

**STATE BAR COURT  
REVIEW DEPARTMENT**

In the Matter of

**FRANKLIN KNIGHT LANE III**

A Member of the State Bar

No. 86-O-14623

Filed March 14, 1994

**SUMMARY**

Respondent loaned \$100,000 to a client without complying with the rule governing business transactions with clients. In later actions, in which he sued the client, represented the client, or was a codefendant with the client, he committed repeated violations of the rules governing conflicts of interest, as well as other rule violations. Taking into account respondent's long unblemished legal career before his misconduct, the many years since his misconduct, the devastating impact of his misjudgment on his life, and the low risk of similar future misconduct, the hearing judge recommended discipline of three years stayed suspension and three years probation, on conditions including sixty days actual suspension. (Hon. Christopher W. Smith, Hearing Judge.)

Respondent sought review, contending that the recommended discipline should not include actual suspension. The review department adopted the hearing judge's findings, conclusions, and disciplinary recommendation. The review department noted that while respondent had had a long legal career with no other misconduct, and his initial motives might have been to aid the client, mitigating factors could not shield him from the consequences of his misconduct. Further, the review department concluded that the gravamen of respondent's misconduct was not the improper loan by itself, but the profound misjudgment which prompted lengthy litigation against a client and harmed the administration of justice. Accordingly, two months of actual suspension was appropriate.

**COUNSEL FOR PARTIES**

For Office of Trials: Janet S. Hunt

For Respondent: Franklin K. Lane, in pro. per.

## HEADNOTES

- [1] **162.11 Proof—State Bar’s Burden—Clear and Convincing**  
**191 Effect/Relationship of Other Proceedings**  
**204.90 Culpability—General Substantive Issues**  
**213.30 State Bar Act—Section 6068(c)**  
**213.40 State Bar Act—Section 6068(d)**  
**221.00 State Bar Act—Section 6106**  
**272.00 Rule 3-210 [former 7-101]**

Due to difference in applicable standards of proof, a civil court finding is not binding on the State Bar Court for purposes of discipline. Where, upon evidence presented to civil court plus additional testimony, hearing judge concluded, contrary to civil court’s decision, that respondent’s loan to a client was not a sham transaction, then, resolving all reasonable doubts in respondent’s favor, it was appropriate to dismiss charges that the loan transaction violated statutory duties to counsel only legal or just actions and to employ only truthful means of maintaining clients’ causes; constituted act of moral turpitude; and violated rule against advising violations of law.

- [2] **162.20 Proof—Respondent’s Burden**  
**273.00 Rule 3-300 [former 5-101]**  
**430.00 Breach of Fiduciary Duty**

Business transactions between clients and their attorneys are closely scrutinized. The burden is on the attorney to demonstrate that the dealings are fair and reasonable. Where respondent loaned a large sum to one client so that the client could repay a debt to another client, respondent owed a fiduciary duty to both clients and was obligated to explain his role in the transaction and the impact it could have on his continued representation of their interests. Where one client, notwithstanding his written consent, did not understand the full implications of the transaction, and the other client did not consent in writing, respondent violated the rule governing business transactions with clients.

- [3] **273.00 Rule 3-300 [former 5-101]**

A violation of any part of the rule governing business transactions with clients gives rise to culpability. The practice of using confessions of judgment to collect legal fees presents an opportunity for overreaching beyond judicial scrutiny which justifies a per se prohibition. Respondent’s use of a confession of judgment to secure repayment of a loan to a client, a portion of which represented attorney’s fees already owed by the client, made the transaction inherently unfair.

- [4] **273.00 Rule 3-300 [former 5-101]**

Where respondent had obtained a deed of trust on property owned by his client’s relatives to secure a loan owed to respondent by the client, and respondent subsequently became the attorney for the relatives in a suit which involved in part the conveyance to respondent of the deed of trust, respondent had an interest adverse to his clients which warranted the disclosures and written consent required by the rule governing business transactions with clients, even though the transfer had actually occurred two years earlier.

- [5] **273.00 Rule 3-300 [former 5-101]**

**691 Aggravation—Other—Found**

Where respondent had made a loan to a client, and later represented that client in a lawsuit in which respondent was a codefendant, and where, in order to secure the client’s debt to him, respondent

had obtained an ownership interest in property which was a subject of that lawsuit and respondent later sued to foreclose on that interest, the fact that respondent's original business transaction with the client became the subject matter of litigation aggravated his initial misconduct in failing to comply with the rule governing business transactions with clients, but did not constitute a separate ethical violation.

[6]       **221.00 State Bar Act—Section 6106**  
**273.00 Rule 3-300 [former 5-101]**

Where respondent filed a foreclosure suit in good faith against persons whom he was representing in another lawsuit, his violation of his fiduciary duties under the rule governing adverse interests to clients did not constitute a per se violation of the statute regarding acts of moral turpitude or dishonesty by attorneys.

[7]       **270.30 Rule 3-110(A) [former 6-101(A)(2)/(B)]**

Where a difference of opinion on the merits of a client's defense led respondent to withdraw from representing the client one month prior to trial, with the client's consent, the withdrawal did not violate the rule regarding the duty of competent representation.

[8]       **191 Effect/Relationship of Other Proceedings**  
**194 Statutes Outside State Bar Act**

Where respondent was a creditor of a client's bankruptcy estate and also represented the client in the bankruptcy, and where the only evidence about the bankruptcy proceeding showed that the claims of two other creditors were found non-dischargeable, there was no clear and convincing evidence to sustain a charge that respondent's representation of the client was improper under bankruptcy law.

[9]       **273.00 Rule 3-300 [former 5-101]**  
**273.30 Rule 3-310 [former 4-101 & 5-102]**  
**561 Aggravation—Uncharged Violations—Found**

Where respondent represented a client in the client's bankruptcy and at the same time represented the client's landlord, a company owned by respondent, in negotiating and drafting a new lease with the client, respondent was culpable, as charged, of representing conflicting interests. In addition, respondent's failure to comply with the requirements for business transactions with clients, including giving the client a reasonable opportunity to seek independent counsel, constituted an aggravating factor as uncharged misconduct.

