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RECORD: Appellate Docket 217

SCAD-19-0000561

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner,

vs.

GARY VICTOR DUBIN,
Respondent.

ORIGINAL PROCEEDING
(ODC Case Nos. 16-O-147, 16-O-151, 16-O-213, and 16-O-326)

ORDER OF DISBARMENT

(By: Recktenwald, C.J., Nakayama, McKenna, and Wilson, JJ., and Intermediate Court of Appeals Associate Judge Leonard, assigned by reason of vacancy)

Upon a thorough and careful review of the entire record in this matter, and the briefs submitted by the parties, we find and conclude, by clear and convincing evidence, that Respondent Gary V. Dubin, committed the following misconduct.

In Office of Disciplinary (ODC) Case No. 16-O-151, we find and conclude that Respondent Dubin violated Rule 8.4(c) of the Hawai'i Rules of Professional Conduct (1994) by knowingly

misrepresenting the truth on a government form on which he certified the information thereon was true.

In ODC Case No. 16-O-147, we find and conclude that Respondent Dubin violated HRPC Rule 8.4(c) (2014) by signing the names of his clients, without their permission, in the endorsement section of a $132,000.00 settlement check made out to them alone and depositing it in his client trust account, thereby gaining control over those funds. We find he did not immediately inform the clients of the receipt of the check when he learned of it. We also find the invoice he subsequently issued to the clients on November 7, 2015 was the first billing statement or accounting since the inception of his representation of them in February 2012, wherein he asserted $69,702.87 in fees and costs owing, based upon an hourly rate of $385.00 an hour for associates on the case. We find and conclude that this rate was unreasonable because it exceeded by $115.00 per hour the rate agreed upon in the retainer agreement for associates and was also applied to one associate for work done at a time when that associate was not licensed to practice law in this jurisdiction. We also find the clients were never contacted or consulted regarding an amendment of the agreed-upon rate. We find that, as a result, Dubin overcharged the clients a minimum of $19,885.00. We conclude Respondent Dubin's conduct in this regard violated HRPC Rules 1.5(a), 1.5(b), 8.4(c) and

1.4(a)(3) (once for failing to timely inform the clients of the receipt of the check, and once by failing for more than three years to communicate with the clients regarding the status of their account) (2014).

We find and conclude that, in ODC Case No. 16-O-326, Respondent Dubin withdrew $3,500.00 of the client's funds at a time when, based upon Respondent Dubin's own accounting, Respondent Dubin had not yet earned those funds, thereby violating HRPC Rules 1.15(a) and 1.15(d) (2014). We find and conclude he did not inform the client when he fully disbursed the client's $45,000.00 from the firm's client trust account, thereby violating HRPC Rule 1.15(d) (2014), and he did not respond to clear inquiries from ODC regarding the matter, in violation of HRPC Rule 8.4(g) (2014).

We find that Respondent Dubin's conduct, in ODC Case Nos. 16-O-147 and 16-O-326, inflicted actual, serious, injury upon the clients and upon the profession and, in ODC Case No. 16-O-151, inflicted injury on the public at large and the integrity of the profession.

We have thoroughly reviewed the record, and Respondent Dubin's arguments, both at the Disciplinary Board and before this court, regarding alleged violations of his right to due process throughout the disciplinary process, and find them to be without merit.

We also find, in aggravation, that Respondent Dubin has two prior disciplines, evinced a dishonest or selfish motive, demonstrated a pattern of misconduct, committed multiple offenses, refused to acknowledge the wrongful nature of his conduct, and has substantial experience in the practice of law. In mitigation, the record contains many positive comments from clients, and Dubin has contributed positively to the development of the law.

We note relevant disciplinary precedent in this jurisdiction, including ODC v. Chatburn, Case No. 24777 (May 30, 2002) and ODC v. Burns, Case No. 20882 (December 17, 1999), and take into consideration *ABA Standards for Imposing Lawyer Sanctions*, Standards 4.11, 4.41, and 7.1.

Finally, we have reviewed the arguments from both parties, and related materials, regarding the July 23, 2020 motion from ODC counsel on this matter, seeking to strike the exhibits appended to Respondent Dubin's reply brief.

Hence,

IT IS HEREBY ORDERED that the motion to strike is denied.

IT IS FURTHER ORDERED that Respondent Dubin is disbarred, effective 30 days after the entry date of this order.

IT IS FURTHER ORDERED that, pursuant to Rule 2.16(d) of the Rules of the Supreme Court of the State of Hawai'i (RSCH),

within 10 days after the effective date of his disbarment, Respondent Dubin shall submit to this court proof of compliance with the requirements of RSCH Rule 2.16 regarding disbarred attorneys.

IT IS FURTHER ORDERED that Respondent Dubin shall pay $19,885.00 in restitution to the clients named in ODC Case No. 16-O-147 and submit proof of said payment to this court, all within 30 days after the entry date of this order. The Disciplinary Board may, on behalf of the clients in ODC Case No. 16-O-147, seek further orders from this court in enforcement of this directive, pursuant to RSCH Rule 10, or by other means the Board determines are appropriate to propose.

IT IS FURTHER ORDERED that Respondent Dubin shall bear the costs of these disciplinary proceedings, upon the approval of a timely submitted verified bill of costs by ODC, pursuant to RSCH Rule 2.3(c).

DATED: Honolulu, Hawai'i, September 9, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

/s/ Katherine G. Leonard

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RECORD: Doc. No. 41 (JSmith 5) [R41(5)]

Personal and Professional Resume of Gary Victor Dubin

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Harbor Court
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55 Merchant Street
Honolulu, Hawaii 96813

telephone: (808) 537-2300
facsimile: (808) 523-7733
e-mail: gdubin@dubinlaw.net

San Francisco (415) 659-9855 Los Angeles (213) 947-6262 San Diego (619) 677-6200

ATTORNEY

Gary Dubin is admitted and licensed to practice law in the State and Federal Courts in Hawaii and California, and admitted at the Permanent Court of Arbitration at the Hague, and has been a Member of the United States Supreme Court Bar since 1973.

Mr. Dubin's practice began with the prestigious law firm of Covington & Burling in Washington, D.C. as a summer associate; before moving his practice to Hawaii in 1982, Mr. Dubin traveled between coasts weekly for nearly a decade, serving clients in California and the Eastern United States.

Mr. Dubin has directed major litigation involving shareholder derivative actions, lender liability real estate disputes, trade secret matters, trusts and estates administration, and in bankruptcy proceeding; he has practiced before the U.S. Supreme Court, New York and New Jersey state and federal courts, and courts in California, Tennessee and Hawaii; he has also managed multi-million dollar land tracts for clients.

Mr. Dubin has managed several multi-million dollar corporations as well, serving as Chief Executive Officer and Board Chairman of public and private corporations for many years; he has also served as Executor and as Trustee to several multi-million dollar estates and trusts.

On behalf of clients, Mr. Dubin has worked closely with Congressmen and Senators, the Renegotiation Board, the GAO, the Economic Development Administration, the Small Business Administration, the U.S. Department of Justice, and other state and federal government agencies.

Mr. Dubin has also practiced in the fields of foreclosure defense, bankruptcy, entertainment law, appellate practice, and corporate reorganizations. His clients have included leading business men and women, attorneys, judges, accountants, developers, and media celebrities nationally.

LAW PROFESSOR

Gary Dubin joined the Stanford Law Faculty as a Teaching Fellow in 1963, teaching Legal Analysis, Legal Research and Writing, and Contracts; while at the University of California, Berkeley, from 1964 to 1966, he taught seminars on the Sociology of Law.

Mr. Dubin was appointed to the University of Denver Law Faculty in 1966, where he taught Decision Process, Criminal Law, Remedies, Jurisprudence, and Legal History, and headed its Criminal Justice Research Center.

Mr. Dubin left Denver in 1969 to accept a faculty-level research and teaching position at the Harvard Law School.

Since 1967, Mr. Dubin has lectured and taught seminars at the RAND Corporation in Santa Monica, the Harvard Law School, the Justice Department in Washington, D.C., the University of Texas Law School, the UCLA Institute of Government and Public Affairs, the University of Southern California School of Public Administration, the California Council on Criminal Justice, and the National Advisory Commission on Criminal Justice Standards and Goals in Washington, D.C., and private seminars on Law and Social Change.

Mr. Dubin has authored numerous professional articles and books and special reports, published by New York University, Stanford University, the University of Denver, UCLA, the RAND Corporation, and the United States Department of Justice, and hosts a national radio talk show on KHVH-AM and on iHeart Radio across the Internet every Sunday called "The Foreclosure Hour."

Mr. Dubin during his career as a law teacher developed many new pioneering concepts for teaching rule making and legal analysis as the authoritative management of multi-disciplinary uncertainty.

RESEARCHER

Gary Dubin began his extensive early research career as a Russell Sage Foundation Fellow at the Law and Society Center at Berkeley in 1964, where he studied social science research methodology in relation to legal analysis and participated in the research activities of the Center until 1966.

From 1968-1969, he was the Director of the Criminal Justice Program at the University of Denver; in 1969 he joined the Harvard Law School Criminal Justice Center as a Russell Sage Foundation Fellow, and in 1970 became a Resident Consultant at the RAND Corporation "think tank" in Santa Monica, developing computerized decision theory for several urban social problem management projects.

In 1970, Mr. Dubin was honored with appointment to the National Institute of Law Enforcement and Criminal Justice within the U.S. Dept. of Justice (LEAA) as its first Visiting Fellow with a government research grant to continue his work in criminal justice research.

In 1971, Mr. Dubin was appointed the Executive Director of the Southern California Criminal Justice Research Center, and developed a knowledge support system and research programs for local criminal justice agencies. Mr. Dubin also served as the Chief Consultant from 1971-1972 to the Alameda Regional Criminal Justice Planning Board, supervising its research projects.

From 1972-1973, Mr. Dubin was Principal Consultant to the Courts Task Force of the President's National Advisory Commission on Criminal Justice Standards and Goals and developed the central administrative theme for the President and his Commission's Report on the Courts.

BUSINESSMAN

Gary Dubin has been in corporate management since he was 19 years old when he started his first corporation manufacturing and distributing educational tape recordings nationwide, one of the first such nationwide companies, while he was a student at U.S.C.

In addition to managing his own corporations, including a chemical company and a leading boat manufacturer, Mr. Dubin has performed key management roles for companies owned or controlled by clients at their request, including manufacturing companies, a golf course, a newspaper, and real estate investment companies, and holds personally several United States chemical patents.

As Chief Executive Officer, Board Chairman, and a Director of both public and privately held corporations, Mr. Dubin has had extensive experience in virtually every aspect of corporate management, including financial, personnel, production, preparation of SEC documents and filings, and was a founding member of the National Association of Corporate Directors.

