

**PUBLIC MATTER**

**FILED**

JUL 11 2014

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES**

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

In the Matter of

**JOSEPH DARRELL PALMER,**

**Member No. 125147,**

A Member of the State Bar.

) Case No.: 12-O-16924-LMA  
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**DECISION**

**Introduction**<sup>1</sup>

In this contested disciplinary proceeding, respondent **JOSEPH DARRELL PALMER** is charged with three counts of willfully violating section 6106's proscription of acts involving moral turpitude, dishonesty, or corruption. Each count is based on the false statement, that respondent made on or with respect to three applications to appear pro hac vice that he filed in various federal-court, class-action lawsuits, to the effect that he had never been disciplined by a court or state bar.

Respondent admits that he made these three statements and that they are false, but asserts that he did not deliberately make the statements and that he made them inadvertently as a result of negligence. Even though the record fails to establish, by clear and convincing evidence, that respondent deliberately made the false statements or that he made them with the intent to mislead, the record does clearly establish that the false statements were not the results of respondent's mere carelessness or negligence, but were the results of respondent's gross

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<sup>1</sup> Unless otherwise indicated, all references to rules are to the State Bar Rules of Professional Conduct.

negligence. As discussed *post*, the court finds that respondent is culpable as charged in each of the three counts because, even in the absence of an intent to mislead, a false statement made

through or as a result of

## **Facts**

### **Respondent's Criminal Conviction**

For about three or four years in the early to mid-1990's, respondent lived in Colorado where he owned and operated both American Family Homes, Inc. (AFH), which built and sold homes, and Tri-County Supply, LLC (Tri-County), which sold construction materials to home builders, including AFH. During that time, respondent rarely practiced law.

In 2001, in a Colorado state court, respondent was charged with, pleaded guilty to, and was convicted on one felony count of violating Colorado sales-tax laws (Colorado Revised Statutes 39-21-118(2) and 39-26-120). Respondent's conviction was based on Tri-County's failure to report and pay over to the Colorado Department of Revenue about \$4,000 in sales taxes that it charged (and presumably collected from) AFH for construction supplies that it sold to AFH in 1995 and 1996 (Colorado Revised Statutes 39-26-104, 105, and 106).

Respondent did not deliberately violate the sales-tax laws or personally profit from Tri-County's failure to report and pay the sales taxes to Colorado. In fact, a significant cause of this failure was a turnover in Tri-County's full-time accountants and accounting assistants.

Following respondent's conviction, the Colorado state court sentenced respondent to two years of unsupervised probation and ordered respondent to perform 200 hours of community service in Colorado. Respondent thereafter successfully completed his probation and community service.

### **Respondent's Discipline in Three States**

#### **Colorado**

Based on respondent's criminal conviction and on a stipulation that respondent and the Colorado Office of Attorney Regulation Counsel entered into in June 2002, the Colorado Supreme Court entered an order on July 1, 2002, suspending respondent "from the practice of

law [in Colorado] for a period of sixty days with all but thirty days stayed during a one-year period of probation [with conditions].” The Colorado Supreme Court imposed that discipline on respondent under Colorado Rules of Civil Procedure, rule 251.5(b), which provides that any act or omission that violates, inter alia, Colorado’s criminal laws is grounds for disciplining an attorney regardless of whether the attorney is ever charged with or convicted or acquitted of the violation in a criminal proceeding and regardless of whether the attorney committed the act or omission in the course of an attorney-client relationship. In respondent’s California proceeding,

proceeding, there were no findings of moral turpitude of dishonesty. Nor were any aggravating circumstances found. In mitigation, respondent did not have a prior disciplinary record, made full and free disclosure, had a cooperative attitude towards the proceeding, and was remorseful.

### **California**

Based on respondent’s criminal conviction and a stipulation regarding facts, conclusions of law, and disposition that respondent and the California State Bar entered into in October 2002, the State Bar Court of California filed an order on November 4, 2002, in case number 02-C-11878 (California *Palmer I*) imposing on respondent a public reproof with conditions attached for 12 months that required respondent to complete his unsupervised criminal probation and community service.

parties stipulated that, even though respondent was convicted of a felony in Colorado, the crime of which respondent was convicted does not, as a matter of law, rise to a felony in California. Under California law, it is a felony to evade reporting, assessment, or payment of a tax only if the tax liability aggregates at least \$25,000 in a consecutive 12-month period. (Cal. Rev. & Tax. Code, § 7153.5.) Respondent's conviction involved only about \$4,000 in unpaid taxes over a 24-month period.