[10 a, b] **273.30 Rule 3-310 [former 4-101 & 5-102]**

Under the former rule providing that an attorney shall not accept employment adverse to a client or former client relating to a matter in which the attorney has obtained confidential information, except with the written consent of the client, actual possession of confidential information was not required to be demonstrated; showing a substantial relationship between representations was enough to establish a conclusive presumption that the attorney possessed confidential information adverse to the client. Where respondent represented a client in many actions, most of which related to the client's financial status, respondent's representation of his own company against the client in unlawful detainer actions while representing the client in bankruptcy court constituted not only a violation of the former rule regarding adverse representation and confidential information, but also a representation of conflicting interests.

**[11 a, b] 135 Procedure—Rules of Procedure**  
**218.00 State Bar Act—Section 6090.5**  
**274.00 Rule 3-400 [former 6-102]**

Respondent's letters to client demanding release from all liability, including for malpractice, in exchange for settling outstanding business disputes between them, violated rule prohibiting attorneys from attempting to exonerate themselves from liability for malpractice except in settlement of a malpractice claim. However, respondent's attempt to persuade client to withdraw State Bar complaint did not violate statute prohibiting attorneys from requiring as a condition of malpractice settlement that plaintiff agree to not file a complaint with the State Bar. The plain language of the statute is limited to settlements involving the agreement not to file a disciplinary complaint. The effect of withdrawal of charges is not the same as not filing them. Once the State Bar becomes aware of possible misconduct by the filing of a complaint, it does not need a complaining witness in order to go forward with its investigation. (Trans. Rules Proc. of State Bar, rule 507.)

**[12] 277.50 Rule 3-700(D)(1) [former 2-111(A)(2)]**  
**791 Mitigation—Other—Found**

Even under the threat of a malpractice action by a client, an attorney is not excused from complying with the duty to provide the client with his or her file. The trial court's determination of the requirements of discovery in the malpractice case is irrelevant to this ethical obligation. Where a client sued respondent for malpractice and respondent failed to turn over the client's file on request, respondent violated the rule requiring release of the client's file, but his misconduct was mitigated by his adherence to the discovery conditions allowing access to the client's files ordered by the trial judge in the malpractice case.

**[13] 755.52 Mitigation—Prejudicial Delay—Declined to Find**  
**755.53 Mitigation—Prejudicial Delay—Declined to Find**

Where respondent failed to show that delay in his disciplinary proceeding was not attributable to him and that it caused specific, legally cognizable prejudice, the delay was not a mitigating circumstance.

**[14] 710.10 Mitigation—No Prior Record—Found**

Where respondent had practiced law for more than 25 years before committing misconduct, such practice was entitled to considerable weight in mitigation.

**[15] 795 Mitigation—Other—Declined to Find**

Where respondent's misconduct lasted over a long period of time, it could not be considered aberrational, despite his lengthy record of prior practice without misconduct and his good reputation in the legal community.

**[16 a-c] 273.00 Rule 3-300 [former 5-101]**  
**273.30 Rule 3-310 [former 4-101 & 5-102]**  
**586.19 Aggravation—Harm to Administration of Justice—Found**  
**710.10 Mitigation—No Prior Record—Found**  
**881.10 Standards—Business Transaction with Client—Suspension**  
**881.20 Standards—Business Transaction with Client—Suspension**

Where respondent not only made a bad loan to a client without complying with the rule governing business transactions with clients, but also thereafter exhibited profound misjudgment which prompted lengthy litigation against an existing client, and which harmed the administration of

justice, two-month actual suspension was appropriate discipline despite respondent's initial motive to aid the client and despite his long legal career and the high personal and financial cost he had already paid for his poor judgment.

**ADDITIONAL ANALYSIS**

**Culpability**

**Found**

- 273.01 Rule 3-300 [former 5-101]
- 273.31 Rule 3-310 [former 4-101 & 5-102]
- 274.01 Rule 3-400 [former 6-102]
- 277.51 Rule 3-700(D)(1) [former 2-111(A)(2)]

**Not Found**

- 213.35 Section 6068(c)
- 213.45 Section 6068(d)
- 218.05 Section 6090.5
- 221.50 Section 6106
- 270.35 Rule 3-110(A) [former 6-101(A)(2)/(B)]
- 271.05 Rule 3-200 [former 2-110]
- 272.05 Rule 3-210 [former 7-101]
- 273.05 Rule 3-300 [former 5-101]

**Aggravation**

**Found**

- 521 Multiple Acts
- 591 Indifference

**Declined to Find**

- 545 Bad Faith, Dishonesty
- 582.50 Harm to Client

**Mitigation**

**Found**

- 740.10 Good Character
- 750.10 Rehabilitation

**Standards**

- 881.30 Business Transaction with Client—Suspension
- 901.10 Miscellaneous Violations—Suspension
- 901.30 Miscellaneous Violations—Suspension

**Discipline**

- 1013.09 Stayed Suspension—3 Years
- 1015.02 Actual Suspension—2 Months
- 1017.09 Probation—3 Years

## OPINION

PEARLMAN, P.J.:

We agree wholeheartedly with the sentiments expressed by the Court of Appeal in its summary of many of the events which underlie the ethical misconduct charges against respondent Franklin Knight Lane. "This case is a primer on why lawyers should not do business with their clients." (*Younesi v. Lane* (1991) 228 Cal.App.3d 967, 969.) Respondent, who was admitted to practice in 1951 and is now near retirement, admits that he handled himself very poorly in this matter but challenges the recommended discipline. He contends that discipline should not include actual suspension because he has suffered enough for his mistakes in dealing with a difficult client with whom he also had a personal relationship which clouded his judgment.

After reviewing the lengthy record in this matter at the request of respondent, we adopt the hearing judge's findings and conclusions. The State Bar originally sought respondent's disbarment, but was unable to prove respondent's culpability on the most serious charges. Nonetheless, respondent was found culpable of repeated conflicts of interest and other rule violations resulting in significant harm to the administration of justice. The hearing judge took into account the many years that have passed since the misconduct, the devastating impact respondent's misjudgment has already had on his life, the previous 25-year blemish-free legal career of the respondent and the low risk that similar misconduct will occur in the future in recommending only 60 days suspension of respondent's license to practice law in California with other conditions, including a 3-year stayed suspension and 3 years of probation. We adopt the hearing judge's recommendation.

## A. FACTS

## 1. The Loan

The incidents recounted in the 12-count notice to show cause arose from respondent's relationship with Jack Younesi ("Younesi"), an Iranian national and self-employed import/exporter. Respondent is a sole practitioner experienced in litigation in the areas of real estate and business law. Respondent met and

was retained by Younesi in 1975 to perform legal work for himself and his company, Bianca Enterprises. Younesi also introduced respondent to many wealthy Iranian nationals, who employed respondent for their legal work. One of these individuals, Feizollah Younesi ("Feizollah"), a cousin of Younesi, retained respondent in early 1976 to assist in purchasing real estate and to represent him in litigation that resulted.