Mr. Dubin has also had extensive business training and experience in the entertainment industry in virtually all phases of motion picture management and financing and was Chief Executive Officer of his own film production company for several years while residing in California.

Mr. Dubin since 1972 has specialized in all aspects of mortgage lending, having successfully refinanced hundreds of millions of dollars in client mortgages throughout the United States, while successfully protecting hundreds of millions of dollars of borrowers' equity, and having prevailed in more than a dozen appellate cases since 1997 which overhauled Hawaii lending guidelines and practices, starting his own mortgage company in 2007, as its President and CEO.

EDUCATION

Gary Dubin graduated first in his class at Los Angeles High School in 1956; he received his A.B. degree, summa cum laude, from the University of Southern California in 1960, graduating first in his class, majoring in Political Science and Soviet Studies, Phi Beta Kappa, a student senator and fraternity president and was awarded the University's highest graduating honor for scholarship, athletics, and community service, the Order of the Palm.

Mr. Dubin attended New York University Law School as a National Root-Tilden Scholar, receiving a J.D. degree, cum laude, in 1963 as Law Review Executive Editor and Member, Order of Coif.

In 1963-1964, Mr. Dubin engaged in post-graduate studies in law and social science research and language analysis at Stanford University, and from 1964-1966 he was a resident at the Law and Society Center at the University of California, Berkeley, as a Russell Sage Foundation Scholar doing post-doctoral work in legal theory, decision making, and the sociology of law.

In 1969-1970, Mr. Dubin was honored with appointment to the Harvard Law School as a Russell Sage Foundation Fellow at the Harvard Criminal Justice Center, doing postgraduate work and lecturing at Harvard Law School in jurisprudence and decision theory.

Mr. Dubin has served his country in the United States Air Force, received an honorable discharge in 1962, and has held top secret government security clearance in conjunction with work on numerous national security projects.

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RECORD: Doc. 41, Exh. 10

Office of Disciplinary Counsel
1164 Bishop Street, Suite 600
Honolulu, Hawai'i 96813
Telephone (808) 521-4591

Chief Disciplinary Counsel
Carole R. Richelieu
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Charles H. Hite
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Brian C. Means
Staff Attorney
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Investigators
Celeste M. Fujii
Elise B. Johnson
Research Paralegals
Neva Keres
Darryn J. Manuel

January 27, 1998

CONFIDENTIAL

Gary Victor Dubin, Esq.
500 Ala Moana Boulevard
Seven Waterfront Plaza, Suite 400
Honolulu, Hawai'i 96813

Re: ODC 4068

Dear Mr. Dubin:

This is to inform you that the above-referenced ethics matter has been investigated by our office. Our investigation has been reviewed by a member of the Disciplinary Board of the Hawai'i Supreme Court ("Disciplinary Board").

Based upon the information and documents obtained by our investigation, the Reviewing Member of the Disciplinary Board has determined that a finding of professional misconduct on your part, regarding your 1995 misdemeanor conviction for Willful Failure to File Income Tax Returns in violation of 26 United States Code section 7203, is <u>not</u> warranted due to the unique circumstances pertaining to your matter. Therefore, the Reviewing Member of the Disciplinary Board has dismissed this complaint.

However, given the nature of this charge, the Reviewing Member of the Disciplinary Board also suggests that your conduct should be modified if you wish to avoid the imposition of future ethical discipline.

You are hereby cautioned that in the future, under the provisions of Hawai'i Rule of Professional Conduct 8.4(b), it would be best if you promptly filed your Federal and State of Hawai'i Income Tax Returns, if you are required by law to file such returns. You are also cautioned that any future convictions for willful failure to file income tax returns may result in the imposition of ethical discipline against you.

If you have any questions regarding this letter, please contact me at 521-4591. Your cooperation in this matter is appreciated.

Very truly yours,

MICHAEL T. LEE
ASSISTANT DISCIPLINARY COUNSEL

MTL:jv

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RECORD: Doc. 41. Exhibit 11

Valdez cooperated with the State Bar during its investigation and proceedings, demonstrated remorse, and at the time of the misconduct suffered financial stress and hardship that was beyond his control.

The probation order took effect December 19.

Jeffrey John Wiebe, State Bar # 147834, Alameda (November 19). Wiebe, 37, had his previous order of probation extended for one year for failure to comply with the terms and conditions to the previous probation.

In April 1998 Wiebe was suspended for 90 days and until he made restitution of $900 to one client. Also, he was placed on two years of probation for failure to maintain client funds in trust, failure to promptly pay funds to a client, and entering into a business relationship adverse to a client.

In aggravation, Wiebe had a prior record of discipline, the underlying matter. His misconduct involved multiple acts of wrongdoing that harmed the administration of justice. In mitigation, he acknowledged that stress from substance abuse contributed to his delay in complying with the terms and conditions to probation. He has enrolled in a substance abuse recovery program, reflecting his good faith efforts to learn strategies for coping with the stress of maintaining a law practice while meeting ethical and professional responsibilities.

The probation order took effect December 19.

Public Reproval

Gary Victor Dubin, State Bar # 34595, Honolulu, Hawaii (December 15). Dubin, 62, was publicly reproved for failure to file federal income tax returns.

In January 1994 Dubin was convicted of violation of 26 USC section 7203, failure to file federal income tax returns, from 1986 through 1988. He has since filed the returns but owed no taxes for those years because of business losses. At about the same time he failed to file the tax returns, he was being audited. He received a letter from an employee of the Internal Revenue Service stating that he was not required to file income tax returns for the years covered by the audit.

There were no factors in aggravation. In mitigation, at about the time of the misconduct, Dubin was under great stress because his son had been terminally ill and passed away in 1992. The misconduct was due, in part, to the letter he received from the IRS stating that he was not required to file the tax returns. Also, the misconduct did not involve clients.

The reproval took effect December 31.

Henry R. Eskens II, State Bar # 123898, Surfside (October 26). Eskens, 40, was publicly reproved for failure to competently perform legal services.

In April 1994 Eskens entered into an agreement with a financial services company to act as trustee of security placed in trust for the benefit of investors who purchased secured corporate promissory notes to be issued by the company. Eskens also received a deed of assignment, executed by the president of the company, assigning the company's interest in $940,800 worth of U.S. Treasury bills. Part of Eskens's fiduciary duty was to disclose fully the nature and extent of the security so as to avoid any misrepresentation.

In May 1994 Eskens sent letters to potential investors identifying himself as a licensed California attorney employed by the company as an independent trustee to hold and oversee certain security for the company's promissory notes.

At the time he wrote the letter, Eskens did not have possession of or access to the security and was not in a position to administer the security for the benefit of the investors.

Stat r Court of the State Bar of Califor
Hearing Department ☒ Los Angeles ☐ San Francisco

Counsel for the State Bar	Case number(s)	(for Court's use)
VICTORIA R. MOLLOY JANET S. HUNT KEVIN B. TAYLOR, NO. 151715 STATE BAR OF CALIFORNIA ENFORCEMENT 1149 S. HILL ST. LOS ANGELES, CA 90015	94-C-17515-CEV	FILED DEC 15 1999 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel for Respondent GARY VICTOR DUBIN IN PRO PER 7 WATERFRONT PLAZA 500 ALA MOANA BLVD., #400 HONOLULU, HI 96813		
In the Matter of GARY VICTOR DUBIN Bar # 34595 A Member of the State Bar of California (Respondent)	Submitted to ☐ assigned judge ☒ settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **REPROVAL** ☐ PRIVATE ☒ PUBLIC ☐ PREVIOUS STIPULATION REJECTED	

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted January 6, 1964 (date).

(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 and order consist of 8 pages.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(6) 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.

(7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

☒ costs added to membership fee for calendar year following effective date of discipline (public reproval)
☐ case ineligible for costs (private reproval)
☐ costs to be paid in equal amounts prior to February 1 for the following membership years:

_____
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)

☐ costs waived in part as set forth under "Partial Waiver of Costs"
☐ costs entirely waived

Note: All information required by this form and any additional information wh **be set forth in the text component of this stipulation under specific headings, i.e. "Facts,"**

(Stipulation form approved by SBC Executive Committee 10/22/97)

ODC v. Gary Victor Dubin
Petitioner's Exhibit E1
For Identification_____
In Evidence_____

Reproval

In the Matter of Gary Victor Dubin A Member of the State Bar	Case Number(s): 94-C-17515-CEV

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code §6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

(a) Admission of culpability.

(b) Denial of culpability.

(c) Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California **STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following: . . .

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:

(a) an acknowledgment that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and

(b) If requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code §6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

NOTWITHSTANDING THE ABOVE, BY SIGNING BELOW I AM ACKNOWLEDGING AND ADMITTING ONLY THAT I WAS CONVICTED OF VIOLATING SECTION 7203.

12/7/99 Date _____ Signature GARY VICTOR DUBIN print name

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/97)

B. Aggravating Circumstances (for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)). Facts supporting aggravating circumstances are required.

( ) ☐ **Prior record of discipline** (see standard 1.2(f))

(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 or under "Prior Discipline".

(2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) ☐ **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.

(4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.

(5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.

(8) ☒ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. **Mitigating Circumstances (see standard 1.2(e)). 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 deemed serious. Respondent has no record of prior discipline since being admitted to practice law in California on January 6, 1964.

(2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation to the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her 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 him/her.

(7) ☐ **Good Faith:** Respondent acted in good faith.

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

(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 his/her control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's 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 his/her 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:

① About the time of Respondent's misconduct he was under stress due to his son being terminally ill. Respondent's son passed away on November 11, 1992.

② Respondent's failure to file income tax returns was due in part to a letter he received from the I.R.S. advising him that he was not required to file the returns.

③ Respondent's misconduct did not involve clients.

D. Discipline:

(1) ☐ private reproval (check applicable conditions, **if any**, below)

(a) ☐ no public disclosure (stipulation prior to filing of charges only)
(b) ☐ public disclosure (Notice of Disciplinary Charges filed)

or

(2) ☒ public reproval (check applicable conditions, **if any**, below)

E. Conditions Attached to Reproval:

(1) ☒ Respondent shall comply with the conditions attached to the reproval for a period of one (1) year.

(2) ☒ During the condition period attached to the reproval, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Respondent shall promptly report, and in no event in more than 10 days, to the Membership Records Office of the State Bar and to the Probation Unit, Office of the Chief Trial Counsel, Los Angeles, all changes of information including current office or other address for State Bar purposes as prescribed by section 6002.1 of the Business and Professions Code.

