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Attorneys for Plaintiffs BRUNILDA STEPHENS and the Proposed Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BRUNILDA STEPHENS, on behalf of herself and all others similarly situated

Plaintiffs,

v.

NORDSTROM, INC.; HAUTELOOK, INC.

Defendants.

Civil Case No. 2:17-cv-05872 DSF (Ksx)

DECLARATION OF ROLAND C. COLTON IN SUPPORT OF PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE RE ADEQUACY OF COUNSEL AND ORDER TO SHOW CAUSE RE SANCTIONS

Date: February 12, 2018
Time: 11:00 a.m.
Judge: Hon. Dale S. Fischer
Courtroom: 7D

TO: THE COURT AND ALL PARTIES OF RECORD:

I, Roland C. Colton, declare as follows:

1. I am an attorney licensed to practice before all courts of the State of

California, and am counsel of record for Plaintiffs in this action. I make this declaration in Support of Plaintiffs' Response to the Court's Order to Show Cause re Adequacy of Counsel and the Court's Order to Show Cause re Sanctions for Failure to Comply with Local Rule 83-1.3.1. The following facts are based on my personal knowledge and my review of pertinent communications with opposing counsel in this matter. If called as a witness, I could and would competently testify to these facts under oath.

2. As I previously stated in my Reply to Plaintiff's Motion for Relief from Central District Local Rule 23-3, I made multiple attempts to contact Ms. Pearce on her "direct line" as set forth on her profile page in Sheppard Mullin's website, in addition to trying to reach her on the Sheppard Mullin's main switchboard, but was unable to leave a voice message on the direct line. Apparently there was and is no working voice message associated with Ms. Pearce's "direct" line. In addition, on January 4, 2018, I placed another call on her "direct" line, wherein I allowed the phone to ring approximately fifteen times before hanging up, never accessing a voice mail.

3. According to my recollection, I tried multiple times to reach Ms. Pearce on her direct line, hoping to reach her directly, *before* calling the Sheppard Mullin's main switchboard, and ultimately leaving messages to both Ms. Pearce and Mr. Dunwoody, and talking to Ms. Pearce's assistant.

4. I cannot state with certainty when the initial calls to Ms. Pearce's direct line were made. My present office is in an executive suite of professional offices in Laguna Niguel managed by Carr Workplaces. I requested that the Executive Suites' Manager, Amber Galette, provide me with a list of calls placed to Ms. Pearce's direct line (858-720-7475). The list she provided me did not include any calls to that number. Ms. Gallette indicated that "unless a call is picked up no call is registered." Consequently, I cannot provide specifics as to the

date/time of the initial attempts to reach Ms. Pearce on her direct line.

5. Attached as Exhibit "1" is a true and correct copy of email exchanges between myself and Amber Gallette, Executive Suites Manager, regarding attempts to locate a call registry of calls placed to Ms. Pearce's direct line.

6. In my 39-plus years of practice as a trial attorney and litigator, several of the complex/class action cases I have provided professional services have involved actions where the defendant filed bankruptcy. Case-in-point are items l. and m. listed in Para. 1 of Response of Colton Law Group to Order to Show Cause re Adequacy of Counsel (filed concurrently herewith), wherein my firm had to navigate through the U.S. Bankruptcy court's labyrinth of trustee motions and defenses to ultimately conduct a trial in U.S. Bankruptcy court against Donald Hill Williams. Other defendants in that proceeding also filed bankruptcy. Ultimately, a $20,000,000 verdict was obtained against Mr. Hill Williams, and eight-figure verdicts obtained against other defendants who had also previously filed bankruptcy. Moreover, my firm successfully defended multiple appeals in that action. Subsequent to the judgment, my firm spent several years pursuing collections of the judgments against those defendants, including filing further lawsuits to set aside fraudulent transfers, seize property, breach of settlement agreements, etc.

7. Attached at Exhibit "2" is a true and correct copy of a Los Angeles Times article, dated March 8, 1995, referencing the above trial against Donald Hill Williams before U.S. Bankruptcy Judge John E. Ryan.

8. Attached as Exhibit "3" is a true and correct copy of the Opinion and Order *In the Matter of Roland Clark Colton,* State Bar Court Case No. 06-C-15151, discussing the two disciplinary proceedings I have had with the State Bar, both of which resulted in public reprovals.

9. I have retained the tax specialist firm of Wood LLP, based in San

Francisco, California to deal with the Franchise Tax Board matter (a lien of which appears as Doc. 11, filed Oct. 3, 2017).

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

Executed on February 6, 2018, at Laguna Niguel, California.