Respondent had a favorable impression of Younesi's apparent wealth and success, and anticipated a large volume of business from his association with Younesi and Younesi's close connection with other wealthy potential clients. In January 1976, respondent had loaned Younesi \$5,000, secured by stock assigned to respondent, with the understanding that Younesi could repurchase the stock if the loan was paid within 90 days. Younesi defaulted on the loan and instead approached respondent in April 1976 for a large loan to repay a debt owed to Feizollah.

After initially resisting Younesi's pleas, respondent agreed to loan Younesi approximately \$55,000, and made arrangements to borrow the money from several banks. The agreement signed April 23, 1976, represents this loan. The amount was shortly increased to \$100,000, by amendment to the agreement dated April 28, 1976, of which approximately \$70,000 was paid by respondent directly to Feizollah, approximately \$12,800 was given to Younesi, and the remaining \$17,200 was for outstanding legal fees Younesi owed to respondent, rounded off from over \$18,400 owed, to make an even \$100,000. Respondent also asked for and received a financial statement from Younesi, which indicated his net worth at over \$850,000. Respondent did not investigate any of the information provided on the statement, or seek an independent valuation of any of the property, including the real property.

As security for the \$100,000 loan, Younesi assigned his interest in his home in Pasadena to respondent. The home was held in the name of Younesi's wife's brother and sister-in-law, Mr. and Mrs. Ray Nehdar, subject to a first deed of trust held by California Federal Bank. Younesi promised to use his best efforts to have the record title of the house transferred into his name without delay and thereafter execute a second deed of trust on the house to

respondent. If the record title was not transferred into Younesi's name within 30 days, Younesi agreed to get his brother-in-law and wife, the Nehdars, to execute a second deed of trust on the property to respondent. Younesi also consented to a lien on his interest in the property and to a levy of any writ of attachment or execution on the property.

In addition, Younesi executed a security agreement and UCC 1 form covering all his personal property, including his automobiles, all his household and office goods, and furniture and furnishings, and promised to deliver to respondent 100 semi-precious stones. The amended agreement provided that Younesi would grant a power of attorney to respondent over all Younesi's stock and security accounts with licensed brokerage houses as well. On April 28, 1976, the same date of the amended agreement, Younesi executed a promissory note payable on demand to respondent with interest due from June 1, 1976, and a confession of judgment on the note. The confession of judgment would not be filed if, by June 1, 1976, Younesi had repaid at least \$85,000 of the loan and, in respondent's view, there was adequate security for the balance.

Further, a letter on Younesi's stationery for the "IRAN SOCIAL, ECONOMIC AND CULTURAL ORGANIZATION" dated April 23, 1976, signed by Younesi, stated that he and his brother jointly owned property in Tehran and agreed, in the event that Younesi was unable to repay the loan, he would either convey to respondent a one-half interest in the Iranian property or sell it to satisfy his debt. The letter also stated that respondent had advised him to consult with another attorney before entering the loan transaction, and he had informed respondent that he did not wish to do so, and was fully capable of acting without independent advice because he was sophisticated in business matters. Younesi has repudiated this letter in subsequent proceedings, including the discipline hearings, as a fabrication constructed prior to trial of an unlawful conveyance complaint brought by creditors of Younesi against him, the Nehdars and

respondent (hereinafter "*Lalingo case*"). Weighing all the evidence including the testimony of Younesi and respondent, the hearing judge concluded that the document was authentic.

## 2. Creditor Lawsuits

By early summer of 1976, Younesi was threatened with legal action by three brokerage firms, Merrill Lynch (suit filed approximately June 9, 1976), Dean Witter (July 1976) and Drexel Burnham (October 1976), as a result of bad checks Younesi had executed to cover his option accounts after he had suffered considerable losses in the stock market. Some of this stock activity was initially financed by the funds Younesi borrowed from Feizollah. Respondent represented Younesi in all three lawsuits.

Respondent demanded payment of his loans on June 4, 1976. On June 22, 1976, he wrote to Younesi that he was in default on the loan, had 48 hours to arrange for payment, and that the confession of judgment would be filed if payment was not forthcoming. The confession of judgment was filed on July 22, 1976, but later rejected by the court clerk.

Respondent also filed suit against the Nehdars and Younesi in July 1976 for an equitable lien on the Pasadena house because the Nehdars had neither transferred title into Younesi's name nor executed a second trust deed to respondent. In response to the lawsuit, the Nehdars granted a second deed of trust to respondent as beneficiary, and respondent's "shell" corporation, Providencia Limited, as trustee.

Despite these financial problems, in October 1976, respondent arranged to have two other clients each loan Younesi \$7,500 (\$15,000 total), secured by 15,000 shares of Stanwood Oil stock issued to Younesi's corporation, Bianca Enterprises, Inc., and payable in 90 days. Younesi defaulted on these loans and respondent testified that he (respondent) paid the clients sometime thereafter.<sup>1</sup>

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1. There is little evidence in the record concerning these additional transactions with clients, since they were not charged as misconduct.

In early 1977, respondent convinced Younesi to stipulate to judgments in two of the brokerage cases, totaling approximately \$50,000. Younesi balked at any settlement with Merrill Lynch, contending that he had a viable defense and countersuit against the action. Respondent considered Younesi's position to be without merit and withdrew from representing him in the case in March 1981, one month before trial, with Younesi signing the substitution of counsel form to appear in propria persona. The lawsuit went by default in favor of Merrill Lynch, with judgment of \$70,000 in compensatory damages and \$50,000 in punitive damages awarded.

Other creditors of Younesi filed suit or threatened to do so. Respondent remained Younesi's attorney in these actions. In one case filed in March 1978, the *Lalingo* case, Younesi, his wife, the Nehdars, respondent, and Providencia were charged with conspiring to accomplish the fraudulent conveyance of Younesi's assets to shelter them from his creditors.

