attempting to protect themselves from professional discipline under B & P C § 6077 for violations of Cal. R. Prof. Conduct 5-200(B), 3-310(C), or from legal liability. Hardisty v. Hinton & Alfert (2004, Cal App 1st Dist) 124 Cal App 4th 999, 21 Cal Rptr 3d 635, 2004 Cal App LEXIS 2082, modified, (2005) 2005 Cal. App. LEXIS 4.

### ☞ Decisions Under Former Rule

#### ☞ 1. Evidence

There was clear and convincing evidence to support a finding that an attorney deliberately sought to mislead a judge by a false statement of fact or artifice in violation of B & P C § 6068(d) and former Prof Cond Rule 7-105 by falsely stating that the attorney had not been advised by another judge to get a client to mediation and by falsely denying that the attorney had received a written order to do so. Bach v. State Bar (1987) 43 Cal 3d 848, 239 Cal Rptr 302, 740 P2d 414, 1987 Cal LEXIS 402.

#### ☞ 2. Discipline

Disbarment was appropriate discipline for an attorney, where he had fraudulently transformed an assignment of contract form into a confession of judgment and knowingly offered it as genuine, and had filed false involuntary bankruptcy petitions, for the purpose of harassment and delay, where he advised clients to make their deposition testimony unavailable, despite court orders, where he had made an unwarranted charge of bias and prejudice against all the superior court judges in a county and had prepared a declaration for a client containing offensive descriptions of opposing parties and counsel, where he had communicated with a judge in the absence of opposing counsel, concerning the merits of a contested action, and had given deliberately evasive deposition testimony and failed to answer proper questions, and where, though he asserted defense that his mental and emotional state was such that he was unable to use his independent judgment and was under the influence of one of his clients, possibly explained his actions, it neither justified them nor exonerated him from bearing the responsibility for his professional misconduct. Snyder v. The State Bar (1976) 18 Cal 3d 286, 133 Cal Rptr 864, 555 P2d 1104, 1976 Cal LEXIS 353.

Suspension from the practice of law for one year with actual suspension for six months as recommended by the State Bar rather than ninety days actual suspension as recommended by the hearing panel was the appropriate discipline for an attorney found to have violated his oath and duties as an attorney within the meaning of B & P C §§ 6067, 6068, 6103, and to have wilfully violated former Prof Cond Rule 7-105 by signing documents for others under penalty of perjury, asserting their genuineness before a court, and urging his client to give false testimony. Though the attorney did not benefit from his actions and no one suffered any monetary injury, honesty in dealing with the courts is of paramount importance, and misleading a judge is, regardless of motives, a serious offense; it is not necessary that actual harm has resulted to warrant disciplinary action where actual deception is intended and shown. Moreover, the attorney had a past disciplinary record which included three separate offenses for which he received two private reprimands and a public reprimand based on his having wilfully failed to perform all of the services for which he had been retained. The attorney's present and past dishonesty demonstrated an habitual lack of appreciation and respect for his duties and responsibilities as an attorney and officer of the court. Garlow v. State Bar (1982) 30 Cal 3d 912, 180 Cal Rptr 831, 640 P2d 1106, 1982 Cal LEXIS 155.

#### ☞ 3. Illustrative Cases

Attorney was not guilty of intentional effort to mislead trial court in citing as controlling law case which was apparently superseded by later case in which he had appeared as counsel for appellant where, on matter being called to attention of trial court, he addressed letter to court that in his opinion pertinent declaration in case was dictum and did not serve to overrule earlier case relied on by him. Shaeffer v. State Bar of California (1945) 26 Cal 2d 739, 160 P2d 825, 1945 Cal LEXIS 189.

Attorney who represented himself in a medical malpractice action was held to the same standards applicable to advocates under B & P C § 6068 and former Prof Cond Rule 7-105. Davis v. State Bar (1983) 33 Cal 3d 231, 188 Cal Rptr 441, 655 P2d 1276, 1983 Cal LEXIS 140.

