PUBLIC MATTER

FILED
JUL 11 2019
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of MARC LAWRENCE TERBEEK, State Bar No. 166098.	Case No. 17-C-01402-YDR DECISION

Introduction[1]

This matter is before the court on a referral order filed by the Review Department of the State Bar Court (Review Department) on March 1, 2018, after the judgment of conviction of Marc Lawrence Terbeek (Respondent) for a violation of Title 12 U.S.C. section 1956 (willful violation of anti-structuring regulation), a misdemeanor, and 29 U.S.C. section 186(a) (making payments to an employee of a union organization), a felony. As the statutory criteria for summary disbarment had not been met, the Review Department referred the matter to this court under California Rules of Court, rule 9.10(a), for a hearing and decision recommending the discipline to be imposed.

After having thoroughly reviewed the record, including the testimony and exhibits presented at trial in this proceeding, evaluating the crimes of which Respondent was convicted and the facts and circumstances surrounding Respondent's conviction, as well as the aggravating

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

and mitigating factors, this Court recommends, among other things, that Respondent be suspended from the practice of law in California for three years, that execution of suspension be stayed, that he be placed on probation for three years, and that he be actually suspended from the practice of law for two years (with credit for Respondent's time on interim suspension[2]) and remain suspended until he satisfactorily proves to the State Bar Court his rehabilitation, present fitness and learning and legal ability under the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

Significant Procedural History

On February 5, 2018, based on Respondent's waiver of finality, the State Bar of California, Office of the Chief Trial Counsel (OCTC) transmitted evidence of finality of Respondent's conviction to the Review Department. On March 1, 2018, the Review Department referred this case to the Hearing Department for a hearing and decision recommending the discipline to be imposed. On March 5, 2018, the State Bar Court issued and properly served Respondent with a Notice of Hearing on Conviction. Respondent filed a response on March 29, 2018.

Trial took place from March 12 through March 15, 2019. OCTC was represented by Supervising Attorney Susan Kagan and Deputy Trial Counsel Christina Lauridsen. Respondent was represented by attorney Samuel C. Bellicini. Following the submission of the parties' closing argument briefs, the case was submitted for decision on April 12, 2019.

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[2] The Review Department placed Respondent on interim suspension effective September 5, 2017, pending final disposition of this proceeding.

Findings of Fact and Conclusions of Law

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of each crime of which he was convicted. (*In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 30, 1993, and has been licensed by the State Bar of California at all times since then.

B. Findings of Fact Regarding Facts and Circumstances Surrounding Respondent's Conviction

Case No. 17-C-01402 – The Conviction Matter

The following facts are derived from the parties' stipulation of undisputed facts, exhibits and testimony admitted into evidence at trial.

Respondent first met Daniel Rush (Rush) at an Instituto Laboral de la Raza (Instituto) dinner celebrating James Hoffa, Jr., at the Fairmont Hotel in late 2002 or early 2003. Respondent had just become a partner with the law firm of Mehlman and Terbeek. At the time, Respondent's practice focused primarily on real estate matters.

Over the next few years, Respondent and Rush became friends. Rush took an interest in Respondent's personal and professional life, including Respondent's law practice. Respondent would see Rush a few times a month socially and at Instituto dinners, political and union events. They would sometimes meet for lunch in Oakland or other locations. On a few occasions before 2008, Respondent hired Rush to perform investigative work for him.

Between 2003 and 2006, Respondent made personal loans to Rush for sums ranging from approximately $5,000 to $15,000 on at least three occasions. Rush paid each of these loans back as agreed, with interest.

Rush first raised the idea of Respondent acquiring a worker's compensation practice sometime in 2004. Initially, Respondent was not interested, but by 2006, Respondent had a change of heart and decided to take on worker's compensation cases. Rush then introduced Respondent to Phil Weltin, a lawyer who had been handling workers' compensation cases referred to him by Instituto.

In October 2006, Respondent acquired Phil Weltin's workers' compensation practice. Rush began to send referrals to Respondent through Instituto. Rush made it clear to Respondent that he expected remuneration for those referrals. Respondent paid Rush varying amounts for the referrals in response to Rush's demands.[3]

When Rush's uncle died intestate in 2007, he had several heirs: Rush and his cousins. Rush retained the law firm of Mehlman and Terbeek to represent the Eugene Rush Estate during probate.[4] In January 2010, the probate court approved the creation of the 472 Rush Family Trust (Trust). Several parcels of real property, including 472 West MacArthur Boulevard in Oakland, were transferred into the Trust at its creation. Rush was the Trustee for the Trust.