In July 1978, with the debt and interest owed to respondent by Younesi totalling over \$120,000, respondent filed suit against Younesi and the Nehdars to foreclose on the Pasadena house. The Nehdars, concerned about their credit record, conveyed to respondent's corporation, Providencia, a deed in lieu of foreclosure prior to the sale on August 9, 1978, and in exchange, respondent cancelled Younesi's \$100,000 note and the Nehdars' second deed of trust. After taking record title to the house, respondent's corporation leased the house to Younesi and his wife, at a rent of \$1,000 per month, with Younesi making the mortgage payments to California Federal Bank directly. Monies in excess of the costs of the property (found by the hearing judge to be the mortgage payment, taxes, insurance, etc.) were applied to attorney's fees Younesi owed respondent.

Respondent also prosecuted two of Younesi's lawsuits, one a securities case and the other a personal injury matter arising out of an automobile accident in which Younesi and his wife were in-

involved. Younesi assigned his interest in the securities case to respondent on November 1, 1978, stating that the assignment was made in part "to induce said Franklin K. Lane III to permit the undersigned and his family to remain as tenants in the single family residence presently occupied by the undersigned at 3765 Hampton Road, Pasadena, California." (Exh. H.) Younesi and respondent testified that he assigned his interest in the automobile accident case<sup>2</sup> to respondent in January 1981. This assignment was made to pay for attorney's fees and "other indebtedness" Younesi owed respondent. The case settled sometime after March 1982 for \$10,000.

### 3. Younesi's Bankruptcy and Lease on Pasadena Property

At respondent's repeated urging and, in at least one instance, upon respondent's threat of eviction, Younesi filed in March 1982 a chapter 7 bankruptcy petition (personal liquidation) prepared by respondent.<sup>3</sup> The filing had the effect of staying all creditor litigation then pending. The petition noted an outstanding secured debt of \$60,000 owed to respondent for legal fees accrued after 1976 and respondent filed with the court notice that he had charged Younesi \$1,000 for preparing the bankruptcy petition. Respondent continued to represent Younesi in bankruptcy proceedings, primarily in an adversary proceeding in which several creditors, including Drexel Burnham and Dean Witter (which also intervened in 1980 as plaintiffs in the *Lalingo* case), succeeded in having their claims declared non-dischargeable in October 1985. As of the date of the last hearing in the hearing department in this disciplinary matter, Younesi had yet to be discharged from bankruptcy due to an appeal brought by respondent in connection with the adversary proceedings.

Within a month of the bankruptcy filing, respondent had Younesi and his wife execute another lease for the Pasadena house in April 1982, increasing the rent to \$1,500 per month, with another increase to \$2,000 per month after one year. The hearing judge

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2. Respondent was already entitled pursuant to their agreement to one-third of any recovery in the automobile accident case.

3. Aside from the bankruptcy petition, the bankruptcy file was not put into evidence.

found part of the payments were applied to the outstanding attorney's fees Younesi owed to respondent. Any arrearages Younesi may have accrued under the 1978 lease were not listed as claims by respondent on Younesi's bankruptcy petition and respondent did not seek bankruptcy court approval of the new lease with Younesi which had been entered into after the filing.

Respondent's company, Providencia Limited, filed an unlawful detainer action against Younesi for non-payment of rent in June 1983, but respondent permitted Younesi to remain in the property after receiving a \$3,000 payment. Nevertheless, a default was entered against the Younesis in July 1983. In June 1984, respondent's company obtained a default judgment against the Younesis in the unlawful detainer action. An application for writ of possession was filed on August 29, 1985, and a writ of possession was issued to Providencia on September 19, 1985. Thereafter, respondent promised that he would not evict the Younesi family until the conclusion of the *Lalingo* trial.

#### 4. Lalingo Trial

The *Lalingo* lawsuit was revived in April 1986, after Dean Witter and Drexel Burnham succeeded in having their debts declared non-dischargeable by the bankruptcy court on the grounds that they arose out of false representations and fraud by the debtor,

Younesi. (11 U.S.C. § 523(a)(2).) The trial was held in August 1986, with respondent appearing on behalf of himself and his company, Providencia.<sup>4</sup> The trial court issued its statement of decision on October 17, 1986, in which it set aside the transfer of the Pasadena property to respondent. The court concluded that the loans to Younesi from respondent were sham transactions<sup>5</sup> and were without fair consideration, that respondent, as Younesi's counsel, was in a position to know Younesi's true financial situation, and that when the Nehdars conveyed the property by trust deed in lieu of foreclosure, the Younesis were clearly insolvent.

Respondent filed initial papers to appeal the *Lalingo* court decision, but the appeal was dismissed when respondent failed to pay costs on time.

#### 5. Unlawful Detainer Actions

After the *Lalingo* court decision, respondent's company revived its unlawful detainer action against the Younesis. The Younesis retained counsel and filed motions to vacate defaults and to set aside the default judgment in January 1987, which was granted. The matter was tried on February 10, 1987, and judgment was in favor of the Younesis, with a statement of decision issued on March 11, 1987, finding that the *Lalingo* decision had collateral estoppel effect on the issue of ownership of the Pasadena property.<sup>6</sup>

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4. Respondent originally appeared in the lawsuit on behalf of himself, his company, the Nehdars and the Younesis. Plaintiffs moved to have respondent disqualified as counsel for Providencia, the Nehdars and the Younesis because it was likely that respondent would be called as a witness in the proceeding and respondent would then be in the position of violating former rule 2-111(A)(4) of the Rules of Professional Conduct (eff. prior to May 26, 1989), which permitted an attorney to testify as a witness on behalf of a client only if the client was advised of the possible implications of the dual role, was given the opportunity to seek independent counsel and gave written consent to the continued employment, the consent to be filed with the trial court in a civil matter before the commencement of trial. Respondent stipulated to his disqualification and the plaintiffs' motion was granted in November 1978. In February 1980, respondent filed a substitution of attorney form for Providencia Limited, substituting himself for other counsel. The Younesis appeared in propria persona.

5. The court found the transaction suspect because (1) the payments to Feizollah were made in cashier's checks, when Feizollah had a bank account; (2) Feizollah filed suit against Younesi in May 1976, shortly after allegedly receiving \$82,000 from respondent to satisfy Younesi's debt, for \$18,000 plus interest for sums owed; (3) respondent could not produce a cashier's check for over \$10,000 loaned to Younesi as part of the transaction; (4) respondent did not do a title search of the property prior to the loan, although he is an experienced real estate attorney; (5) respondent rounded off his fees by approximately \$1,300 to make the loan exactly \$100,000, a reduction which the trial court found incredible; and (6) Younesi was permitted to stay in the Pasadena property for 10 years, during which time he often did not pay rent.