(4) ☒ Respondent shall submit written quarterly reports to the Probation Unit of the Office of the Chief Trial Counsel on each January 10, April 10, July 10, and October 10 of the period of probation, except as set forth in the second paragraph of this condition. Under penalty of perjury each report shall state that Respondent has complied with all provisions of the State Bar Act and the Rules of Professional Conduct during the preceding calendar quarter or period described in the second paragraph of this condition.

If the first report would cover less than 30 days, then the first report shall be submitted on the next quarter date and cover the extended period. The final report is due no earlier than 20 days before the last day of the period of probation and no later than the last day of probation.

(5) ☒ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.

(6) ☐ Respondent shall be assigned a probation monitor. Respondent shall promptly review the terms and conditions of his/her probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent shall furnish such reports as may be requested by the probation monitor to the probation monitor in addition to quarterly reports required to be submitted to the Probation Unit of the Office of the Chief Trial Counsel. Respondent shall cooperate fully with the probation monitor to enable him/her to discharge his/her duties.

(7) ☐ Within one year of the effective date of the reproval herein, Respondent shall attend the State Bar Ethics School, and shall pass the test given at the end of such session.

☒ No Ethics School ordered. See attachment

(8) ☒ Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reproval.

☐ No MPRE ordered.

(9) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☐ Medical Conditions ☐ Financial Conditions

(10) ☐ Other conditions negotiated by the parties:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: GARY VICTOR DUBIN

CASE NUMBER(S): 94-C-17515-CEV

Facts

On January 14, 1994 Respondent was convicted, following a bench trial, on three misdemeanor counts of violating 26 U.S.C. section 7203, wilfully failing to file federal tax returns for the years 1986 through 1988. The Court found that Respondent had gross income in each of those years in excess of $300,000.

Respondent has since filed the required returns which showed that he owed no taxes for the subject tax years because he suffered business losses which exceeded his gross income. The Internal Revenue Service has not assessed Respondent for the subject years.

Respondent was being audited by the Internal Revenue Service about the time he failed to file the subject tax returns. During that audit Respondent received a letter from an I.R.S. employee confirming Respondent's idea that he was not required to file the subject returns.

Conclusions of Law

The facts and circumstances surrounding Respondent's violation of 26 U.S.C. section 7203, did not involve moral turpitude, but did involve other conduct warranting discipline. The facts described above constitute a violation of California Business and Professions Code, section 6068(a).

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was November 22, 1999.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court.

2. On January 14, 1994, respondent was convicted on three misdemeanor counts of violating 26 U.S.C. section 7203, wilfully failing to file federal tax returns.

3. On August 6, 1996, the Review Department of the State Bar Court issued an augmented order referring this matter to the Hearing Department for a hearing and decision recommending discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the offense for which Respondent was convicted involved moral turpitude or other misconduct warranting discipline.

STATE BAR ETHICS SCHOOL EXCLUSION

Respondent resides outside California and is unable to attend State Bar Ethics School. As an alternative to State Bar Ethics School, the parties agree that within one year of the date the discipline in this matter becomes effective respondent will complete four hours of C.E.B. approved continuing legal education courses on legal ethics. Respondent shall provide the Probation Unit with proof of his compliance with this condition on or before the date his final quarterly report is due.

COMPLIANCE WITH CONDITIONS OF PROBATION/PAROLE IN UNDERLYING CRIMINAL MATTER.

Respondent shall comply with all conditions of any probation or parole imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.

Date 12/3/99	Respondent's signature	print name GARY VICTOR DUBIN
Date ~~12/8/99~~	Respondent's Counsel's signature	print name
Date 12/8/99	Deputy Trial Counsel's signature	print name Kevin B. Taylor

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.

☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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 rule 135(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 12/15/99

Judge of the State Bar Court

DECLARATION OF SERVICE BY MAIL

CASE NUMBER: 94-C-17515

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, declare that I am not a party to the within action; that I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service; that in the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day; that I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit. That in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles, on the date shown below, a true copy of the within

STIPULATION

in a sealed envelope placed for collection and mailing at Los Angeles, on the date shown below, addressed to:

GARY VICTOR DUBIN
7 WATERFRONT PLAZA
500 ALA MOANA BLVD STE 400
HONOLULU HI 96813

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: December 8, 1999

SIGNED: Bonnie Peterson-Bryan
BONNIE PETERSON-BRYAN
Declarant

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on **December 15, 1999**, I deposited a true copy of the following document(s)

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL FILED DECEMBER 15, 1999

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

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

GARY V. DUBIN, ESQ.
7 WATERFRONT PLAZA, STE 400
500 ALA MOANA BLVD
HONOLULU HAWAII 96813

[ ] by certified mail, , with a return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

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

KEVIN TAYLOR, ESQ., OFFICE OF TRIALS

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 15, 1999**.

Rose M. Luthi

ROSE M. LUTHI
Case Administrator
State Bar Court

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court

ATTEST December 7, 2016

State Bar Court, State Bar of California
Los Angeles

By _____
Clerk

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RECORD: Doc. 4±, Exhibit 10, and Pet. E1

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November 8, 1999
Hand Delivered

Carole R. Richelieu, Esq.
Chief Disciplinary Counsel
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawaii 96813

RE: Your November 2, 1999, Letter

Dear Ms. Richelieu:

As you know, some years ago a Hurricane by the name of Visiting Judge Manuel Real went through my life, and I am still putting the pieces back together again.

Your agency thus far has been the only body to seriously study my misdemeanor tax case, and thanks to the time that your Mr. Lee personally invested in reviewing my case, and the Disciplinary Board having cleared me of any professional wrongdoing early last year, I have been able to restart my law practice and in the process to maintain my sanity.

I am however also as you know a Member of the California State Bar, which of course also has a disciplinary agency – known as the State Bar Court – which is much more formal in its procedures than those we have here in Hawaii, principally due to its having now I understand over 150,000 practicing attorneys in California to oversee.

In California, failure-to-file convictions have in recent years *automatically* resulted in two-year suspensions with all but sixty days stayed, based solely upon the fact of a misdemeanor failure-to-file tax conviction without more, the amount of the stay dependent upon the presence of mitigating circumstances – which is an approach quite different and less flexible and less inquiring than has been the practice in Hawaii.

However, as with Mr. Lee, the investigators there, although styled as State Bar Court *prosecutors*, have been sympathetic with my unique circumstances and, defying their State's precedent, have been attempting to carve out the least severe sanction possible, after I wrote you, bending their procedures by bringing me before a settlement judge who, remarking understandingly that I seem to have been falsely accused, agreed to approve a stipulated settlement breaking with otherwise controlling precedent in this one instance.

However, despite what in the context of the California Bar Court represents a remarkable gesture towards me in the context of its adversarial procedures, which is also based on my otherwise completely clean ethical record with them for 36 years (not one ethics complaint against me), the California Bar officials are unable, based on their case precedent from the California Supreme Court and pressure from reviewing panels, to let me go without some discipline and therefore have recently offered me a "public reproval" or otherwise I and they will have to go through with my scheduled trial in late January of 2000.

Naturally, I am reluctant to accept *any* discipline for something that I did not do; however, from a practical point-of-view, not only will it be costly for me to defend the case in California next year, but I do not expect to ever again practice law in that State, although I certainly do not intend to resign under any ethics' cloud.

That being the case, the California authorities have proposed that I enter a *nolo contendere* response and they will then stipulate to a public reproval based upon the same facts that were before you, specifically basing their public reproval solely and exclusively upon the public record that I was convicted of misdemeanor failure-to-file charges and nothing more.

Further, they have agreed to state in the public notice that I had a number of mitigating factors which were considered, such as my having been advised by the IRS that I had no filing requirement for the years in question, and the contemporaneous illness of my son. They will also note in the public notice, printed in California, that I continue to maintain my innocence.

Under those circumstances – specifically that the "public reproval" discipline proposed in California would be based upon *the same identical facts* previously before you – I need to know if that would trigger any reciprocal discipline in Hawaii, for under no circumstances do I intend to affect my ability to practice here. Overcoming the inaccurate public perception in Hawaii as to what happened to me has already been burdensome and unfair enough.

Additionally, as previously mentioned, I intend shortly to request the U.S. Attorney to join me in petitioning the United States District Court for a new trial based upon the set of circumstances set forth in my earlier letter to Mr. Lee, or I will do so myself, which I believe is currently the proper forum for such information, and not your agency, and I will seek to delay the imposition of any "public reproval" discipline in California until that new request is dealt with by the federal courts.

Unfortunately, however, the California disciplinary authorities claim that they do not have the time to look behind the public fact of a misdemeanor conviction given the number of ethics cases they process each year and have not devoted the time to review my case as your Mr. Lee did, and do not want to.

Since I am being pressured to settle or to prepare for trial in California, I am hoping to hear from you as soon as possible.

Very truly yours,

/s/ Gary Victor Dubin

GVD/o

Gary Victor Dubin

Comparison Of Differences In Determinations Of Gross Income, Taxable Income, And Tax Liability Of Petitioner For The Tax Years 1986, 1987, And 1988

Determination Made By	1986 Tax Year	1987 Tax Year	1988 Tax Year
1. United States Attorney's Office in Honolulu on August 13, 1993, charging Dubin with three federal failure-to-file misdemeanors	Gross Income: **$530,511.00**	Gross Income: **$634,100.00**	Gross Income: **$479,289.00**
2. Judge Real in Honolulu on January 20, 1995, sentencing Dubin to 30 months in prison and a $125,000 fine as the Government's "tax loss"	Gross Income: **$533,725.39** Taxable Income: **$199,980.29** Tax Liability: **$25,000.00**	Gross Income: **$633,594.38** Taxable Income: **$284,787.75** Tax Liability: **$62,303.00**	Gross Income: **$330,297.68** Taxable Income: **$33,976.54** Tax Liability: **$44,949.00**
3. The Internal Revenue Service's Examiner in Honolulu on November 2, 2001, assessing Dubin for federal income tax deficiencies upon his return from federal prison	Gross Income: **$662,680.78** Taxable Income: **$547,870.00** Tax Liability: **$260,921.00** + **Penalties:** **$ 199,565.25** (+ **Interest**)	Gross Income: **$627,091.90** Taxable Income: **$556,999.00** Tax Liability: **$208,409.00** + **Penalties:** **$160,347.00** (+ **Interest**)	Gross Income: **$620,754.46** Taxable Income: **$553,401.00** Tax Liability: **$121,017.75** + **Penalties:** **$ 199,565.25** (+ **Interest**)
4. Internal Revenue Service's Seattle District Office on June 30, 2003, after reviewing Dubin's tax case	Taxable Income: (minus) **$-243,645.00** Tax Liability: **$0.00**	Taxable Income: (minus) **$-60,801.00** Tax Liability: **$0.00**	Taxable Income: (minus) **$-3,348.00** Tax Liability: **$0.00**

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December 7, 1999

Carole R. Richelieu, Esq.
Chief Disciplinary Counsel
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawaii 96813

RE: Your November 12, 1999, Letter

Dear Ms. Richelieu:

In direct reliance upon your November 12, 1999, letter to me stating that there would be no reciprocal discipline in Hawaii if a public reproval in California were based upon the same information which served as the basis for the reviewing Disciplinary Board Member's determination in ODC 4068 which previously found me not guilty of any professional wrongdoing, I am writing to report to you that I have today sent the attached Stipulation to the California Bar authorities, accepting a public reproval based solely upon the fact of my misdemeanor failure-to-file related tax convictions by Visiting District Court Judge Manuel Real in 1994.