By 2008, Respondent had achieved sobriety while participating in Alcoholics Anonymous (AA). While Respondent was in the program, Rush insisted on acting as his AA sponsor. As Respondent's sponsor, Rush manipulated and exploited Respondent while claiming "credit" for guiding Respondent through the AA process and into sobriety. Rush not only began to dominate and abuse Respondent, but Rush began to make increasingly aggressive and onerous demands for "resources" from Respondent.

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[3] It is estimated that the Rush and Instituto referrals to Terbeek totaled about $1.3 million in attorney fees.

[4] After Mehlman and Terbeek dissolved, Respondent independently concluded the representation of the Eugene Rush Estate under his own practice.

In 2009, Respondent's workers' compensation practice was taking off and was becoming more profitable. Also at that time, Rush was emerging from bankruptcy. Both Respondent and Rush began to take steps to develop business in the emerging medical marijuana industry. Around that time, Respondent began familiarizing himself with local and state cannabis law. In 2010, Rush began pitching the idea of unionizing medical marijuana workers through the United Food and Commercial Workers (UFCW). Respondent shared Rush's vision of unionizing these workers and using the UFCW to drive forward cannabis normalization.

In early December 2009, Respondent learned that Rush, as administrator of his uncle's estate, had encumbered the property at 472 West MacArthur with a $420,000 note from the Weisbach Family Trust (Weisbach loan), which would be due in or around March 2010. Rush urgently wanted to pay the loan off because the property had been in the Rush family since the Civil War and Rush did not want the family to lose the property on his watch.

Also in late 2009, Respondent was retained by a client named Martin Kaufman. Kaufman was referred to Respondent by a tax preparer. Kaufman had significant personal assets, including, as Respondent knew, revenue unlawfully obtained from the medical marijuana industry. Kaufman told Respondent that he wanted to invest those funds in real estate and also open a medical marijuana dispensary in the Oakland area.

Between December 2009 and February 2010, Respondent structured a sham consulting deal which provided that the Rush Family Trust hire Kaufman, as an independent contractor, to loan the Rush Family Trust $500,000 in cash, "to assist the Trust in maintaining, improving and developing current and future Trust Assets." The Trust was to pay Kaufman $3,000 per month in interest for five years, and then the Trust would pay the principal back to Kaufman in January 2015. To make the $500,000 loan appear legitimate, the monthly interest payments were characterized as "consulting fees" paid by the Trust to Kaufman. Almost as soon as the

obligation to make the monthly interest payments came due, Rush told Respondent he was unable to make the interest payments.

As promised, Kaufman delivered the $500,000 in cash to Respondent's office in January 2010. Rush, after taking $80,000 of the cash, instructed Respondent to pay off the loan. In a series of 40 deposits of less than $10,000 each, Respondent began to deposit the cash he had received from Kaufman at Wells Fargo and Bank of America branches in the Bay Area. Respondent intentionally deposited the loaned funds in amounts less than $10,000 in an effort to "launder" the funds and to avoid regulatory detection by banking representatives.

Respondent subsequently obtained a cashier's check for $420,000 and paid off the loan. Respondent did not personally receive any of the "laundered" funds.

In 2010, Respondent also furnished Rush with a credit card. Respondent told Rush he could use the credit card for expenses when he was traveling in connection with his union-related organizing and lobbying activities. Respondent told Rush he could charge a maximum of $2,000 per month on the card; however, Rush often exceeded that amount, sometimes by thousands of dollars. Respondent noticed that a substantial portion of these charges appeared to be personal and unrelated to UFCW business.

After Rush made charges on the card, Respondent paid off the card's balance using his own funds, or otherwise ensured the card functioned by increasing the credit limit. Between 2010 and 2014, Respondent paid Rush about $400,000.