6. The judgment was eventually vacated and the action was dismissed on respondent's motion on April 27, 1987.

Providencia posted a three-day notice on the Pasadena property on February 10, 1987 (the day of trial in the first case), and filed a second unlawful detainer action in superior court in Los Angeles on March 13, 1987. This time an associate in respondent's office initially appeared on behalf of Providencia. The Younesis demurred to the complaint and the action was dismissed on June 24, 1987.

On July 15, 1987, a third unlawful detainer action was filed against the Younesis by respondent, on behalf of Providencia. This third action was also dismissed by statement of decision filed May 4, 1988.

#### 6. Malpractice Action and Settlement Offers

Respondent, Younesi, and Younesi's son met in early March 1986 in an attempt to resolve their differences. Respondent wrote a letter to Younesi on March 6, 1986, in which he made two proposals to Younesi, requiring in either instance that Younesi and his wife "give me [respondent] a full and complete release of any claims, demands or causes of action that you may have against me or Providencia Ltd." In a second letter dated September 29, 1986, respondent threatened Younesi with eviction from the Pasadena house unless he met conditions including the following: "I want a written waiver and relinquishment signed by you and Evelyn of any and all claims, demands or causes of action against me from any of our past dealings or transactions, including any claims against me for malpractice, breach of fiduciary duty or any claim for any unethical conduct on my part."

The Younesis and the Nehdars filed a malpractice and other civil torts action against respondent and Providencia on November 6, 1986. By this point,

a complaint had also been filed with the State Bar. During the malpractice case, which was tried before a jury between October 17, 1988, and November 17, 1988, a friend of the Younesi family approached respondent to explore a possible settlement. Respondent told that friend of the Younesi family that he would require as a part of any settlement that Younesi go to the State Bar to get it to drop the discipline investigation.<sup>7</sup>

During pretrial proceedings, Younesi requested respondent to deliver his files to his new counsel. Respondent refused, citing the cost of duplicating the voluminous file and the fear that Younesi would destroy documents in the file prior to the malpractice trial. The trial court ordered that Younesi's counsel be given access to the files in respondent's office, but did not require that they be delivered to Younesi as part of a discovery order.

The jury found in respondent's favor. On Younesi's untimely motion, the trial judge entered a judgment notwithstanding the verdict in Younesi's favor. This was reversed on appeal; the Court of Appeal found that Younesi had not met the statutory deadlines for filing a motion for a judgment notwithstanding the verdict, vacated the trial court judgment, and reinstated the jury verdict. (*Younesi v. Lane*, *supra*, 228 Cal.App.3d 967.)<sup>8</sup>

Eventually, the Pasadena house was sold, the *Lalingo* judgment creditors were satisfied, and the remaining proceeds went to Younesi.

#### B. CULPABILITY FINDINGS

Rather than tracking the counts in the notice to show cause, we have analyzed the findings in the context of the particular transactions involved.

7. On this issue, the hearing judge made an additional finding based on the testimony of the friend of the Younesi family which is in direct contradiction of testimony of respondent found credible by the hearing judge. We reconcile these conflicts in the findings by adopting only that finding which is supported by both respondent's and the friend's testimony, i.e., that respondent demanded that Younesi withdraw his disciplinary complaint as a condition of settlement.

8. At the close of the State Bar's case, respondent moved to dismiss counts 1 through 8 based upon the res judicata effect of the malpractice judgment in respondent's favor. The hearing judge denied the motion. On review, respondent has not raised this issue or, more properly, any collateral estoppel effect of the attorney misconduct issues adjudicated in the malpractice action. Upon de novo review, we see no basis for disagreeing with the hearing judge's ruling.

## 1. Loan to Younesi

[1] Due to the difference in applicable standards of proof, the civil court finding by the *Lalingo* court was not binding on the State Bar Court for purposes of discipline. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.) Taking into consideration both the evidence presented at the superior court trial which was offered into evidence by the State Bar below and the testimony of respondent and Younesi before him, the hearing judge found, contrary to the decision of the *Lalingo* court, that the loan by respondent to Younesi was not a sham transaction, but a bona fide loan to Younesi from respondent for consideration. The hearing judge concluded that the indicia of fraud cited by the superior court judge in *Lalingo* were that Feizollah received the proceeds in the form of cashier's checks rather than into his bank account, and that respondent had rounded off his fees, neither of which in the hearing judge's view constituted affirmative evidence of fraud. The hearing judge also accepted respondent's testimony that he did not have knowledge of Younesi's precarious financial situation when he made the loan to Younesi. He further credited the testimony of both Younesi and respondent that the transaction occurred. The State Bar has not sought review of these findings. Resolving all reasonable doubts in respondent's favor, it was appropriate to dismiss the charges that the loan transaction was an attempt to shield assets, in violation of former rule 7-101 and sections 6068 (c), 6068 (d) and 6106.<sup>9</sup>

The hearing judge found that the terms and conditions of the loan were not fair and reasonable because it contained a confession of judgment for fees (which constituted about 18 percent of the proceeds of the loan), and also because the conflicts inherent in the transaction were not adequately explained to both clients. [2] Business transactions between clients and their attorneys are closely scrutinized. (*Ritter v. State Bar* (1985) 40 Cal.3d 595, 602.) The burden is on the attorney to demonstrate that the dealings were fair and reasonable. (*Hunnicutt*

*v. State Bar* (1988) 44 Cal.3d 362, 372-373.) The hearing judge found that respondent owed a duty to both Younesi and Feizollah to explain his role in the transaction and the impact it could have on his continued representation of their interests. As noted earlier, the hearing judge found, contrary to Younesi's testimony, that Younesi's written statement of April 23, 1976, acknowledging his right to independent counsel was authentic. However, the hearing judge concluded that notwithstanding the written consent, Younesi did not understand the full implications of the transaction. Further, respondent did not have Feizollah's consent in writing. Respondent does not challenge the conclusion that Feizollah was involved in a business transaction such that former rule 5-101 conditions would attach. Since respondent was acting both as an agent of Younesi in delivering the funds to him and as a fiduciary to both parties in the transaction (see *Guzzetta v. State Bar* (1987) 43 Cal.3d 962), the prophylactic conditions of former rule 5-101 applied to respondent's dealings with Feizollah as well.