### **Arizona**

Based on the Colorado Supreme Court's July 1, 2002, disciplinary order, the Arizona Supreme Court filed an order February 13, 2003, suspending respondent "from the practice of law [in Arizona] for a period of sixty (60) days, thirty (30) days stayed, to run concurrent with Respondent's Colorado discipline..." and placing respondent "on probation for a period of one (1) year, under the same terms as and to run concurrent with Respondent's Colorado discipline."

### **Respondent's False Statements**

Notwithstanding the July 1, 2002, Colorado disciplinary order, the November 4, 2002, California disciplinary order, and the February 13, 2003, Arizona disciplinary order, respondent filed, on June 20, 2006, in a civil lawsuit styled *Ingolf R. Dinklage v. Holland America Line-Westours, Inc.* in the United States District Court for the Western District of Washington (*Dinklage*), an application for leave to appear pro hac vice in which respondent falsely declared under penalty of perjury: "I have not been disbarred or formally censured by a court of record or by a state bar association...."<sup>2</sup>

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<sup>2</sup> In the present proceeding, respondent is not charged with making this false statement in his June 20, 2006, application in *Dinklage*. Nonetheless, the court admitted that false statement into evidence because it is relevant on the issues of respondent's intent to mislead.

In addition, respondent made the same or a similar false statement in or in support of each of the following applications to appear pro hac vice that respondent filed in three separate federal-court lawsuits between 2010 and 2012 as charged in the NDC.

On June 2, 2010, respondent filed, in a class action lawsuit styled *James Gemelas v. The Dannon Company, Inc.* in the United States District Court for the Northern District of Ohio (*Dannon*), an affidavit in support of a motion for admission of counsel pro hac vice in which

respondent falsely stated under oath: "I have never been the subject of disciplinary action of any kind before any bar or court."

On January 7, 2011, respondent filed, in a class-action lawsuit styled *Mark A. Arthur, et al. v. Sallie Mae, Inc.* in the United States District Court for the Western District of Washington (*Sallie Mae*) an application for leave to appear pro hac vice in which respondent falsely declared under penalty of perjury: "I have not been disbarred or formally censured by a court of record or

On July 5, 2012, respondent filed, in a class-action lawsuit styled *Alyson Herfert, et al. v. Crayola, LLC* in the United States District Court for the Western District of Washington (*Crayola*), an application for leave to appear pro hac vice in which respondent falsely declared under penalty of perjury: "I have not been disbarred or formally censured by a court of record or by a state bar association...." On August 10, 2012, the district court in *Crayola* filed an order to show cause (OSC) directing respondent to show cause why he should not be sanctioned for submitting a pro hac vice application that contained a false statement. Thereafter, on August 15,

*post*, respondent did not file an amended application in *Sallie Mae* until August 27, 2012.

Moreover, respondent never filed an amended application in *Dannon*.

On August 20, 2012, the district court in *Crayola* denied respondent's pro hac vice application not because respondent had previously been disciplined in Colorado, California, and Arizona, but because respondent failed to disclose his prior discipline and falsely stated in his application that he had never been disciplined and because respondent failed to appear at a prior hearing. Also, on August 20, 2012, the plaintiffs in *Sallie Mae* filed a motion to revoke the order granting respondent admission pro hac vice because of respondent's false statement in respondent's January 7, 2011, pro hac vice application.

On August 27, 2012, respondent finally filed an amended pro hac vice application in *Sallie Mae* disclosing his prior discipline in Colorado, California, and Arizona. However, on September 14, 2012, the district court in *Sallie Mae* revoked respondent's admission pro hac vice in that case not because respondent had previously been disciplined, but because respondent falsely stated that he had never been disciplined in his original application and because respondent did not file an amended pro hac vice application in *Sallie Mae* until August 27, 2012, instead of promptly filing one after his application in *Crayola* was challenged in August 10, 2012, OSC in that case.