From 2010 through 2012, Respondent began to give legal advice to Carl Anderson, a medical marijuana dispensary owner affiliated with American Medical Cannabis Dispensary, located at 578 West Grand Ave. in Oakland. The West Grand Avenue dispensary was in a highly sought-after dispensary location. Although Anderson initially had a permit to operate the dispensary at the West Grand Avenue location, his company was eventually disqualified due to

its failure to pay taxes. In addition, Anderson's dispensary gained the attention of the City of Oakland when the electrical power usage was exceptionally high due to illegal marijuana-growing activity. On Respondent's advice, Anderson lied to the City of Oakland, stating the electricity use was due to the presence of leaky refrigerators on the property.

In an FBI-recorded conversation with Kaufman's close business associate, Derek Peterson, Respondent told Peterson that he "threw Anderson to the wolves" by feeding him the outlandish electricity usage story, which partly caused Anderson's dispensary license disqualification and resulted in Kaufman's wife obtaining tenancy at the West Grand Avenue dispensary property.

By 2014, medical marijuana was gaining traction nationally and Rush and Respondent were expanding their joint legitimization efforts to include clients in Nevada, Washington, Colorado, and elsewhere. Although their work was going relatively well, Rush did not have the money to repay Kaufman the $500,000 Kaufman had loaned him in 2010. In addition, Rush had borrowed another $100,000 in cash from Kaufman. Rush therefore owed Kaufman a total of $600,000.

Respondent endeavored to help Rush to get Kaufman to forgive the loan. To that end, between January and October 2014, Respondent had a series of meetings with Kaufman, and some with Kaufman's close business associate, Derek Peterson (Peterson). Rush also participated in some of the meetings with Peterson. During the meetings, Respondent and Rush highlighted the benefits Rush and Respondent had provided over the last five years, including political introductions, lobbying, and facilitating the opening of Blüm Oakland, the dispensary operating at the location leased by Kaufman's wife and Peterson, at 578 West Grand Avenue in Oakland.

In addition, in 2014, with Rush's knowledge and consent, Respondent prepared a fictional promissory note for Michael Steele, an individual whom Respondent believed to be an associate of Kaufman. Respondent backdated the promissory note to 2010.

On November 26, 2014, Kaufman went to Respondent's office to negotiate a settlement agreement releasing Rush, the Trust, and Respondent from any liability on the loan. Respondent gave Kaufman a $50,000 check, and Kaufman signed a form releasing Rush from the debt obligation.[5]

On January 7, 2015, Respondent learned he was the target of a federal criminal investigation when the Federal Bureau of Investigation (FBI) executed a search warrant at his law office located at 2648 International Boulevard in Oakland. In conjunction with the search of Respondent's law office, the FBI seized files and other evidence from Respondent's office. Shortly thereafter, Respondent began to cooperate with the government in its investigation of Rush.

Respondent enrolled in the Lawyer Assistance Program (LAP), on December 21, 2015, before he was charged with a crime. Respondent successfully completed LAP on February 4, 2019.

On February 15, 2017, the United States Attorney's Office filed an information in the United States District Court, Northern District of California, in the matter entitled, *United States v. Marc Terbeek*, case No. CR17-00083. In *U. S. v. Terbeek*, Respondent was charged with: Count One – a violation of 29 U.S.C. section 186(a)(2) [making payment to a union employee], a felony; and Count Two – a violation of 12 U.S.C. section 1956 [willful violation of anti-structuring regulation], a misdemeanor.

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[5] Unbeknownst to Respondent or Rush, Kaufman was cooperating with the FBI by 2014. The FBI authorized Kaufman's partial forgiveness of Rush's loan.

On February 16, 2017, pursuant to a cooperation plea agreement, Respondent pled guilty to both charges. The FBI found Respondent's cooperation to be extremely helpful in its prosecution of Rush. Respondent's extensive cooperation with the FBI led the U.S. Attorney's Office to file a motion on Respondent's behalf, which sought a downward departure in Respondent's sentence.

According to the U. S. Attorney's Office's sentencing memorandum, Respondent cooperated for two and a half years by "covertly recording his interactions with Rush and then assisting the government with trial preparation." Specifically, the sentencing memorandum stated, the "primary factors supporting the government's recommendation are as follows: (1) Terbeek's immediate willingness to cooperate before being charged, with the understanding that ultimately he would plead to a felony; (2) extensive proactive cooperation, including approximately 35 recordings of substantive communications with Dan Rush; (3) regular contact with case agents and prosecutors and participation in dozens of pre-charge meetings; (4) extensive debriefing and pretrial preparation with U.S. Attorney's Office, including approximately a dozen in-person meetings; (5) extensive document review in preparation for meetings and testimony, including by his retained counsel; (6) assistance to the government in determining privilege as to hundreds of documents and communications, including advice and involvement by his retained counsel; and (7) testimony at a contested evidentiary hearing in March 2017."