[3] Respondent argues in his brief that the terms and conditions of the loan were fair and reasonable to Younesi and contends he should not be bound by the Supreme Court's holding in *Hulland v. State Bar* (1972) 8 Cal.3d 440, 450, that prohibits the use of a confession of judgment to collect legal fees since his fees constituted less than 20 percent of the monies loaned. As the State Bar noted, a violation of any part of former rule 5-101 gives rise to culpability. (*Read v. State Bar* (1991) 53 Cal.3d 394, 411.) Over \$17,000 in fees subject to a confession of judgment cannot be considered an insignificant sum. The practice of using confessions of judgment to collect legal fees presents an opportunity for overreaching beyond judicial scrutiny which justifies a per se prohibition. (*Hulland v. State Bar, supra*, 8 Cal.3d at p. 450; *Isbell v. County of Sonoma* (1978) 21 Cal.3d 61, 70-71; *Hawk v. State Bar* (1988) 45 Cal.3d 589, 600.) Respondent's use of the confession of judgment to secure over \$17,000 in fees made the transaction inherently unfair.

9. Except as otherwise noted, all further references to former rules are to the Rules of Professional Conduct in effect from

January 1, 1975, to May 26, 1989, and all further references to sections are to the Business and Professions Code.

## 2. July 1978 Foreclosure Action

[4] By July 1978, when respondent filed suit against the Nehdars to foreclose on the Pasadena property, he was also representing them in the *Lalingo* lawsuit. The subject matter of the *Lalingo* lawsuit was in part the conveyance of the deed of trust by the Nehdars to respondent in June 1976. This was clearly an interest adverse to his clients and warranted the disclosures and written consent required by former rule 5-101. Respondent's argument that he did not need to comply since the transfer had actually occurred two years earlier ignores both the legal significance of the transfer of the title to his company and the impact of the foreclosure action on the Nehdars. Fidelity to his clients' interest ahead of his own required him to follow the requirements of former rule 5-101 when the foreclosure action shifted the legal relationships.

[5] As to the Younesis, the issue is whether additional explanations to and consent were required from them or whether respondent was required to withdraw from representation, being a codefendant and simultaneously possessing an ownership interest in the subject of the *Lalingo* litigation. The foreclosure was clearly a foreseeable result of respondent's original business transaction with Younesi. The fact that the transaction became the subject matter of litigation aggravates the initial misconduct, but does not constitute a separate ethical violation.

[6] The State Bar did not challenge the hearing judge's conclusion that respondent's actions in the foreclosure proceeding did not constitute an act of moral turpitude under section 6106. Rather, the judge found that respondent acted in good faith in the proceeding and that respondent's violation of his fiduciary duties under former rule 5-101 did not constitute a per se violation of section 6106. In *Hawk v. State Bar*, *supra*, 45 Cal.3d 589, the Supreme Court found a violation of former rule 5-101, coupled

with misleading actions against the clients, constituted a violation of section 6106. It dismissed section 6106 charges in *Connor v. State Bar* (1990) 50 Cal.3d 1047 when it did not find sufficient evidence that the attorney was intentionally dishonest. The hearing judge's conclusion is consistent with this case law.

## 3. Withdrawal from Merrill Lynch Case

[7] The State Bar has not challenged the dismissal of charges arising from respondent's withdrawal in March 1981 from representing Younesi in the Merrill Lynch lawsuit one month prior to trial. The client's consent to the withdrawal was evident from his signature on the substitution of counsel form, and resulted from a difference of opinion on the merits of Younesi's defense to the lawsuit.<sup>10</sup> We see no reason to disturb the hearing judge's finding in this regard.

## 4. Bankruptcy

[8] The hearing judge concluded that there was no clear and convincing evidence that respondent's representation of Younesi while a creditor of the estate was in violation of the Bankruptcy Code. We do not have the record of the adversary proceedings in the bankruptcy court in this record, nor was there much testimony below concerning the bankruptcy adversary proceedings. Since all that was established below is the fact that the claims of Dean Witter and Drexel Burnham were found non-dischargeable under section 523(a)(2) of the Bankruptcy Code, there is no clear and convincing evidence to sustain a charge that respondent's representation of Younesi was improper in this respect.

[9] We agree with the hearing judge that the execution of the new residential lease between Providencia and the Younesis shortly after Younesi had filed for bankruptcy was not a reaffirmation

10. The decision below indicated that the notice to show cause had incorrectly charged respondent with a violation of former rule 6-101(2) and, finding sufficient notice to respondent, proceeded with its analysis under former rule 6-101(A)(2). Former rule 6-101(A)(2) was an amendment to rule 6-101 and

became effective on October 23, 1983. Since the misconduct allegedly occurred between June 1976 (when the Merrill Lynch suit was filed) and respondent's withdrawal from representation on March 27, 1981, the prior rule 6-101(2) was in force and the notice properly charged the prior rule.

agreement nor was there sufficient evidence produced to establish that it was otherwise inconsistent with bankruptcy law.<sup>11</sup> However, we concur with the hearing judge that respondent violated former rule 5-102(B) by representing conflicting interests. Respondent represented Younesi in bankruptcy court and at the same time negotiated and drafted the new lease on the Pasadena property for Providencia. Further, because of the bankruptcy filing, this new lease was a new business transaction with his clients and respondent was obligated to meet the dictates of former rule 5-101, including giving his clients a reasonable opportunity to seek independent counsel. He did not and we find this uncharged conduct to be an aggravating factor. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

The hearing judge also concluded that the execution of the new lease and respondent's unlawful detainer actions did not violate the automatic stay provisions of the Bankruptcy Code.

The State Bar has not objected to the finding that Younesi's assignment to respondent of his recovery in two lawsuits was not in violation of the automatic stay. These transactions took place more than a year prior to the filing and thus did not come within the ambit of 11 United States Code section 329(a). Nor did the State Bar charge the assignments as potential violations of former rule 5-101.

#### 5. Unlawful Detainer Actions

[10a] Respondent contests the finding that his reactivation of the unlawful detainer action in the fall of 1986 after the court decision in the *Lalingo* case was improper, and contends that there was no confidential information which he received as part of his representation of Younesi in the bankruptcy proceedings and *Lalingo* litigation which related in any way to the unlawful detainer actions. Respondent takes a too narrow view of his representation of

Younesi. Former rule 4-101 states that an attorney shall not accept employment adverse to a client or former client relating to a matter in which he has obtained confidential information, except with the written consent of the client. Actual possession of confidential information need not be demonstrated; it is enough to show a substantial relationship between representations to establish a conclusive presumption that the attorney possesses confidential information adverse to a client. (*H.F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal. App.3d 1445, 1452.)