Roland C. Colton

Roland C. Colton

EXHIBIT "1"

RE: Telephone records

Amber Gallette <Amber.Gallette@carrworkplaces.com>

Tue 2/6/2018 4:40 PM

To: Roland COLTON <RCC7@msn.com>;

Cc: Cynthia Carey <cynthia.carey@carrworkplaces.com>;

Good Afternoon Mr. Colton,

That is a fact, unless a call is picked up no call is registered. Currently the phone system and settings do not record outgoing calls that are not picked up. The logs only show calls made and then the history of the call after its been picked up. We are working on another setting that may allow us to see additional call history and have put in a ticket with the information needed in hopes we can retrieve some type of record of outbound calls made to (858) 720-7475.

Thank you,

Amber Gallette
Carr Workplaces
949.365.5881

From: Roland COLTON [mailto:RCC7@msn.com]
Sent: Monday, February 05, 2018 3:16 PM
To: Amber Gallette <Amber.Gallette@carrworkplaces.com>
Cc: Cynthia Carey <cynthia.carey@carrworkplaces.com>
Subject: Re: Telephone records

Hi Amber,

Thank you for your prompt response. It appears that a call is not registered unless the other party answers (or an answering machine responds). Is this true? It's important, because I placed several calls to (858) 720-7475 during the week of December 29, 2017, which were not responded to.

Could you confirm that fact?

Thank you.

Roland C. Colton
COLTON LAW GROUP
28202 Cabot Road
3rd Floor
Laguna Niguel, CA. 92677
Phone: (949) 365-5660
Fax: (949) 365-5662

From: Amber Gallette <Amber.Gallette@carrworkplaces.com>
Sent: Monday, February 5, 2018 1:35 PM
To: Roland COLTON
Cc: Cynthia Carey
Subject: RE: Telephone records

Hi Roland,

Attached please find the file with all calls made during December. I highlighted the dates needed in yellow on the attached. Please let me know if this is acceptable.

Thank you,

Amber Gallette

From: Roland COLTON [mailto:RCC7@msn.com]
Sent: Monday, February 05, 2018 1:25 PM
To: Amber Gallette <Amber.Gallette@carrworkplaces.com>
Subject: Re: Telephone records

Hi Amber,

In follow-up to our brief discussion last Friday, could you let me know if you can locate past telephone records for my calls. I am interested in the phone calls made on December 26 through December 29, 2017?

Thank you.

Roland C. Colton
COLTON LAW GROUP
28202 Cabot Road
3rd Floor
Laguna Niguel, CA. 92677
Phone: (949) 365-5660
Fax: (949) 365-5662

EXHIBIT "2"

Los Angeles Times | ARTICLE COLLECTIONS

‹— Back to Original Article

Anaheim Man Ordered to Pay $20 Million to Investors : Courts: Judge calls former developer a 'snake oil salesman' who preyed on the elderly. Plaintiffs are pleased but skeptical about getting money.

March 08, 1995 | CHRIS WOODYARD | TIMES STAFF WRITER

SANTA ANA — A U.S. Bankruptcy Court judge Tuesday ordered former Anaheim real estate developer Donald Hill Williams to pay $20 million to investors in a fraud-riddled scheme that preyed on the elderly.

Judge John E. Ryan castigated Williams for bilking investors in his Hill Williams Development Corp. of $90 million through land investment schemes.

"He preyed on those least able to recover from financial disaster," Ryan said. The judge called the operation "a classic Ponzi scheme" in which "new money was used to pay old costs," rather than being invested in real estate development as promised.

Williams left federal court in Santa Ana without comment, but later, his lawyer, William C. Starrett II, said of the decision, "We're not happy."

Williams "feels crushed," Starrett said. "When he listened to the judge describing his activities, they were describing someone he does not know."

He said it would take Williams, with his current earnings as a construction worker, about 400 years to pay the judgment. Lawyers for the plaintiffs also expressed concern that they might not be able to collect much of the money.

The verdict came in a lawsuit by about 900 investors who alleged that they had been defrauded by the Anaheim company. They alleged that only $5 million of their money was actually invested in real estate and that the rest was used to pay extravagant salaries and other expenses.

Williams had tried to shield himself from court judgments by filing for personal bankruptcy protection, but Ryan lifted that shield in ruling that Williams must repay investors $16 million in actual damages and $4 million in punitive damages.

The judge cited one land deal after another in which he said that Williams knowingly defrauded investors. In each case, he said, Williams took out millions of dollars in loans for housing projects in which only a few units were built--or none at all.

"He didn't bring the money in from investors to build homes. He brought the money in . . . to keep the business going," Ryan said. "He did this knowing they were investing in a house of cards."

Ryan lambasted Williams for his wholesome sales pitch--"he dressed in the red, white and blue"--when, in fact, he was a "snake oil salesman" who made his deals "only to leave the next day with promises unfulfilled."