I have done so only because California has a truly Draconian disciplinary system – which in the recent past has routinely suspended California attorneys for a minimum of two years (or more) based solely upon such misdemeanor failure-to-file tax convictions and nothing more.

Unlike the professional and thorough manner in which my case was investigated by your office, in California I found myself immediately beset upon by young role-playing "prosecutors" attempting to convince the "State Bar Court" that I was a menace to the community and should be immediately suspended, based exclusively on a misdemeanor conviction, and without even bothering to examine any of the facts of my case, in marked contrast to my experience with the professionalism and due process of your office.

Fortunately, the "State Bar Court" judges did not agree with its prosecutors in my situation, forcing me however to go to trial next month, if I continued to deny culpability, thousands of miles away from where my witnesses, for instance, reside.

Such unreasonable disciplinary procedures in California, as you may know, led in part to the recent revolt in that State's Legislature and among the California Bar that cut off all funding for the California "State Bar Court" for over one year, and thankfully led to its new policy of expediting the resolution of minor cases such as mine without such Draconian discipline.

Since I do not expect to be again residing or practicing law in the State of California, and since an ethics trial there would be quite time-consuming and quite costly, especially to bring my witnesses to Los Angeles for trial, after receiving your November 12, 1999, letter, I decided to accept a public reproval based entirely upon the fact of my conviction by Judge Manuel Real – with the understanding that if my forthcoming efforts to overturn those misdemeanor convictions are successful the public reproval will be publicly retracted there.

I tried to secure a private reproval, and if I pressed the issue I might have been successful, but once again California has unique procedures, and in "misdemeanor tax conviction" cases even a so-called private reproval is made public on membership records on the Internet, so the distinction lost its real difference in my situation.

The minor discipline of a public reproval, the California "prosecutors" continually tell me, is less than they have ever agreed to for any attorneys with federal failure-to-file convictions in the past, but that still seems highly unfair to me in my circumstances, and I am told that they do not want to vary too far from the otherwise established precedent.

In other words, they have made a decision in my case so as to protect somewhat the consistency of their prior judgments, disregarding my "unique circumstances".

While I am still not pleased with even such a "nolo contendere" plea there, the minimum required for resolving the matter, the system in California – with its 180,000 or so Members – is frankly so rigid and so unfair that I have reluctantly been forced to now accept that alternative in order to exit the process with as little damage to my reputation there as possible.

Very truly yours,

/s/ Gary Victor Dubin

Gary Victor Dubin

GVD/o
enclosure

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December 31, 1999

Carole R. Richelieu, Esq.
Chief Disciplinary Counsel
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawaii 96813

RE: Your November 12, 1999, Letter

Dear Ms. Richelieu:

As a follow-up to my letter to you dated December 7, 1999, formally reporting to you that I had accepted a stipulated, *nolo contendere* public reproval in California, and the specific reasons therefor, based solely upon the technical fact of my misdemeanor failure-to-file related tax convictions by Visiting District Court Judge Manuel Real in 1994, in direct reliance upon your November 12, 1999, letter to me stating that there would be no reciprocal discipline or reopened ethics investigation in Hawaii if a public reproval in California were based upon the same information which served as the basis for the reviewing Disciplinary Board Member's determination in ODC 4068 which previously found me not guilty of any professional wrongdoing on the same facts, I am now enclosing for your files a filed copy of that stipulation now approved and formally entered by the California Bar Court for its purposes there.

Very truly yours,

/s/ Gary Victor Dubin

Gary Victor Dubin

GVD/o
enclosure

Valdez cooperated with the State Bar during its investigation and proceedings, demonstrated remorse, and at the time of the misconduct suffered financial stress and hardship that was beyond his control.

The probation order took effect December 19.

Jeffrey John Wiebe, State Bar # 147834, Alameda (November 19). Wiebe, 37, had his previous order of probation extended for one year for failure to comply with the terms and conditions to the previous probation.

In April 1998 Wiebe was suspended for 90 days and until he made restitution of $900 to one client. Also, he was placed on two years of probation for failure to maintain client funds in trust, failure to promptly pay funds to a client, and entering into a business relationship adverse to a client.

In aggravation, Wiebe had a prior record of discipline, the underlying matter. His misconduct involved multiple acts of wrongdoing that harmed the administration of justice. In mitigation, he acknowledged that stress from substance abuse contributed to his delay in complying with the terms and conditions to probation. He has enrolled in a substance abuse recovery program, reflecting his good faith efforts to learn strategies for coping with the stress of maintaining a law practice while meeting ethical and professional responsibilities.

The probation order took effect December 19.

Public Reproval

Gary Victor Dubin, State Bar # 34595, Honolulu, Hawaii (December 15). Dubin, 62, was publicly reproved for failure to file federal income tax returns.

In January 1994 Dubin was convicted of violation of 26 USC section 7203, failure to file federal income tax returns, from 1986 through 1988. He has since filed the returns but owed no taxes for those years because of business losses. At about the same time he failed to file the tax returns, he was being audited. He received a letter from an employee of the Internal Revenue Service stating that he was not required to file income tax returns for the years covered by the audit.

There were no factors in aggravation. In mitigation, at about the time of the misconduct, Dubin was under great stress because his son had been terminally ill and passed away in 1992. The misconduct was due, in part, to the letter he received from the IRS stating that he was not required to file the tax returns. Also, the misconduct did not involve clients.

The reproval took effect December 31.

Henry R. Eskens II, State Bar # 123898, Surfside (October 26). Eskens, 40, was publicly reproved for failure to competently perform legal services.

In April 1994 Eskens entered into an agreement with a financial services company to act as trustee of security placed in trust for the benefit of investors who purchased secured corporate promissory notes to be issued by the company. Eskens also received a deed of assignment, executed by the president of the company, assigning the company's interest in $940,800 worth of U.S. Treasury bills. Part of Eskens's fiduciary duty was to disclose fully the nature and extent of the security so as to avoid any misrepresentation.

In May 1994 Eskens sent letters to potential investors identifying himself as a licensed California attorney employed by the company as an independent trustee to hold and oversee certain security for the company's promissory notes.

At the time he wrote the letter, Eskens did not have possession of or access to the security and was not in a position to administer the security for the benefit of the investors.

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RECORD: Doc. 41, Exhibit 9

FEATURES

Real Trouble

POSTED SEP 01, 2008 01:10 PM CDT

BY TERRY CARTER

Judge Real
Photo by Virginia Lee Hunter

Gary Dubin spent 19½ months in a California federal prison and returned to Hawaii in October 1996 to practice law. The state's Office of Disciplinary Counsel, in an extremely unusual decision concerning a matter of moral turpitude, determined that a finding of professional misconduct was "not warranted." Later, even the U.S. Internal Revenue Service reversed itself, saying he didn't owe the $1.5 million that was the basis of his three misdemeanor convictions for failure to file tax returns.

In fact, the agency gave him nearly $100,000, including interest, from payment in an earlier tax year. The IRS had found that he indeed had substantial business losses and deductions for the years in question, and that they could be carried back.

He can't recoup the time behind bars; the same goes, thus far, for the $131,000 the judge fined him. In 2006, the IRS looked into the possibility of crediting the fine to his next tax liability, but found it couldn't because the money went to the court.

Dubin still seeks redress beyond his vindication from the bar and the IRS. He has filed complaint after complaint in venue after venue against the man who sentenced him—including a 2006 mandamus petition to the U.S. Supreme Court, where cert was denied.

Dubin had been Hawaii's example in "Project Esquire," a nationwide dragnet by the IRS to snare lawyers for failure to file tax returns. Dubin's case had been scheduled for a bench trial with a magistrate there.

But on short notice, it found its way to the docket of U.S. District Judge Manuel L. Real—a jurist known for a heavy hand with errant lawyers in the Central District of California—who was visiting on the bench from Los Angeles.

Gary Dubin
Photo by Chris McDonough

Dubin claims Real, now 84, railroaded him 14 years ago. It is a rare federal judge who hasn't attracted such complaints. But there have been many similar complaints about Real (the judge pronounces it "reel") over four decades by plaintiffs, defendants and lawyers alike, as well as appellate decisions occasionally attacking the judge's handling of cases. Three times this year, cases have been summarily removed from Real's docket.

In one decision by the San Francisco-based 9th U.S. Circuit Court of Appeals in March, *U.S. v. Hall*, the court remanded the case of two men convicted of securities fraud and ordered that it be given to a different judge.

The opinion noted "the catalog of inappropriate behavior by the trial court is long, so we merely summarize it here." One example: "Sua sponte interposing adverse evidentiary rulings with such frequency that the government was effectively relieved of its responsibility to make objections."

"That's what he did to me, among other things," says Dubin. In May he reworked his detailed, document-rich petition and filed it with the Judicial Conference of the United States, which recently expressed serious concerns about the judge's actions in scores of cases going back to the mid-1980s.

Since his conviction was upheld on appeal (though the 9th Circuit accepted on its face a crucial finding of fact that seems indisputably erroneous), Dubin knows he is seen by some—especially since serving as his own lawyer—as a kook wearing a tinfoil hat.

"I have to pursue it," the 69-year-old Dubin still says. "It was wrong."

JUDICIAL REVIEW

The Judicial Conduct and Disability Committee of the U.S. Judicial Conference asked (http://www.ce9.uscourts.gov/misconduct/orders/committee_memorandum_89020.pdf) (PDF) the 9th Circuit Judicial Council in January to review 89 of Real's cases in which the appeals court found problems. (The number reportedly has been cut somewhat. And the review would not include Dubin's conviction, because it was upheld on appeal.)

Judge Real did not respond to requests for an interview. He has granted them a number of times over the years with various publications. But he lately has hunkered down and lawyered up to battle investigations into whether he has a "pattern and practice" of not giving reasons for his decisions when required and whether it is "willful."

"The most interesting and far-reaching question is what are the limits? Where do you draw the line between judicial freedom to make mistakes—wrong decisions—which is protected, and judicial misconduct, which isn't?" says Arthur Hellman, a professor at the University of Pittsburgh School of Law and a leading authority on federal judicial ethics.