[10b] Respondent had a long relationship with Younesi, representing him in many actions, most of which related to Younesi's financial status. Respondent denies that he acted as attorney for Providencia, and thus maintains that he cannot have violated the rule. According to the record of the unlawful detainer actions, respondent is wrong. During various points in the unlawful detainer actions, respondent made court appearances and filings for his company, Providencia Limited, against Younesi while continuing appeals on Younesi's behalf in the bankruptcy court. This was not only a violation of former rule 4-101, but a representation of conflicting interests as well.

The State Bar has not sought review of the hearing judge's conclusion that respondent's repeated filings for unlawful detainer did not constitute harassment or improper use of the legal process, contrary to former rule 2-110(A) and (B). While we do not look with favor on respondent's actions in these matters, we do not discern in this record a basis for reversing the hearing judge on this issue.

#### 6. Malpractice Action

[11a] Respondent concedes that his letters to Younesi in March and September 1986 constituted a violation of former rule 6-102 as an attempt to

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11. The hearing judge also concluded that portions of Younesi's payments which were in excess of respondent's actual costs of the property (the mortgage payment, taxes, insurance, etc.) were applied to attorney's fees Younesi owed to respondent. Payments from a debtor for attorney's fees resulting from an adversary proceeding in the bankruptcy court are not in

violation of the automatic stay, but have to be approved by the bankruptcy court as postpetition legal fees. (11 U.S.C. § 329.) If they were paid for legal services provided prior to the March 1982 bankruptcy filing, then such payments would be in violation of the automatic stay. Respondent was not charged with this as misconduct in the notice to show cause.

exonerate himself from any liability but he contends that his attempt to have Younesi withdraw his State Bar complaint in the midst of the malpractice trial was not also a violation of section 6090.5. We must agree with respondent because of the clear limitations of the statute. Section 6090.5 establishes grounds for discipline when a bar member requires "as a condition of a settlement of a civil action for professional misconduct brought against the member that the plaintiff agree to not *file* a complaint with the disciplinary agency concerning that misconduct." (Emphasis added.)

[11b] The State Bar argues that there is no difference between requiring a client as a condition of settlement not to file disciplinary charges against the attorney and attempting to force the client to withdraw those charges once filed as a condition of settlement. The State Bar argues that section 6090.5 applies in both instances to prevent attorney interference with the proper investigation of unethical conduct by the attorney. We cannot agree. The plain language of the statute is limited to settlements involving the agreement not to file a disciplinary complaint. (See, e.g., *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 800, 801 [no extrinsic aids needed to interpret clear, unambiguous language of law].) Nor is the effect of withdrawal of charges the same as not filing them in the first instance. Once the State Bar becomes aware of possible misconduct by the filing of a complaint, it does not need a complaining witness in order to go forward with its investigation. (Rule 507, Trans. Rules Proc. of State Bar.)

[12] Respondent's failure to surrender Younesi's files violated former rule 2-111(A)(2). Even under the threat of a malpractice action by the client, an attorney is not excused from complying with his duty to provide the client with his or her file. The trial court's determination of the requirements of discovery is irrelevant to this ethical obligation. In *King v. State Bar* (1990) 52 Cal.3d 307, the attorney did not file an action within the statute of limitations and was discharged by his client. The client retained new counsel, requested that his files be sent to his new attorney and sued King for malpractice. The Supreme Court found King had violated former rule 2-111(A)(2) when he failed to deliver his former

client's files. (*Id.* at pp. 310, 313, 315; see also *Finch v. State Bar* (1981) 28 Cal.3d 659, 663-665 [attorney refused to forward file to new counsel; after malpractice claim filed, sent file instead to malpractice insurance carrier; culpable of misconduct].) However, we find the misconduct mitigated by the fact that respondent did adhere to the discovery conditions allowing access to Younesi's files ordered by the trial judge in the malpractice case.

### C. DISCIPLINE RECOMMENDATION

Aggravating circumstances identified by the hearing judge included respondent's repeated conflicts of interest with his client over a 12-year period, significant harm to the administration of justice due to the multiplicity of suits arising between respondent and Younesi, and respondent's indifference toward rectifying his misconduct. Nonetheless, the hearing judge did not find any resulting harm to Younesi and rejected the State Bar's assertion that respondent's pleadings showed evidence of bad faith.

In mitigation, the hearing judge noted respondent's 25-year legal career without discipline and that the misconduct was aberrational. Respondent presented character evidence from one attorney and three retired judges, all acquainted with respondent for more than 30 years, who were aware of respondent's work in the legal community and conversant with the disciplinary charges against respondent. The hearing judge concluded from their testimony that respondent has a good reputation of long standing in the Los Angeles legal and judicial community.

The hearing judge rejected the State Bar's recommendation of disbarment as totally unwarranted. Indeed, the State Bar apparently concedes this because it did not seek review of the hearing judge's recommendation of two months suspension. It has argued to this court on respondent's request for review that the discipline might be increased, but does not specify any particular degree of discipline to which it might be increased.

The case cited in support of the State Bar's original disbarment recommendation, *Rimel v. State Bar* (1983) 34 Cal.3d 128, involved multiple misap-

propriations by an attorney from clients in bankruptcy—very serious misconduct which the Court concluded the attorney was likely to repeat in the future. In fact, the only similarities between that case and the instant case are that there were business transactions between the attorneys and their clients and the clients were in bankruptcy. In a brief recitation of cases involving conflict of interest, the hearing judge noted that the range of discipline for the type of misconduct involved here has been from a private reproof to two years actual suspension. Finding that respondent placed his self-interest before his duty to his client but that his conduct did not cause his client harm and was aberrational, the judge recommended that respondent receive a three-year stayed suspension and three years probation on conditions, including sixty days actual suspension.

Respondent contends that the recommended discipline is excessive because of the lengthy time that has passed since the bulk of the misconduct took place, his long practice without misconduct, the lack of harm to the client, and alleged excessive delay by the State Bar in conducting the discipline proceedings. Respondent indicates that he suffered great economic losses from his representation of Younesi and prolonged anxiety and stress as a result of the extended time it took for this matter to be filed and tried.