Investors and their lawyers raised doubts about whether they can get Williams to pay the damages, but were nonetheless elated.

"It's a complete and total victory and vindication for the plaintiffs," said lawyer Ronald C. Colton of Del Mar. "It shows a recognition by the judge that this operation was a fraud and a Ponzi scheme."

He said his team will try to identify any assets that the onetime high-flying developer might still possess after his empire crumbled two years ago.

Investor Pierce Ostrander, a retired engineer living in Long Beach, described Tuesday's court outcome as "therapeutic. This was a $100,000 show for me. That's what it cost me."

Tom Artingstall, a Yorba Linda retiree, said the verdict was "beyond what I had hoped."

Ryan's ruling came a day after a former Williams associate, David A. Colton, filed for personal bankruptcy. Colton, a securities dealer who operated Colton Capital Corp. in Irvine and is not related to the plaintiffs' lawyer, lists $132,771 in assets and $151,000 in liabilities, most of it due to judgments stemming from Hill Williams.

EXHIBIT "3"

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed August 30, 2013

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	Case No. 06-C-15151
	)	
ROLAND CLARK COLTON,	)	OPINION AND ORDER
	)	
A Member of the State Bar, No. 79896.	)	
	)	

Roland Clark Colton appeals from a hearing judge's recommendation that he receive a one-year stayed suspension and probation due to his 2011 misdemeanor conviction. He seeks a public reproval with conditions. We agree with Colton because the hearing judge relied on a factual error in his analysis.

Colton's misconduct occurred nearly 12 years ago, in 2001, when he submitted a form containing an inaccurate entry to the Trustee in his own bankruptcy case. Five years later, in 2006, federal prosecutors filed bankruptcy fraud charges against him. After the jury failed to reach a verdict, Colton pled guilty to misdemeanor contempt for not cooperating with the Trustee.

The record in the disciplinary trial below is very limited. The Office of the Chief Trial Counsel (State Bar) relied entirely on a stipulation to prove its case. This stipulation provided that the facts and circumstances surrounding Colton's conviction did not constitute moral turpitude, but did involve other misconduct warranting discipline. It also offered the only evidence of the facts and circumstances of Colton's conviction – that he incorrectly marked the bankruptcy form and then failed to ensure that it was accurate in all material respects before it was submitted to the Trustee. Colton testified briefly on his own behalf.

Colton has one prior record of discipline since he was admitted to the Bar in 1978. He was disciplined in 1985 due to his 1983 federal conviction for aiding and abetting the preparation of two false income tax returns for clients. His misconduct occurred in 1981. Due to strong mitigation, he received only a public reproval with conditions. In the present conviction case, the hearing judge imposed a stayed suspension as progressive discipline under Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.7(a).[1]

On review, Colton seeks a public reproval with conditions, asserting that progressive discipline is not warranted because his prior case is remote in time and his present misconduct was minimal. He argues that the hearing judge gave too much weight to his 1985 discipline based on an incorrect finding that it occurred only *six* years before his present (2001) misconduct when, in fact, *16* years had passed. The State Bar asks that we affirm the hearing judge's recommendation despite this error. The main issues on appeal are: (1) what weight to assign the 1985 discipline case; and (2) whether to apply progressive discipline (stayed suspension) instead of a public reproval.

After independently reviewing the record (Cal. Rules of Court, rule 9.12), we find that progressive discipline is not warranted. We give less weight to Colton's prior discipline case than the hearing judge did because it is remote in time and the misconduct was extensively mitigated. In addition, Colton's present misconduct was minimal and it occurred almost 12 years ago. Since that time, he has practiced law without further ethical violations. Overall, Colton's mitigation far outweighs the aggravation of his 1985 discipline. We conclude that a public

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[1] All further references to standards are to this source. Standard 1.7(a) directs that the degree of discipline imposed on an attorney with a prior record of discipline "shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust."

reproval with conditions will adequately protect the public, the courts, and the legal profession without imposing punishment on Colton.

I. FACTS AND CIRCUMSTANCES SURROUNDING COLTON'S CONVICTION[2]

For purposes of attorney discipline, Colton's conviction proves his guilt of all requisite elements of his crime. (Bus. & Prof. Code, § 6101, subd. (a).)[3] After the State Bar transmitted the conviction records to us, we referred the matter to the hearing department to determine whether the facts and circumstances of the crime involved moral turpitude or other misconduct warranting discipline and, if so, the proper level of discipline. (§ 6102, subd. (e); *In re Kelley* (1990) 52 Cal.3d 487, 494.) Since the parties stipulated that the facts and circumstances of the conviction constituted other misconduct warranting discipline, we "look to the whole course of [Colton's] conduct which reflects upon his fitness to practice law," not merely the elements of the crime, to determine the proper discipline. (*In re Hurwitz* (1976) 17 Cal.3d 562, 567.)