### **Conclusions**

***Count One - § 6106 [Moral Turpitude]***  
***Count Two - § 6106 [Moral Turpitude]***  
***Count Three - § 6106 [Moral Turpitude]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. Even though the term "moral turpitude" in section 6106 is defined very broadly (e.g., *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110), the Supreme Court has always required a certain level of improper

intent or guilty knowledge before holding that an attorney's conduct involves moral turpitude.  
(e.g., *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321, 330; see also  
*Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 332.)

Respondent credibly testified that he did not

statements deliberately or with any intent to mislead or deceive and that he made each of the

false statements in 1981.



[finding of gross negligence in creating a false impression involves moral turpitude in violation of section 6106].) In short, just as an attorney may be discipline for a false statement made with reckless disregard for the truth (*In the Matter of Dixon* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 23, 29-30), an attorney may be disciplined for a false statement made through or as a result of gross negligence.

### **Aggravation<sup>3</sup>**

#### **Prior Record of Discipline (Std. 1.5(a))**

As noted *ante*, respondent has one prior record of discipline based on his criminal conviction in 2001. The weight of that prior record is diminished because it is remote in time and because the underlying misconduct was not serious.

#### **Multiple Acts of Misconduct (Std. 1.5(b))**

Respondent's present misconduct involves three acts of misconduct.

### **Mitigation**

#### **Recognition of Wrongdoing (Std. 1.6(g))**

Respondent revised his office procedures and now more thoroughly reviews all pleadings, applications, and declarations he signs.

#### **Good Character (Std. 1.6(f))**

Respondent presented very credible testimony from three attorneys as to his good character, honesty, and integrity. Respondent, however, is entitled to limited mitigation for this testimony because, while three attorneys is a significant range of references in the legal profession, three attorneys are not a significant range of references in the general community.

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<sup>3</sup> All references to standards (stds.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.



record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.”

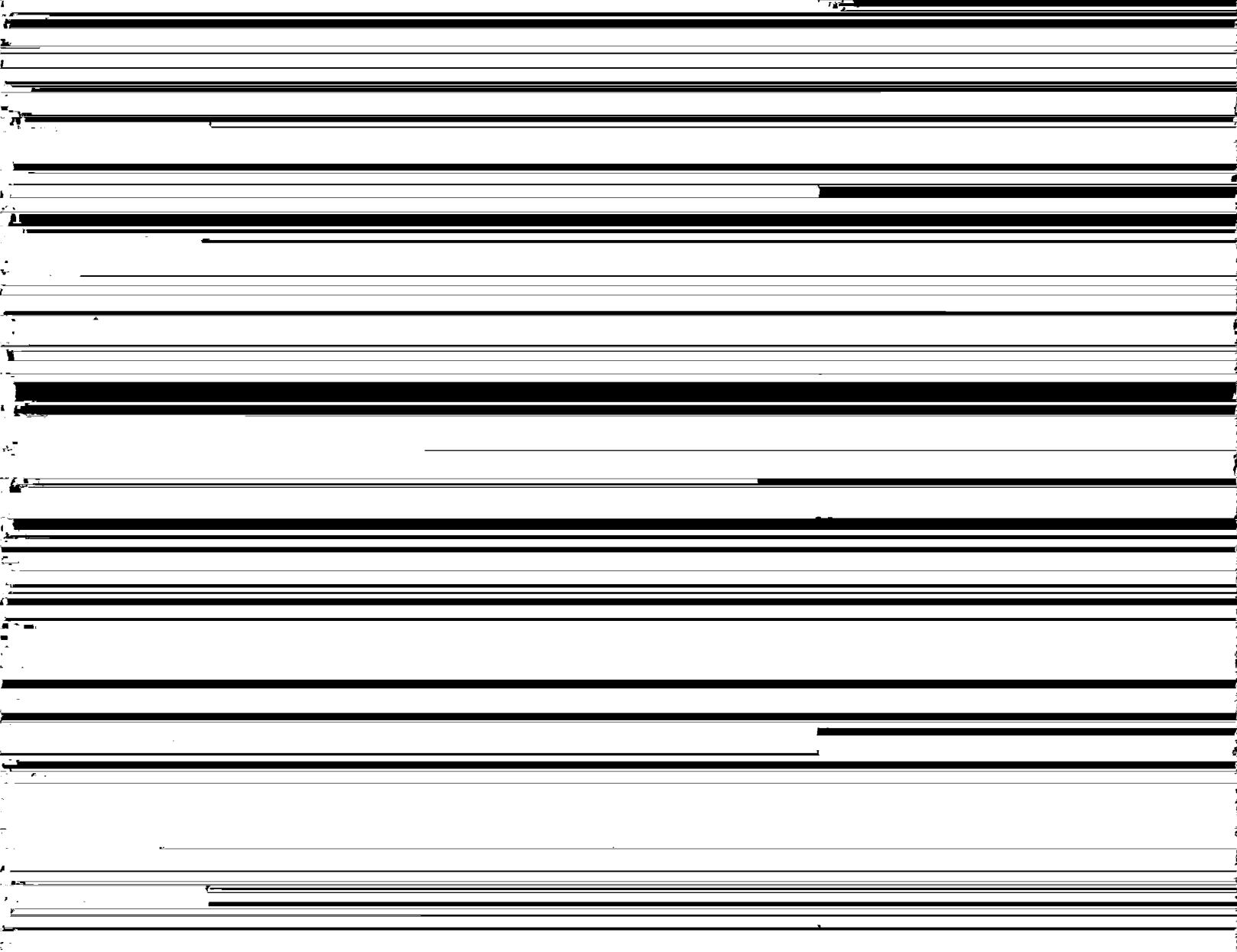
Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) The court finds *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151 and *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 instructive on the issue of discipline even though the misconduct and aggravation in both of those matters are greater than the misconduct and aggravation found here.