"Does there come a point where a willful pattern and practice becomes misconduct?" Hellman continues. "This touches closely on the substance of judicial decision-making, which is off-limits from disciplinary proceedings. It could be a major test case of where that line is."

David Oswalt, a senior counsel in the Los Angeles office of Arnold & Porter, heads Real's team of lawyers, which draws from other firms as well as academia, but says he cannot comment given the nature of the proceedings.

After congressional rumblings in recent years about replacing the judiciary's self-regulation with an inspector general, the U.S. Judicial Conference is pushing harder for circuits to deal more forcefully with errant judges. Real

became a prominent example in this effort. He was called to appear at a 2006 hearing of the U.S. House Judiciary Committee, which was considering his possible impeachment.

"If the Democrats had not taken back control of the Congress shortly after that, he might have been impeached," says Henry Weinstein, who for many years covered the 9th Circuit for the *Los Angeles Times* before recently leaving.

On the heels of such criticism, the U.S. Judicial Conference implemented in April the first-ever nationwide rules and procedures for all circuits' handling of judicial misconduct complaints. It's a step away from the decentralization that has given the circuits wide latitude in dealing with their own.

And one element in the new disciplinary procedures was clearly tailored to address the kinds of issues that have come up with respect to Real.

The changes resulted from recommendations by a committee headed by Supreme Court Justice Stephen G. Breyer. In 2004, partly responding to complaints from Congress, then-Chief Justice William H. Rehnquist created the committee to study whether the 1980 Judicial Conduct and Disability Act had been effective in dealing with complaints against judges.

The Breyer committee found that while for the most part the law was effective, there were significant shortcomings in high-profile matters. The report detailed several instances without naming names, but one could be clearly identified as Real. The report said that actions by the chief judge and circuit council in dealing with a complaint against him were "inconsistent with the law."

The rules declare that a "chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute." Still, the complaint against Real was twice dismissed by Chief Judge Mary Schroeder based on her own findings—and upheld by the 9th Circuit council.

Likewise, the Judicial Conference's conduct committee found its hands tied when considering an appeal by the complainant: It could review only matters in which a chief judge named a special investigative committee, which Judge Schroeder had not done.

Under the new rules suggested by the Breyer committee, the conduct committee now can request that a circuit appoint one.

Compared to federal rules for judges, state canons for judicial ethics are more specific as to what judges can and cannot do. And it has been a long-held belief in the federal circuits that they could, and should, effectively police their own—often with a quiet, personal touch.

In the early 1990s, Charles Geyh, a professor at the Indiana University School of Law, interviewed more than 30 current and former chief judges in the circuits to study how they handled complaints against judges. He found that informal measures for dealing with abusive or troubled judges seemed to work.

"But as I've gotten farther down the road and also studied judicial discipline at the state level, I've begun to appreciate that even if federal judges take keeping a clean shop seriously, there still are two problems: The public doesn't know that they're doing so, so they suspect nothing is happening; and federal judges take pride in collegiality, making it very hard for them to deal with their own dirty laundry."

REAL'S MODEL

Gregory Ellis
Photo by Thomas Broening

Over the years, Manuel Real has told a story about a case he had as a young prosecutor in the early 1950s in front of a judge who became his judicial role model.

Real was prosecuting two men charged with sending pornography through the mail—nothing more than bare breasts; it was the early 1950s. One pleaded guilty before Judge Peirson Hall, who promptly acquitted the other in a bench trial. The first man then asked to withdraw his plea and go to trial with Hall. The judge agreed.

That piqued Real, who demanded a jury trial. The judge obliged, telling his courtroom clerk to call a jury for 10 p.m. Real said he couldn't prepare that soon.

Hall's reply: Case dismissed for lack of prosecution.

The story brings smiles to most who hear it. But if adopted generally, such an approach in the courtroom could free the guilty or send the innocent to prison.

Los Angeles criminal defense lawyer Stanley Greenberg believes one of his clients spent more than a year behind bars, fully innocent, before the case, *U.S. v. Mayans*, was remanded and later dropped.

On appeal, the 9th Circuit found Real made four reversible rulings concerning testimony and evidence. But the circuit was particularly rankled about what it viewed as the unconstitutional denial of an interpreter for the defendant, who had come from Cuba and struggled with English.

The remand opinion noted that "we find ourselves in the peculiar situation of being unable to review the district court's determination that appellant did not need an interpreter. The trial judge never conclusively made that determination, but rather urged appellant over and over to try testifying in English—to 'try it.' "

Otherwise, Real had said from the bench, the testimony "takes twice as long."

Although Greenberg, who was a federal prosecutor in L.A. in the early 1970s, is reluctant to criticize Real, others familiar with the case say he's still dismayed nearly 16 years later. At trial, instead of asking whether the prosecution had any more questions for a witness, an exasperated Greenberg is said to have asked if Real had anything further to add.

"He's a complex person and there is another side to him," Greenberg says now. "I've seen him do extraordinarily compassionate things from time to time, taking great interest in probationers and actually reading whatever I submitted—which you don't always expect with other judges.

"But given a choice, it's not a courtroom I'd ever choose. It's very unpleasant because he makes it very unpleasant."

Off the bench, Real is described by most who know him—including some who try to avoid his courtroom—as a caring gentleman and a charming, pleasant figure at social and professional gatherings.

Manny Real, as many call him, grew up in San Pedro, Calif., where he lives today. His parents emigrated from Spain and his father was a grocer.

For decades, he has insisted his law clerks live near enough to him that they can ride together for the 35- to 45-minute drives to and from the courthouse.

"It was our alone time with the judge," says Gregory Ellis, who clerked with the judge from 1999 to 2000. "We would listen to NPR and discuss the news, or we could talk to him about pending cases, what he thought of them, any motions we had heard; and if he had them, he'd ask us questions."

Real takes an interest in staff throughout the courthouse, Ellis says: "He tries to create a family atmosphere for everybody."

After finishing at Loyola Law School of Los Angeles in 1951, Real spent four years as an assistant U.S. attorney there and then 10 years in private practice with his brother in San Pedro.

In 1964, a close friend who was an influential Democrat recommended him to be U.S. attorney in Los Angeles. Just two years into the job, Real was appointed to the federal bench by President Lyndon Johnson.

Probably Real's most significant judicial decision came early in his career. In 1970, he ordered busing to desegregate the Pasadena public schools. It was the first such order outside the South. A Perris, Calif., elementary school was later named for him.

His most notorious decision was in 1985, after *Hustler* magazine publisher Larry Flynt appeared before him on a contempt charge from another judge in *U.S. v. Flynt*.

At sentencing, Flynt repeatedly taunted Real: "Motherf——, is that the best you can do?"

Not to be outdone, Real upped the ante each time: from six months to 12 months to 15 months. The scene was in the 1996 movie *The People vs. Larry Flynt*.

In real life, Real was reversed; the 9th Circuit ruled Real did not take into account Flynt's mental competency.

PERSONAL TOUCH

> With more normal defendants, Real is often known for his compassion, and—sentencing guidelines be damned—if he thinks a person is salvageable, he crafts unique remedies, often with thousands of hours of community service in lieu of doing time. He monitors each of these probationers personally.

Victor Sherman
Photo by Thomas Broening

In a case in 2000, he went too far to help one of his probationers. On his own motion, Real seized her personal bankruptcy case and, based on ex parte communication with her, stopped her landlord (former in-laws) from evicting her or even collecting rent.

It is the matter that found its way into the Breyer committee's report for having been mishandled by the 9th Circuit.

"Because he cares so much and gets personally involved in cases, I think that sometimes backfires on him," says Laurie Levenson, a former federal prosecutor in Los Angeles and now a professor at Loyola Law School there.

Real received a public reprimand (http://www.ce9.uscourts.gov/misconduct/orders/committee_memorandum.pdf) (PDF) in January for his handling of the bankruptcy matter, though it took five years after the initial complaint was filed in 2003. Interestingly, the complaint came from Stephen Yagman, a lawyer with no interest in the case—other than a grudge against Real.

It is a grudge Yagman has carried since 1984, when Real fined him $250,000 for unprofessional conduct in a civil suit. Yagman was a prominent civil rights lawyer with a specialty in police misconduct.

Yagman said at the time that Real "is a tyrant who is a disgrace to democracy—he is a modern-day Torquemada. He suffers from boredom and indulges himself in infantile and harsh behavior to create situations to alleviate his boredom."

The 9th Circuit reversed the ruling and remanded the case for another judge. Real refused to let it go and instead sat on it—he was waiting for a ruling in another case in which he asked the appellate court to vacate an order taking that matter from him.

Real then did the unthinkable.

He filed personal petitions for certiorari with the Supreme Court, in 1986 and 1987, asking that the two cases be returned to him. Cert was denied on both *In re Real* and *Real v. Yagman*.

Earlier this year, Yagman went to prison, convicted of tax fraud. And there is no word on the source of a more recent and more significant complaint about the judge. But Yagman's case drew so much scrutiny that other complaints were bound to gain traction.

When the Judicial Conference's conduct committee upheld a public reprimand of Real in the probationer's bankruptcy matter, it also issued another opinion concerning Real that was a bombshell: It asked the 9th Circuit council to review scores of cases for a willful pattern and practice of not giving reasons for decisions.

The matter had not previously been disclosed.

Real has found himself, in effect, on the receiving end of advice he is famous for giving lawyers in his court: "This isn't Burger King. We don't do it your way here."

Pittsburgh's Hellman says, "There has been evidence of problems with Judge Real for a long time, and the fact they are acting now in this way may be tied to the higher level of congressional interest and the raising of doubts whether the judiciary successfully policed misconduct in its ranks."

Yagman was just one on a long list of lawyers who Real has jailed or tried to jail over the years.

"Everybody has a horror story about a trial they had with Judge Real," says Maria Stratton, laughing because she thinks well of him. She was the public defender for the Central District of California from 1993 to 2006 and is now a judge in Los Angeles Superior Court.

Real once insisted she be in his courtroom at 9 a.m. rather than first appearing at the 9th Circuit, nearby. Protocol defers to the higher court.

"He threatened to hold me in contempt," says Stratton, who said she rushed and was only a few minutes late to Real's courtroom. "Then that night at a bar function, after I'd gotten an acquittal in his court and he seemed upset about it, he couldn't have been nicer."

JEKYLL OR HYDE?

Others say they never see Dr. Jekyll, only Mr. Hyde, when dealing with Real.

Gary Lincenberg Photo by Thomas Broening

In 1971, Santa Monica criminal defense lawyer Victor Sherman was ordered to jail for four days over a routine evidentiary question.