An attorney's false statement to the court in a small claims action against him by a client that he was prepared to pay the client's judgment at once and his concealment of any reservations or conditions to immediate payment violated former Prof Cond Rule 7-105(1) (misleading a court by a false statement of fact or law), and involved moral turpitude. Chefsky v. State Bar (1984) 36 Cal 3d 116, 202 Cal Rptr 349, 680 P2d 82, 1984 Cal LEXIS 177, modified, (1984, Cal) 206 Cal Rptr 859, modified, (1984, Cal) 687 P2d 1165.

An attorney violated B & P C § 6106 (commission of an act involving moral turpitude), and B & P C § 6068(d), (failing to employ "such means only as are consistent with truth"), and former Prof Cond Rule 7-105(1), by answering interrogatories directed to his client himself and attaching one of the client's presigned verifications, when the attorney could not locate the client. The use of a presigned verification in discovery proceedings, without first consulting with the client to assure that any assertions of fact are true, is a clear and serious violation of the rules and former CCP § 2030. Drociak v. State Bar (1991) 52 Cal 3d 1085, 278 Cal Rptr 86, 804 P2d 711, 1991 Cal LEXIS 563.

### Research References & Practice Aids

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## RULE 3.3: CANDOR TOWARD THE TRIBUNAL

October, 2016

### ABA Model Rules of Professional Conduct and Code of Judicial Conduct **ADVOCATE**

ADVOCATE

#### Core Terms

tribunal, disclosure, false evidence, offer evidence, withdraw, remedial measure, adjudicative process

#### Notice

##### Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a) (3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.



##### **Representations by a Lawyer**

Document:  [3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters

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asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

**Legal Argument**

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.


**Offering Evidence**


[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.


[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].



Document:  [8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is

Go to 

false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood. 

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

**Remedial Measures**

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the



Document: ~~Document: RULE 3.3: CANDOR TOWARD THE TRIBUNAL~~ Actions  
~~lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.~~

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**Preserving Integrity of Adjudicative Process**

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[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

**Duration of Obligation**

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.



**Ex Parte Proceedings**


[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.


**Withdrawal**

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to



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~~seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6 of 64~~ Results list 

**Definitional Cross-References**

- "Fraudulent" See Rule 1.0(d)
- "Knowingly" and "Known" and "Knows" See Rule 1.0(f)
- "Reasonable" See Rule 1.0(h)
- "Reasonably believes" See Rule 1.0(i)
- "Tribunal" See Rule 1.0(m)

**RULE 3.3: CANDOR TOWARD THE TRIBUNAL**

**(a) A lawyer shall not knowingly:**

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;**
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;**  
or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.**



**(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.**



Document: RULE 3.3: CANDOR TOWARD THE TRIBUNAL Actions  
**(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if**

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**compliance requires disclosure of information otherwise protected by Rule 1.6.**

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**(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.**

ABA Model Rules of Professional Conduct and Code of Judicial Conduct



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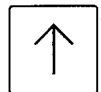
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**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

2013

ABA MODEL RULES OF PROFESSIONAL CONDUCT  
 ;CLIENT-LAWYER RELATIONSHIP

Core Terms

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fraudulent

Notice

Comment

**Allocation of Authority between Client and Lawyer**

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

**Independence from Client's Views or Activities**

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

**Agreements Limiting Scope of Representation**

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent



Document: RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER  
When determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

**Criminal, Fraudulent and Prohibited Transactions**

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

**Definitional Cross-References**

"Fraudulent" See Rule 1.0(d)

"Informed consent" See Rule 1.0(e)

"Knows" See Rule 1.0(f)

"Reasonable" See Rule 1.0(h)

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.



**CERTIFICATE OF SERVICE**

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

I am a Court Specialist of the State Bar Court of California. 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 January 17, 2019, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

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

CAROLE JOANN BUCKNER  
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP  
525 B ST  
STE 2200  
SAN DIEGO, CA 92101 - 4474

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

TERESE E. LAUBSCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 17, 2019.



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Mazie Yip  
Court Specialist  
State Bar Court