Respondent was fined $7,500 and sentenced to three years' probation and three months of home monitoring, on November 27, 2017.

C. Conclusions

After considering the facts and circumstances surrounding Respondent's criminal convictions, the court finds that the events surrounding Respondent's misdemeanor conviction

for willful violation of anti-structuring regulation in connection with his money-laundering and bank deposit structuring activities involved moral turpitude. However, Respondent's felony conviction related to his payments to an employee of a union did not involve moral turpitude.

Respondent's money laundering and bank deposit activities involved corruption, dishonesty, and deception, with the ultimate goal being personal gain. Therefore, the court concludes that not only did Respondent's 12 U.S.C. section 1956 criminal conviction involve serious and egregious acts of moral turpitude, but the circumstances surrounding that criminal conduct were also characterized by and included elements of corruption, deception, greed, and dishonesty.

Respondent's felony conviction for payments to a union employee was related to his payments to Rush for client referrals and payment of the balance on the credit card Respondent provided to Rush; however, the record is unclear as to which payment(s) specifically supported the charge. The evidence demonstrates that Respondent initially paid Rush a portion of the attorney's fees as a favor, and later, when Rush needed money, he demanded payment from Respondent. The record reflects that Respondent made many of the payments to Rush under pressure and out of fear. Accordingly, the court finds the facts and circumstances surrounding the felony conviction under Title 29 U.S.C. section 186(a) [payments to union employee] did not involve moral turpitude.

Aggravation[6]

Multiple Acts (Std. 1.5(b).)

Over a period of approximately five years, Respondent committed multiple acts of misconduct by engaging in unlawful fee-splitting with Rush, money laundering, and schemes to

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

conceal his misconduct. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-647 [three instances of misconduct considered aggravating as multiple acts of misconduct].) The fact that Respondent engaged in multiple acts of misconduct is a significant aggravating circumstance.

Harm to Client (Std. 1.5(f).)

Respondent harmed his client Carl Anderson by deliberately giving Anderson poor advice to lie to the City of Oakland about the abnormal electrical power usage at the dispensary. Predictably, this played a role in Anderson losing his operating permit, which enabled Kaufman's affiliates to move into the lucrative dispensary location. Respondent had a conflict of interest due to his competing loyalties between his clients Anderson and Kaufman. He used the knowledge he gained during his representation of Anderson to cause Anderson harm in favor of Kaufman's financial interests. The fact that Respondent harmed his own client for the benefit of another client's business interests is a substantial aggravating factor.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent had practiced law without discipline for almost 17 years at the time his misconduct which commenced in 2010. Respondent engaged in ongoing dishonest conduct for more than four years. That conduct ended only when he was arrested and charged with criminal violations. Prior to his arrest and conviction, Respondent had no prior criminal history. Significant weight is assigned for Respondent's lack of a prior record of discipline. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [10 years of practice prior to discipline is worth "significant weight" in mitigation].)

Extreme Emotional Difficulties (Std. 1.6(d.))

Prior to the misconduct, Respondent suffered from alcoholism. By 2008, Respondent achieved sobriety while participating in Alcoholics Anonymous (AA). While Respondent was in the program, Rush insisted on acting as his AA sponsor. While acting as Respondent's sponsor, Rush manipulated Respondent and demanded "resources" from Respondent. Before being criminally charged and well before the initiation of State Bar proceedings, Respondent enrolled in the State Bar Lawyer's Assistance Program to seek additional assistance with his recovery from alcoholism, and he successfully completed the three-year program. Respondent is entitled to mitigation credit for the emotional difficulties he experienced during the time of the misconduct and the actions he took to address these issues. (See *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332 [the Supreme Court may consider lay testimony of emotional problems as mitigation]; see also *Lawhorn v. State Bar* (1987) 49 Cal. 3d. 646, 667.)

Candor and Cooperation (Std. 1.6(e).)