"But it was really because he found out from a marshal that I gave him the finger as he stepped from the bench in another case shortly before that," says Sherman, who had been exasperated by the judge's refusal to allow him to examine a witness on a particular point.

The 9th Circuit knocked down the jail term. "And I got him reversed on the evidentiary matter," Sherman says. "At one point, I got him reversed six times in a row.

"Lots of lawyers have these kinds of stories about Judge Real, but not many of them will talk about it publicly," he adds.

Indeed, a dozen Los Angeles lawyers contacted for this story, some of them well-known, were eager to talk about bitter experiences in Real's court, but not for the record. One who has spoken out in the past, and is known for his collection of negative information and court decisions about the judge, declined to go on the record now because he has a client awaiting sentencing before Real.

Real's defenders, and he has plenty (though some of them, too, declined either to be interviewed or to speak on the record), say his motives are not malevolent.

The president of the Los Angeles chapter of the Federal Bar Association, Gary Lincenberg, does speak out and disagrees with the mounting criticism of Real. The jurist has long been on the association's board and, while others occasionally miss meetings, he is always there, says Lincenberg. The judge is particularly interested in helping younger lawyers, he adds.

"Given the controversy he is in the middle of, I think that other judges might be bitter, but he stays very focused on the big picture," says Lincenberg. "It's fine if somebody wants to criticize his decisions—that's what law is all about.

I don't think criticism of his good faith is warranted."

Says former clerk Ellis, now a Los Angeles litigator: "He's very good at sniffing out people who are unprepared and sniffing out witnesses not telling the truth. The accuracy of his BS detector was off the charts. Typically, if lawyers were prepared and knew the papers, they did OK in his courtroom, even if he didn't agree with them."

The celebrity lawyer Howard Weitzman says he always came prepared and still had difficulties peculiar to Real. In the 1970s he defended a lawyer in a criminal case who was convicted in a trial before Real. The case was remanded and tried again before Real. On the second remand, the case was heard before another judge. The lawyer was acquitted.

Weitzman has tried a half-dozen or more jury trials in front of Real, observed a number of others and found the judge's behavior problematic in all of them.

"I've seen him make it clear to jurors he doesn't agree with the direction of your questioning or doesn't believe your client," Weitzman says. "And I saw him take over questioning of witnesses if the side he prefers wasn't doing well. He continually demeans and puts down lawyers in front of juries in such a way that I think it averts a fair trial."

It was this sort of courtroom in which Dubin says he found himself in 1994.

His story in brief: Just before his trial, a psychiatrist was having Dubin admitted to a psychiatric hospital for depression over both the slow death of his son two years earlier from AIDS and the whirlwind of events that led to his case being moved suddenly to a bench trial by Real.

Dubin, a respected litigator and appellate attorney, had been scrambling, with the help of others, to get a top-notch lawyer—specifically, Richard Ben-Veniste of Washington, D.C.—to represent him. Real denied a continuance.

Real sent U.S. marshals to bring him to court for trial, just as he was being admitted to the hospital. Dubin was forced to defend himself for the next day and a half while sluggish with newly prescribed anti-depression and anti-anxiety medications, and without the letters and tax records he needed to make his case—including proof of extensive deductions and business losses, and a letter from the IRS saying he did not have to file yet for some of the years in question because he was already being audited before the dragnet.

When Dubin—who Real kept in lockup when he wasn't in court—complained that the evidence was at his home, the judge dispatched an acquaintance of Dubin's to obtain the files.

"The room at Dubin's home was wall-to-wall boxes of documents," says James Clement, the now-retired tax lawyer who ran the errand. "I came across some that looked right, but when I took them to the courthouse they turned out to be copies of the prosecution's exhibits.

"It is my understanding that everyone knew at the time that he didn't have the records he needed for trial, and that the judge just wouldn't be bothered with it," says Clement.

Despite this, in his finding of fact No. 11, Real said the defendant had his records "brought to him ... by a friend, also a lawyer, and those records were available to Dubin throughout the trial."

Real even tacked on four months extra under the sentencing guidelines he often openly eschews, for obstruction of justice—because Dubin was at the hospital instead of court.

Clement later wrote in a signed declaration: "I know of my own personal knowledge that finding of fact No. 11 is absolutely false."

At the appellate level, there is a presumption that findings of fact are just that—fact. And in the 9th Circuit, Real's findings went unchallenged.

"What is disturbing about [Dubin's complaint] is that quite a bit of evidence seems to have been available to the judiciary—long before the impeachment proceeding or misconduct proceedings that resulted in reprimands—that suggested the judge is really a danger on the bench," says Hellman, who has not studied the Dubin case.

The judiciary is now taking what many believe is a long-overdue, in-depth look at whether Real's decision-making runs so far afoul of law and procedure that he is engaging in misconduct.

As Hellman says, the result could draw a new line of demarcation between independence and discipline—one of the touchiest areas for the judicial branch.

Considering the 9th Circuit council's call for a private reprimand for Judge Real, the Judicial Conference's conduct committee in January said, in effect, no.

"If the council finds willfulness, it should consider a more severe sanction, such as a public censure or reprimand and an order that no further cases be assigned to the judge for a particular period of time," the conduct committee wrote.

Short of impeachment, that would be the worst fate imaginable for a jurist who twice petitioned the Supreme Court personally in an effort to hold on to cases that had been reassigned.

Like his nemesis Dubin, Real is a man who fully believes he is right and has been wronged. And he presses every challenge as far as he can.

Form 4549 — Department of the Treasury - Internal Revenue Service

Income Tax Examination Changes

Name and Address of Taxpayer
GARY V. DUBIN

900 Fort Street Mall
Suite 1410, Pioneer Plaza
Honolulu HI 96813

SS or EI Number: [redacted]

Return Form No: 1040

Person with whom examination changes were discussed.

Name and Title:

1. Adjustments to Income	Period End 12/31/1985	Period End 12/31/1986	Period End 12/31/1987
a. Itemized Deductions	1,015.00	(157.00)	
b. Schedule C Gross Business Income	73,481.00	28,710.00	927.00
c. SCH C BUS DEDUCTIONS	30,351.00	134,263.00	75,201.00
d. NOL Carryback/Carryforward	(40,168.00)	43,365.00	329,702.00
e. Other Income		(131,056.00)	
f.			
g.			
h.			
i.			
j.			
k.			
l.			
m.			
n.			
o.			
p.			
2. Total Adjustments	64,679.00	75,125.00	405,830.00
3. Taxable Income Per Return or as Previously Adjusted	(67,864.00)	(347,480.00)	(467,593.00)
4. Corrected Taxable Income	(3,185.00)	(272,355.00)	(61,763.00)
Tax Method	TAX TABLE	TAX TABLE	TAX TABLE
Filing Status	Head of Household	Single	Single
5. Tax	0.00	0.00	0.00
6. Additional Taxes / Alternative Minimum Tax			
7. Corrected Tax Liability	0.00	0.00	0.00
8. Less Credits a.			
b.			
c.			
d.			
9. Balance (Line 7 less total of lines 8a through 8d)	0.00	0.00	0.00

1. Adjustments to Income	Period End 12/31/1988
a. Itemized Deductions	(6,078.00)
b. NOL Carryback/Carryforward	438,636.00
c. Schedule C Gross Business Income	7,459.00
d. SCH C BUS DEDUCTIONS	62,327.00
e. SE AGI Adjustment	
f.	
g.	
h.	
i.	
j.	
k.	
l.	
m.	
n.	
o.	
p.	
2. Total Adjustments	494,344.00
3. Taxable Income Per Return or as Previously Adjusted	(497,484.00)
4. Corrected Taxable Income	(3,140.00)
Tax Method	TAX TABLE
Filing Status	Single
5. Tax	0.00
6. Additional Taxes / Alternative Minimum Tax	
7. Corrected Tax Liability	0.00
8. Less Credits a. General Business Credit	
b.	
c.	
d.	
9. Balance (Line 7 less total of lines 8a through 8d)	0.00

Examiner's Signature: Fred L Bridges
Fred L. Bridges

Employee ID: 9100224

Office: Seattle

Date: 06/30/2003

Consent to Assessment and Collection – I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States Tax Court the findings in this report. Therefore, I give my consent to the immediate assessment and collection of any increase in tax and penalties, and accept any decrease in tax and penalties shown above, plus additional interest as provided by law. It is understood that this report is subject to acceptance by the Area Director, Area Manager or Director of Field Operations

PLEASE NOTE: If a joint return was filed, BOTH taxpayers must sign	Signature of Taxpayer	Date	Signature of Taxpayer	Date
	X	7/10/03		
By:		Title		Date

RGS Version 4.00.00

Form CG-4549

Internal Revenue Service
Appeals Office
915 Second Avenue
Room 2790, MS W680
Seattle, WA 98174

Date: April 13, 2006

GARY V DUBIN
55 Merchant Street #3100
HONOLULU HI 96813

Department of the Treasury

Person to Contact:
Vicki Olsen
Employee ID Number: 9-95658
Tel: (206) 220-6059
Fax: (206) 220-5925
Refer Reply to: AP:FW:SEA:VSO
In Re: Abatement of Interest/Penap
Tax Period(s) Ended:
12/1985 12/1988 12/1989
12/1990 12/1991 12/1992
12/1993 12/1994

Dear Mr. Dubin:

I am faxing you this letter in response to your inquiry regarding the $125,000 penalty.

I pursued the possibility of crediting part or all of the $125,000 penalty to your IRS liability and have determined that the penalty went to the court and not to IRS, that I have no jurisdiction over the penalty, and any adjustment would have had to have been done by the court, presumably through an appeal.

You will have to contact the court system and pursue adjustment, refund or relief there.

If you have any questions, please call me. Thank you.

Sincerely,
Vicki Olsen
Appeals Officer

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RECORD: 11/14/17 Transcript

Before the

DISCIPLINARY BOARD

of the

HAWAI'I SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL, Petitioner, vs. GARY V. DUBIN, Respondent.	ODC No. 16-0-213 16-0-151 16-0-147 16-0-326

DBF45

H E A R I N G (Volume II),

Taken at the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813, commencing at 9:05 a.m., on November 14, 2017.

BEFORE: HEARING OFFICER ROY HUGHES, ESQ.

Reported By: SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii

A. At lunchtime, I tried to count them. I stopped at 300. My computer didn't go up to the earlier -- for all twenty years -- 25 years.

Q. Were you ever disciplined for actions in any of these cases besides the ones that we've --

A. If you mean discipline in terms of what's happening here today --

Q. Right.

A. -- potentially? No.

Q. And obviously, when you say no, you mean -- have you ever been sanctioned for anything dealing with clients, client --

A. In 54 years of contentious litigation, no, I've never had any charge of wrongdoing in relation to a client ever pinned on me at all, never. I never have been in a disciplinary hearing in my life.