In *Downey*, the attorney signed and filed a verification in which he falsely attested under penalty of perjury that his clients were out of the county on a specific date. Even though no intent to defraud was found based on the attorney’s testimony, the attorney was found culpable of violating section 6106 when he filed the false verification because he was grossly negligent in concluding that his clients were absent from the county on the date he specified in the verification. The attorney in *Downey* was also found culpable of violating section 6068, subdivision (j) because he failed to notify the State Bar’s membership records office of his new office address until 28 months after he moved into the new office. In mitigation, the attorney was given limited credit for the good character testimony he presented from six witnesses (four of whom were attorneys) and for cooperating with the State Bar by entering into a pretrial stipulation of facts, which were not difficult to prove. In aggravation, the attorney had a prior record of discipline (the attorney was previously placed on one year’s stayed suspension and three years’ probation on conditions, including a four-month actual suspension) and the attorney’s present misconduct was followed by dishonesty and concealment. In *Downey*, the

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attorney was placed on two years' stayed suspension and two years' probation on conditions, including a 150-day actual suspension.

In *Dahlz*, the attorney was found culpable, in a single client matter, of failing to perform, improperly withdrawing from representation, and misrepresenting to a worker's compensation insurance adjuster that his client no longer wanted to pursue her claim. In aggravation, the attorney committed multiple acts of misconduct, had one prior record of discipline, caused significant client harm and lacked candor.



lack of candor was egregious in that the attorney presented a false telephone log and a falsified stipulation and falsely stated that he was in court when his client's claim was settled. In

mitigation, slight weight was afforded for the limited

period of suspension be stayed, and that respondent be placed on probation<sup>4</sup> for a period of two years subject to the following conditions:

1. Respondent Joseph Darrell Palmer is suspended from the practice of law for the Court

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether

8. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

**Multistate Professional Responsibility Examination**

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

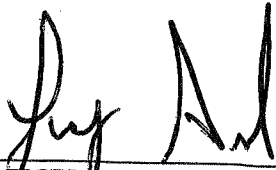
**California Rules of Court, Rule 9.20**

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

**Costs**

Finally, it is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 11, 2014.

  
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**LUCY ARMENDARIZ**  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 11, 2014, I deposited a true copy of the following document(s):

### DECISION

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

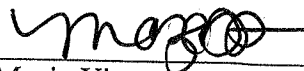
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

KENNETH C. KOCOUREK  
5785 BROCKTON AVE  
RIVERSIDE, CA 92506

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

MICHAEL J. GLASS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 11, 2014.



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Mazie Yip  
Case Administrator  
State Bar Court