Respondent readily and substantially cooperated with the FBI for over two years in a manner that led to Rush's prosecution and conviction. In addition, as recently as last year, Respondent agreed to and did assist the FBI in connection with another matter. In the disciplinary proceeding, Respondent entered into a stipulation of facts which displayed cooperation and, to some extent, helped OCTC conserve resources. For his cooperation and candor, Respondent is afforded substantial mitigation credit. (See *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, 421 [attorney afforded mitigation credit for cooperating in the prosecution of his capper aware that his testimony would result in State Bar proceedings and self-reported his conduct to the State Bar].)

Extraordinary Good Character (Std. 1.6(f).)

Respondent presented testimony from two attorneys (Vernon Grigg and Jerome Braun) and six other witnesses who testified favorably about Respondent's moral character, sincerity, and honesty. Many of Respondent's character witnesses indicated that they believe Respondent engaged in criminal activity as a result of Rush gaining trust and influence over Respondent when he was most vulnerable, causing Respondent to exercise poor judgment. Respondent is entitled to substantial good moral character mitigation.

Remorse and Recognition of Wrongdoing (Std. 1.6(g).)

Throughout the hearing, Respondent expressed deep remorse for his actions and recognition of wrongdoing. He also admitted to others that he had made serious mistakes in his interaction with Rush as well as his professional life. Respondent cooperated with the FBI to, in some way, atone for his actions. The court assigns substantial mitigation credit for the remorse Respondent expressed to his family, friends, the FBI, and the State Bar Court.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) However,

the standards are not mandatory; they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Here, Standards 2.16(a) and 2.15(b) are applicable. Standard 2.16(a) provides that, "[a]ctual suspension is the presumed sanction for final conviction of a felony not involving moral turpitude, but involving other misconduct warranting discipline," whereas Standard 2.15(b) provides that, "[d]isbarment or actual suspension is the presumed sanction for final conviction of a misdemeanor involving moral turpitude." "[D]isbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude." (*In re Crooks* (1990) 51 Cal.3d 1090, 1101.)

OCTC urges Respondent's disbarment, arguing that the facts and circumstances surrounding the convictions involve moral turpitude, and his misconduct was wholly related to his practice of law, such that disbarment is necessary for the protection of the public, the courts and the legal profession. Respondent contends that one or two years of actual suspension would be the appropriate level of discipline.

Here, Respondent engaged in serious misconduct, involving dishonesty, deceit, and corruption for personal gain. The misconduct lasted for several years (2010-January 2015). It ended only because Respondent became aware that he was under investigation by law enforcement. However, there are extensive and substantial mitigating circumstances, including the manipulation of Respondent suffered at the hands of Rush, Respondent's significant cooperation with the FBI, his lack of prior disciplinary history in many years of practice prior to the misconduct, and his good character evidence. The court finds the mitigation is compelling such that actual suspension, rather than disbarment, is warranted.

The court looks to case law for guidance to determine the appropriate level of discipline. In *Chadwick v. State Bar*, *supra*, 49 Cal.3d 103, the Supreme Court of California imposed discipline consisting of five years' stayed suspension with conditions, including the condition that the attorney be actually suspended for one year. Chadwick pled guilty to one federal misdemeanor count for illegal purchase of securities based on insider information. Chadwick and his accomplice also agreed to lie to the Security Exchange Commission ("SEC"). Approximately one month after lying to the SEC, Chadwick, through his counsel, requested a meeting with the SEC where his counsel informed the SEC that Chadwick and his accomplice had illegally relied upon inside information when making the stock options purchases and agreed to lie to the SEC.

The Supreme Court found that Chadwick had committed three acts of moral turpitude that would typically warrant disbarment. In mitigation, the Supreme Court found Chadwick displayed candor by admitting his prior dishonest statements to the SEC and convincing his accomplice to do the same, which the court deemed "commendable action." (*Chadwick v. State Bar*, *supra*, 49 Cal.3d at p. 112.) In further mitigation, Chadwick was remorseful, had committed no further misconduct in the many years since the crime, had no prior record of discipline, and had a number of character witnesses testified to his general honesty and integrity. The Supreme Court deemed the mitigation evidence "compelling," and imposed a one-year actual suspension instead of disbarment. (*Id.*)

Like the attorney *Chadwick*, Respondent was convicted of a federal misdemeanor involving moral turpitude and later admitted his prior dishonesty to law enforcement. However, Respondent was also convicted of a second crime for his payments to a union employee, a felony. Further, while the attorney in *Chadwick* displayed spontaneous candor to law enforcement just one month after lying to the SEC, Respondent continued to engage in

misconduct for over four years until he learned he was the subject of a federal criminal investigation. Respondent's conduct was therefore more serious than that of the attorney in *Chadwick*.