Q. Does that include the fact that you were -- as we all understand, you were convicted by Judge Real for tax --

A. Yes. And I've explained already on the record what happened -- I think I did explain -- in California.

Not only did Hawaii take no discipline against me for that, the deputy disciplinary officer

at the time was Michael Lee, who is in law practice here in Honolulu -- and if that means that issue is important to the hearing officer, we can bring him in -- he called me up after a three and a half year investigation, said he was going to recommend a public reprimand.

MR. KIM: I'm going to object to this as being totally hearsay, and there's no foundation for any of this information, nor are there any exhibits to support the representations that he's making on the record.

HEARING OFFICER HUGHES: I understand. I'll allow it.

MR. WAIHEE: I'm sorry. Mr. Hearings Officer, we're just giving some background.

HEARING OFFICER HUGHES: I said it's allowed.

MR. WAIHEE: Okay.

THE WITNESS: I'm trying to move it along.

A. So he said he would give me -- he would try for a private reprimand. Well, the board decided to charge me with no professional misconduct, and I received a letter to that effect, that the Judge Real incident and my three misdemeanor convictions did not warrant any

discipline whatsoever.

And those files are in Mr. Kim's office, presumably --

MR. KIM: I'm going to object to this. I really am going to object to this. You said that we are going to try one issue at a time. We finished issue number one, which is what he's referring to, this morning. My understanding was that there was not going to be any more evidence, either testimonial or documentary, on that issue after we concluded it, and you noted on the record that we were finished with that issue this morning.

Now he's testifying about that issue all over again.

MR. WAIHEE: I think Counsel --

MR. KIM: The issue before you right now -- excuse me -- the issue before you right now is the issue of the ICA referral, not whether or not he was convicted of tax violations back in 1995.

HEARING OFFICER HUGHES: I think the only thing that's being established is that there was no --

MR. WAIHEE: Sanctions.

HEARING OFFICER HUGHES: -- disciplinary proceeding in connection with that, and they just

under advisement.

MR. WAIHEE: Thank you. I also want to make a second motion, and that is to move to dismiss the Smith case based on prosecutorial misconduct. And it's based on this: The fact of the matter is that between the years of approximately 1996 and 2000, the issue of Mr. Dubin's misdemeanor convictions were taken up by the ODC in Hawaii; that those files should be available in this office and that it's misconduct to cross-examine a witness on this issue and not letting you know that, in fact -- that the dismissal of those charges had, in fact, occurred; that this issue was taken up, it was handled by the ODC; ODC didn't take any action of it; actually, dismissed it.

HEARING OFFICER HUGHES: I've heard that motion.

Before we go further, do you have evidence in support of that motion? I'm talking about that has been made part of the record that you have --

MR. WAIHEE: The first motion or the second?

HEARING OFFICER HUGHES: The second motion.

The motion to dismiss, the initial motion

made, will be taken up after I've reviewed all of the evidence, as well as my notes regarding the testimony taken. Then I will rule on the motion.

MR. WAIHEE: All right.

HEARING OFFICER HUGHES: As for the second motion, on prosecutorial misconduct based on ODC having made these charges previously --

MR. WAIHEE: Having investigated and conducted a hearing.

HEARING OFFICER HUGHES: On whatever basis, I want to know whether you have presented that as part of the numerous voluminous documents.

MR. WAIHEE: No, we haven't.

HEARING OFFICER HUGHES: I want to see those documents if you have those documents.

MR. WAIHEE: Mr. Hearings Officer, may I ask that you order the production of those files from the ODC?

HEARING OFFICER HUGHES: You're bringing the motion. You must have some basis for that, and so I want to see that -- if you have prior reported decisions or prior communications, then I want to see them. I'm not going to have ODC produce them. You're bringing the motion. The burden is on the movant in that regard.

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RECORD: Pet. E1 and 11/28/17 Transcript

DUBIN LAW OFFICES

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October 12, 2001

HAND DELIVERED

Alvin T. Ito, Esq.
Special Assistant Disciplinary Counsel
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawaii 96813

RE: ODC 7031, Myron W. Serbay, Jr., Complainant

Dear Mr. Ito:

I am writing in response to your letter dated September 13, 2001, with regard to Mr. Serbay's generalized and cryptic letter to you dated August 21, 2001.

Please note that Mr. Serbay's letter bears an ODC reference number of "6744" which is that of Mr. Gyler's first complaint against me – which suggests that not only was this mirror-image complaint instigated by Mr. Gyler, but that Mr. Gyler has shared his first filings with you with Mr. Serbay, and who knows how many others, in direct violation of the ODC's confidentiality rule -- which of course Mr. Gylers' attorneys themselves have freely violated in the USDC proceedings as previously pointed out by me -- to color Mr. Serbay's views, and most likely without sharing with him my responses.

Frankly, I do not understand Mr. Serbay's allegations.

First of all, Mr. Serbay was never my client. He had contracted with Mr. Gyler to become his business partner as an additional class representative/plaintiff in the case, but never became one since behind my back Mr. Gyler fed him a bill of goods and, as I understand it from Mr. Gyler, Mr. Serbay agreed to and did rescind his arrangement with the Gylers and entered into some agreement with the Gylers instead to share whatever recovery the Gylers were to receive in a *separate* action after the class suit was dismissed, and presumably feels obliged to continue that relationship now by piggybacking on to Mr. Gyler's complaint (see, for instance, his e-mail to me dated March 29, 2000, set forth in Exhibit 1, and his subsequent, amended agreement with Mr. Gyler making them partners, set forth in Exhibit 2; unfortunately, Mr. Gyler has never shared with me a copy of the rescission agreement with Mr. Serbay executed sometime in late summer 2000, I believe).

Second, I know of no "confidential memoranda, e-mails and letters" of his that I submitted to the Court. Mr. Serbay was himself outspoken in his views, and freely informed everyone of his opinions regarding the case, never requesting any confidentiality and freely waiving same (see, for instance, the declaration that he himself wrote and that I submitted to the Court at his insistence, criticizing roundly the AOAO set forth in Exhibit 3).

Third, Mr. Serbay moreover expressed his critical views in writing to dozens of AOAO owners with the bitterest of language imaginable, so it is therefore difficult to understand what he is claiming was revealed of his confidences, especially since he was not my client and nothing of his that I can find (which if in existence in any way could thus be considered confidential) was ever disseminated by me (see, for instance, some of the inflammatory e-mails he sent to everyone, including opposing AOAO Board Members, set forth in Exhibit 4, which by the way were <u>not</u> filed in court papers by me even though Mr. Serbay had never asked me to keep them or anything else he disseminated confidential).

Fourth, to the extent that Mr. Serbay is intending merely to parrot Mr. Gyler's August 1, 2001, complaint, I submit herewith additional copies of my response to Mr. Gyler's similar assertions and incorporate that response herein (see, for instance, my two supplemental sworn statements submitted to you and to the Court, additional copies of which are separately included herewith to complete the record of this new grievance as well).

Fifth, Mr. Serbay makes reference to somehow being prejudiced by the class suit being dismissed ("the damage to me is incalculable at this time"). That complaint seems to be inconsistent with his having rescinded his agreement with Mr. Gyler behind my back, according to Mr. Gyler that is, in order to avoid becoming an additional plaintiff in that suit which he never did become, inconsistent with the fact that the class action was dismissed without prejudice due to my intervention in Mr. Gyler's motion and plans, inconsistent with the fact that he was never my client and never paid me anything for the Gylers' suit, and inconsistent with the fact that the Court gave him and anyone else the option of going forward with the class action suit and required that Mr. Gierlach notify all potential class representatives such as Mr. Serbay of that option, yet he never responded to that court-ordered invitation.

Frankly, it is a tribute to the wisdom of the other owners that, although apparently Mr. Gyler has attempted to poison their minds against me as well and to drum up false support for now his second grievance against me, only Mr. Serbay appears so far to have fallen prey to Mr. Gyler's many dishonest manipulations of the facts and of the ODC's processes.

If I can be of further assistance in this matter please let me know.

Very truly yours,

/s/ Gary Victor Dubin

Gary Victor Dubin

GVD/o
enclosures

Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawai'i 96813
Telephone (808) 521-4591

Chief Disciplinary Counsel
Carole R. Richelieu
Assistant Disciplinary Counsel
Charles H. Hite
Michael T. Lee
Geoffrey M. Kam
Katherine C. Desmarais
Of Counsel
Alvin T. Ito
Magali V. Sunderland*
*A Law Corporation
Investigator
Fred Oishi
Research Paralegals
Darryn J. Manuel
Lisa Lemon-Monville

May 7, 2004

CONFIDENTIAL

CERTIFIED MAIL NO. 7000 0520 0024 3685 9267
RETURN RECEIPT REQUESTED

Gary Victor Dubin, Esq.
Pioneer Plaza
900 Fort Street Mall, Suite 1410
Honolulu, Hawai'i 96813

Re: ODC 7031
Myron W. Serbay, Jr., Complainant

Dear Mr. Dubin:

As you are aware, the above-referenced ethics matter has been investigated by our office. The investigation has been reviewed by a member of the Disciplinary Board.

Based upon the investigation, it has been determined that your conduct in this matter violated the Hawai'i Rules of Professional Conduct.

In this case, you failed to respond to a letter dated September 13, 2001, from this office which requested that you respond to the complaint filed by Mr. Serbay by September 27, 2001.

You ignored this office's September 13, 2001 letter until a Subpoena and Subpoena Duces Tecum was served upon you ordering you to respond.

By your conduct, you violated the following provisions of the Hawai'i Rules of Professional Conduct:

HRPC 8.1(b). A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

HRPC 8.4(d). It is professional misconduct for a lawyer to fail to cooperate during the course of an ethics investigation or disciplinary proceedings.

HRPC 8.4(a). It is professional misconduct for a lawyer to violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

Taking into account your lack of prior discipline and the facts and factors presented in this case, your violations have been deemed deserving of the imposition of a private Informal Admonition, which is the least severe form of sanction.

This letter constitutes the imposition of such an Informal Admonition upon you. You are advised that this Informal Admonition will become part of your professional file and may be used against you in the event of any future disciplinary proceedings. Please note that the Admonition could become public in the event of any future formal disciplinary proceedings.

You are further advised that you have the right to demand a formal hearing in this matter, in which case the recommendation for Informal Admonition will be withdrawn without prejudice. A formal disciplinary petition will then be filed to institute formal proceedings and served upon you for your Answer. The disposition of this matter will then be decided by the entire Disciplinary Board, subject to possible review by the Hawai'i Supreme Court, after completion of all phases of the formal proceeding. A decision to institute formal proceedings may or may not result in a more severe form of discipline than is stated here.