In rebuttal, the examiner outlines the number of extensions and continuances granted to respondent during the pendency of the matter in the hearing department and contends that respondent has not shown prejudice resulting from the alleged delay. She argues that the evidence in aggravation outweighs that presented in mitigation and that respondent's inability to recognize his ethical responsibilities toward one client over a 12-year period should not be considered aberrational behavior. She also revives her argument that respondent's pleadings, including his brief before us, were not in good faith and demonstrate his complete lack of understanding of the Rules of Professional Conduct and the State Bar Act.

[13] On the question of delay, in order to establish mitigation, respondent must show that the delay was not attributable to him and that it caused specific, legally cognizable prejudice. (Trans. Rules Proc. of State Bar, div. V, Stds. for Atty. Sanctions for Prof. Misconduct ("stds."), std. 1.2(e)(ix); *Blair v. State Bar* (1989) 49 Cal.3d 762, 774; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 361.) He has not done so.

[14, 15] Respondent's over 25 years of practice (1951-1976) without misconduct is entitled to considerable weight in mitigation. "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time. [Citations.]" (*In re Young* (1989) 49 Cal.3d 257, 269.) Respondent's good reputation in the legal community is also mitigating. (*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 331; *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 471.) However, we cannot consider respondent's misconduct over such a long period of time aberrational.

Nonetheless, this case does not warrant comparison to the extreme case of self-dealing and disloyalty to client interests as exemplified in *Rosenthal v. State Bar* (1987) 43 Cal.3d 612.<sup>12</sup> Many prior cases that involve improper business transactions with clients are coupled with other, more serious misconduct. For example, in one of the seminal cases in this area, *Hawk v. State Bar, supra*, 45 Cal.3d 589, the attorney not only acquired an interest adverse to his client by procuring a note secured by a deed of trust in a client's property, but committed acts of moral turpitude and dishonesty by misleading his clients as to the time period they had to pay off their indebtedness and, in one instance, changing the amount of the indebtedness secured after the note had been executed. *Hawk* also had a prior record of discipline, but the Court mitigated the amount of discipline it imposed because the former rule 5-101 charge was an issue of first impression. He received a four-year stayed suspension, a four-year period of probation and a six-month actual suspension.

12. In that case, there were multiple transactions rife with conflicts, coupled with large misappropriations of client funds,

false testimony, and harassment of the client, resulting in disbarment. (*Rosenthal v. State Bar, supra*, 43 Cal.3d 612.)

In *Beery v. State Bar* (1987) 43 Cal.3d 802, the attorney was involved in a single transaction with a client in which he induced the client to invest \$35,000 from a settlement in a business venture without disclosing his own involvement and other material facts and without complying with former rule 5-101. He also personally guaranteed the loan repayment knowing at the time he would be unable to do so in the event of default by the company. The Court found the attorney's acts to be dishonest and an abuse of the attorney-client relationship, considering that the client was particularly vulnerable and unsophisticated in business matters. Although the attorney had a lengthy legal career without prior discipline, the Court found he did not appreciate the seriousness of his misconduct in characterizing the client's testimony and State Bar findings as "trivial." The Court imposed a five-year stayed suspension and two (rather than the recommended three) years of actual suspension, and required \$35,000 in restitution.

In *Brockway v. State Bar* (1991) 53 Cal.3d 51, an experienced attorney commingled a \$500 check to be used as his client's earnest money in a real estate transaction and, in the more serious charge, required a criminal client facing multiple murder counts to execute a quitclaim deed on his home to secure payment for legal fees, a transaction both unfair to the client and entered into without satisfying the safeguards of former rule 5-101. The Court found mitigating the then novel application of the rule to the facts, the roughly equal value of the property obtained and the value of the legal services rendered, and character evidence of the attorney's long record as a conscientious and honest practitioner. He was actually suspended from practice for three months, with a one-year stayed suspension and two years of probation.

Here, we find that much of the misconduct in this case stems from respondent's unique ties with Younesi. Their relationship was beyond that of an attorney and client, and they were bound together by more than is evidenced by their financial dealings. The two of them and their spouses traveled together and over the years exchanged gifts and other tokens of friendship. Their personal relationship soured over time due to bad judgment, greed, and self-

interest on both sides. As a result, respondent allowed his professional judgment to be clouded and his legal career sullied.

There are some aspects of this case which resemble *In re Chira* (1986) 42 Cal.3d 904. In that matter, the attorney participated in a tax shelter scheme which led to his conviction on federal criminal conspiracy charges. The Supreme Court, in eliminating a recommended 30-day actual suspension as a condition of Chira's 3-year probation period, found that Chira had an otherwise exemplary 24-year legal career and was personally and professionally devastated by his misconduct. However, Chira did not personally gain from the transaction and was led by and was overly trusting of a co-conspirator in a matter outside the practice of law.

[16a] Here, after a long legal career, respondent has paid a high personal and financial cost for his poor judgment. While respondent's initial motives may have been to aid his client, that does not shield him from the consequences of his misconduct. (See *Connor v. State Bar*, *supra*, 50 Cal.3d at p. 1060; *Ames v. State Bar* (1973) 8 Cal.3d 910.) "[M]itigating factors cannot wholly dissolve the violation of the rule [former rule 5-101] that proscribes such conduct even when engaged under such circumstances, because of its potential risk of harm to clients and its erosion of the highest standards of loyalty demanded of members of the bar." (*Connor v. State Bar*, *supra*, 50 Cal.3d at p. 1060.)

[16b] Indeed, if all respondent had done was to make a bad loan to a client without complying with former rule 5-101, in all likelihood he would not be facing suspension. The gravamen of his misconduct is the profound misjudgment which prompted lengthy litigation against an existing client and harmed the administration of justice. The applicable standards call for suspension, unless the extent of the misconduct and harm to the client are minimal, in which case, the appropriate discipline would be reproof. (Stds. 2.8 and 2.10.)

[16c] After considering the case law discussed above, and weighing the need to protect the public, the courts and the profession and to maintain the

public trust and standards of the profession, we agree with the hearing judge's recommendation of two months actual suspension.

We therefore recommend that respondent be placed on a three-year suspension, stayed, with three years probation on the conditions set forth in the hearing judge's decision, including sixty days actual suspension. We further recommend that costs be awarded to the State Bar and be added to and become part of the membership fee for the next calendar year. (Bus. & Prof. Code, § 6140.7.)

We concur:

NORIAN, J.  
STOVITZ, J.