Another instructive case is *In the Matter of Jones*, *supra*, 2 Cal. State Bar Ct. Rptr. 411. In that matter, the attorney was employed as an associate in a law firm, and entered into an agreement with a non-lawyer to set up a law corporation and to split fees with the non-lawyer. Over a two-year period, the non-lawyer handled all aspects of the personal injury practice without proper supervision from the attorney. As a result, the non-lawyer used illegal means to solicit clients and, without the attorney's knowledge, engaged in the practice of law and collected fees in the attorney's name without any attorney having performed any services, and misused settlement funds which were withheld to pay medical liens. Eventually, the attorney reported the non-lawyer to the police, reported himself to the State Bar, and cooperated fully both in the criminal prosecution of the non-lawyer and in his own disciplinary matter. The Review Department found that his gross neglect was very serious, bordering on extreme recklessness, and amounted to moral turpitude.

In aggravation, the attorney committed multiple acts of wrongdoing over a three-year period. He was afforded significant mitigating credit for his substantial, spontaneous candor and cooperation with the State Bar, law enforcement and potential victims even though he was warned that his cooperation might implicate him. Also found mitigating were his good character and community activities and his objective steps to make lienholders whole upon learning that they had not been paid. Accordingly, the Review Department recommended that the attorney be suspended for three years, stayed, and placed on probation for three years subject to conditions, including the condition that he be actually suspended of two years and until the attorney demonstrated rehabilitation and fitness to practice pursuant to former standard 1.4(c)(ii).

As with the attorney in *Jones*, Respondent engaged in acts involving moral turpitude and later took remedial steps to rectify his wrongdoing and cooperate with law enforcement. However, some of Terbeek's misconduct occurred as the result of the manipulation and fear imposed by Rush, and he has demonstrated additional compelling mitigating circumstances, including a substantial period of discipline-free practice prior to the misconduct.

When considering the foregoing cases and comparing all of the relevant factors, the court finds that it is appropriate to recommend discipline greater than that imposed in *Chadwick* and similar to that imposed in *Jones* to protect the public, the courts and the legal profession; maintain of the highest professional standards; and preserve public confidence in the legal profession.

Recommendations

It is recommended that Marc Lawrence Terbeek, State Bar Number 166098, be suspended from the practice of law in California for three years, that execution of that suspension be stayed, and that Respondent be placed on probation for three years with the following conditions:

Conditions of Probation

1. Actual Suspension

Respondent must be suspended from the practice of law for a minimum of the first two years of Respondent's probation, with credit given for the period of interim suspension which commenced on September 5, 2017, and until Respondent provides proof to the State Bar Court of his 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).)

2. 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 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.

3. 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.

4. Maintain Valid State Bar Record 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.

5. 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.

6. 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 State Bar record 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.

7. 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 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.

8. Compliance with 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.

9. Proof of Compliance with Rule 9.20 Obligations

Respondent is directed to maintain, for a minimum of one year after the 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(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.

10. 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 Ethics School after the date of this decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

Commencement of Probation/Compliance with Probation 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.

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) 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 and to provide satisfactory proof of such passage to the 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 taking and passage of the above examination after the date of this decision but before the effective date of the Supreme Court's order in this matter, Respondent will nonetheless receive credit for such evidence toward his duty to comply with this condition.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[7] Failure to do so may result in disbarment or suspension.

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[7] 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

Costs

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

Yvette D. Roland

Dated: July 11, 2019

YVETTE D. ROLAND
Judge of the State Bar Court

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).)

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 July 11, 2019, I deposited a true copy of the following document(s):

DECISION

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:

SAMUEL C. BELLICINI
SAMUEL C. BELLICINI, LAWYER
1005 NORTHGATE DR # 240
SAN RAFAEL, CA 94903

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

SUSAN KAGAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 11, 2019.

Mazie Yip
Court Specialist
State Bar Court