Should you decide to demand a formal hearing, you must return the enclosed copy of this letter with your signature on the line provided. If this office does not receive your demand within ten days of your receipt of this letter, you will be deemed to have waived the right to a hearing, and this matter will be considered closed with the Informal Admonition imposed.

Very truly yours,

ALVIN T. ITO
SPECIAL ASSISTANT DISCIPLINARY
COUNSEL

ATI:fh
enclosure

REFUSAL TO ACCEPT INFORMAL ADMONITION:

I have read this letter and understand its contents. I hereby refuse to accept the Informal Admonition and demand that a formal hearing be held in this matter.

_____
Gary Victor Dubin, Esq.

Dated: _____

Dubin Law Offices

900 Fort Street Mall
Suite 1410, Pioneer Plaza
Honolulu, Hawaii 96813

(808) 537-2300 (808) Dubin Law
Facsimile (808) 523-7733
Toll Free (888) Dubin Law
E-Mail: dubinlaw@msn.com
www.dubinlaw.net

May 20, 2004

BY HAND DELIVERY

Alvin T. Ito, Esq.
Special Assistant Disciplinary Counsel
Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawaii 96813

RE: ODC 7031 (Myron W. Serbay, Jr.)

Dear Mr. Ito:

I am in receipt of your letter dated May 7, 2004. For the reasons set forth below, since this matter was not previously discussed with me, and I have never therefore had any notice that such action would be taken or any opportunity to explain the circumstances surrounding my now challenged delay, I am writing to request reconsideration, in the absence of which I accept the informal admonition proposed, asking only that this letter of explanation be also placed in my file.

First of all, I wish to emphasize that I have always taken my responsibilities to cooperate with your office seriously, and have always responded to your inquiries with a complete statement as you know, as quickly as I could, and I have never received any discipline from the ODC in nearly 24 years, but also please known that my responsibilities to clients and to courts have similarly required that I must weigh those responsibilities in scheduling as well.

It is true that I did not respond to your written inquiry in the above-entitled matter, and if that *automatically* triggers an informal admonishment, then I fully understand, as I was late, and you need not read any further, but if there is discretion in this matter I would hope that you and whoever reviewed this matter for the Board might reconsider for the following brief reasons:

1. This complaint was lodged years ago, and the files are in storage, so I have had to rely solely on my memory and my tracing what was happening during the time frame in question from secondary sources.

2. Reviewing my calendar, for instance, I find that I was occupied at the time responding to you concerning ODC complaints from two thoroughly dishonest clients, Ms. Toomalatai (ODC 7017) and Mr. Gyler (ODC 6744). At the same time, I was completing a Seattle District Office four-year IRS examination of the past 20 years of my income tax returns resulting from my experience with Judge Real, of which I was cleared of any wrongdoing by the ODC, yet the IRS was seeking, with interest penalties, nearly $8,000,000 from me. And, reviewing a letter I sent at the time to the IRS, a copy of which is attached, I note that I was also distracted by several client emergencies, like many attorneys in town, as a result of the 9/11 terrorist attack, which occurred but two days before your letter was sent to me.

3. Before I had a chance to respond to your September 13, 2001, letter, I had to travel to Seattle to sit down with my accountant and the IRS for a final week-long examination session, which is probably the reason I forgot to seek an extension from you regarding Serbay – which examination proved quite productive as the IRS concluded that it had made a mistake in its Honolulu audit and that rather than owing the IRS anything for the years in question it actually owed me a six-figure refund! That of course was an urgent matter that required my immediate attention as well, after a battle with the IRS that began a decade earlier. Please put yourself in my situation.

4. I am unaware as I write this letter why otherwise I did not request an extension from you in which to respond to the Serbay complaint, since you have always been quite understanding in granting requested extensions, and four weeks in which to respond is hardly evidence of ethical misconduct; and I did eventually respond fully to your initial inquiry, and can only assume that my failure to do so earlier was due to the above-referenced truly emergency circumstances – and was certainly not evidence of any willful intention on my part to avoid your important processes.

5. In fact, as you know, I feel that I have – if anything – over-responded to your requests in the past for information, despite my own complaints to you that the ODC does not exercise enough control over complainants, some who unfortunately believe that by insincerely complaining to the ODC and abusing your processes they can unjustly embarrass counsel and secure some financial advantage in the process or emotional vendetta against the system as a whole.

6. You will recall, for instance, Mr. Bringas' attempts to defame me, by for instance generating complaints against me from several clients, such as Ms. Mores (ODC 7358) – in much the same way as did Mr. Gyler contact Mr. Serbay and stimulate him to complain about me as a misguided way of seeking to extort money from me – while later Ms. Mores withdrew her complaint as unfounded, having been lied to by Mr. Bringas, and she and her husband remain my clients to this day; yet even after she withdrew her complaint against me I insisted that I fully answer and I did nonetheless answer, wishing to cooperate completely with the ODC nevertheless.

7. Speaking of Mr. Bringas, he then filed his own grievance against me (ODC 7474), claiming that I was his client, and he then informed the ODC that he had filed suit against me for legal malpractice, as you may recall, and sent a copy of his letter to you, along with a copy of his legal malpractice suit against me, to several judges before whom I practice, to federal and state agencies galore, and to the Better Business Bureau, TV stations, and the DCCA and even to some of my clients and who knows who else – yet the ODC said it had no authority to control complainants, while I was being falsely defamed with his claims, yet bound by Supreme Court confidentiality rules.

8. To highlight my point, Mr. Bringas waited something like a year after telling you he had sued me before actually filing his amended complaint against me in an action wherein he was suing other attorneys, in Civil No. 02-1-2144; yet he never even secured a summons for service as the docket sheet shows, and never served anything on me or on anyone else in that suit, and after that "filing" served his malicious purposes, he allowed that case to be involuntarily dismissed without a single actual court proceeding, as shown in the docket entry attached.

While I am not asking for an award, the ODC I hope is aware of the fact that the system that you are administering can be and is being abused by some parties and causing a great deal of unnecessary work for some of us.

Notwithstanding that professional burden, I do not believe that my conduct in the Serbay matter merits any discipline, even an informal admonition, and to the extent that there is any discretion in the matter, I request that the matter be reconsidered, or otherwise I have come to the unpleasant conclusion that the burden of formal proceedings upon me and upon the resources of the ODC is outweighed in this instance by practical time considerations.

Thank you for your consideration.

Very truly yours,

/s/ Gary Victor Dubin
Gary Victor Dubin

GVD/o
enclosures

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May 25, 2004 CONFIDENTIAL

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Honolulu, Hawai'i 96813

Re: ODC 7031
Myron W. Serbay, Jr., Complainant

Dear Mr. Dubin:

This is in response to your letter dated May 20, 2004.

Please be advised that there is no reconsideration, for the complainant of the Reviewing Board Member's determination of an Informal Admonition.

Therefore, as no rejection was received from you within the required time period, the Informal Admonition is imposed and this matter is now concluded.

Very truly yours,

ALVIN T. ITO
SPECIAL ASSISTANT DISCIPLINARY
COUNSEL

ATI:fh

Before the

DISCIPLINARY BOARD

of the

HAWAI'I SUPREME COURT

OFFICE OF DISCIPLINARY COUNSEL, Petitioner, vs. GARY V. DUBIN, Respondent.	ODC No. 16-0-213 16-0-151 16-0-147 16-0-326

H E A R I N G (VOLUME VII),

Taken at the Office of Disciplinary Counsel, 201 Merchant Street, Suite 1600, Honolulu, Hawaii 96813 commencing at 9:20 a.m. on November 28, 2017.

BEFORE: HEARING OFFICER ROY HUGHES, ESQ.

Reported By: SUE M. FLINT, RPR, CSR 274
Notary Public, State of Hawaii

MR. WAIHEE: RR-1.

MR. KIM: I don't know what you're talking about.

MR. DUBIN: But I'll number them any way the hearing officer wants me to number them.

HEARING OFFICER HUGHES: Well, you're going to identify them and introduce this as RR-1.

MR. DUBIN: Okay. RR-1.

HEARING OFFICER HUGHES: And that is -- and I want you to give a copy to Mr. Kim.

MR. DUBIN: Okay. I'm going to label it RR-1 and provide him with another copy marked RR-1.

And relevant to the Ito matter he's just talked about, it is -- this is my correspondence to ODC twenty or so years ago. That is a letter October 12th, 2001, to Alvin Ito from myself, and this is so old that all I have is my records. I don't have the ODC's records. Mr. Kim has those.

And a second letter, May 20th, 2014 [sic] to Mr. Ito regarding this matter, this Serbay matter. And this is rebuttal completely to what Mr. Kim said.

And the front of this is correspondence with Carole Richelieu, Chief Disciplinary Counsel, in 1999, confirming that I was exonerated by the

Office of Disciplinary Counsel for anything to do with Judge Real and my three misdemeanor convictions.

And specifically, to make an offer of proof, put it this way -- specifically states that until I had Carole Richelieu's approval that there would be no reciprocal discipline based upon what California was doing, I would sign the stipulation with California. Otherwise, I would not sign the stipulation with California. And Ms. Richelieu had advised me that I could go ahead, there would be no reciprocal discipline, based upon --

MR. KIM: She didn't have authority to do that.

MR. DUBIN: Well, this is what happened. This is what the ODC did. And Mr. Kim wasn't even there at the time.

MR. KIM: The chief does not have authority to waive a claim like that on her own.

But the other thing is that that is a collateral matter that has nothing to do with either the DCCA Joe Smith complaint or the aggravating or mitigating factors that we put in via E-1 concerning his previous disciplinary history with the State Bar of California, which is in evidence.

MR. DUBIN: Of course it does, because this is showing that I would not have signed that stipulation but for the fact that the Chief Disciplinary Counsel --

HEARING OFFICER HUGHES: What else do you have besides RR-1 that you want to bring in?

MR. DUBIN: On this matter, this is it.

HEARING OFFICER HUGHES: Okay.

MR. DUBIN: Now I'd like to respond -- I ask that this be put in evidence, or not, over respondent's objections, but this refers directly to what Mr. Kim testified to.

MR. KIM: I didn't testify.

HEARING OFFICER HUGHES: Mr. Kim has not testified.

MR. DUBIN: Well, then there's nothing in the record then. What this is is -- Mr. Ito was a special assistant disciplinary counsel. This complaint was a Mr. Serbay, who was not my client. The complaint of Mr. Serbay was denied. Mr. Ito claimed that I was late by one day in responding to him. Subsequent to this -- and by the way, in this letter it talks about Mr. Gyler, the gentleman behind all this, who was my client.

Subsequent to this, Mr. Ito had filed --