A. Colton Filed Bankruptcy in 2001

Colton was admitted to the Bar 34 years ago in 1978. He has practiced law primarily as a solo practitioner doing general litigation and tax work. In 1999, he began experiencing financial difficulties. By 2001, he decided to file a Chapter 7 bankruptcy to discharge his personal debts. Colton hired a bankruptcy attorney because he lacked experience in this area of law. He provided his financial information to the attorney, who prepared the bankruptcy forms. Once the bankruptcy petition was filed in October 2001, the court appointed a Trustee and entered an Order of Relief, which obligated Colton to cooperate with the Trustee in administering the estate.

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[2] Our findings are based on the parties' Stipulation as to Facts, Conclusion of Law, and Admission of Documents, the trial evidence, and the hearing judge's findings. (Rules Proc. of State Bar, rule 5.155(A) [hearing judge's factual findings entitled to great weight on review].)

[3] All further references to sections refer to the Business and Professions Code.

B. Colton Submitted an Inaccurate Bankruptcy Document

On November 16, 2001, Colton appeared before the Trustee for a meeting of creditors. He was required to submit a form entitled "341(a) Meeting of Creditors, Questionnaire" (Questionnaire) to the Trustee before the meeting. Colton's attorney arrived late and had not yet completed the Questionnaire. His attorney hastily prepared the document, which he gave to Colton to sign, indicating that it contained the financial information they had discussed. Contrary to his usual practice, Colton did not read the Questionnaire before he signed and submitted it to the Trustee.[4]

The Questionnaire included a series of "check-off" boxes, including one that asked if Colton was a beneficiary or trustee of any trusts. Colton's attorney had marked "no" in response. This was incorrect since Colton was a trustee of his irrevocable family trust. Colton testified that his attorney believed this trust was not subject to the bankruptcy. Ultimately, Colton dismissed the bankruptcy case without discharging any debt, and the Questionnaire never became part of the bankruptcy file.

C. Criminal Charges Were Filed Against Colton Five Years After Misconduct

Colton's error on the Questionnaire ultimately led to criminal charges being filed against him. In 2006, he was charged with seven counts of criminal misconduct related to bankruptcy fraud in the U.S. District Court for the Southern District of California, Case No. 3:06-cr-02252, *United States v. Colton*. In 2009, the case proceeded to trial but ended in a hung jury. The prosecutor called Colton two and one-half years later in December 2011, and suggested a plea agreement to a lesser charge. Colton consented because he wanted to finalize the matter without putting his family through another trial.

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[4] At the time, Colton was suffering significant personal stress. His wife developed health issues and almost died, which left her with frequent bouts of anxiety. Although he testified his problems did not impact his ability to practice law, they caused him great concern.

D. Colton Pled Guilty to One Count of Criminal Contempt

On December 19, 2011, Colton pled guilty to violating 18 U.S.C. § 401(3) (Criminal Contempt – Misdemeanor). The written plea agreement recited the factual basis for the crime as follows: "By submitting this form [the Questionnaire] to the Trustee, and failing to ensure that it was accurate in all material respects, [Colton] willfully resisted the lawful Order of Relief . . . which required [Colton] to cooperate with the Trustee." He was sentenced to two years' supervised probation and ordered to pay a $25.00 assessment.[5] Colton agreed, as an additional term of probation, to pay restitution of $405,811, plus penalties and interest, to the California Franchise Tax Board (FTB) for taxes owed from 1992 to 1998.

E. The Discipline Trial

The State Bar presented the stipulation to prove the facts and circumstances surrounding the conviction. It stated, in relevant part, that Colton: (1) attended the creditors' meeting; (2) failed to correctly mark the "check-off" box indicating he was a trustee of any trust; and (3) failed to "ensure that [the Questionnaire] was accurate in all material respects" before submitting it to the Trustee. While certain facts in the record raise concerns about Colton's misconduct – such as initial bankruptcy fraud charges and the large amount of restitution paid to the FTB – the State Bar failed to present evidence from which we might conclude that Colton's misconduct was more serious than the stipulation recited.

Colton testified at his discipline trial about his professional background, other facts and circumstances surrounding his conviction, and his pro bono and community service. He repeatedly acknowledged his wrongdoing, admitting that he erred by not reading the Questionnaire before signing it: "I'm meticulous in my own practice and advising clients to read documents so it's not [an] excuse. I don't offer it as an excuse. I accept full responsibility for

[5] The maximum penalty for this crime included six months in prison, a $5,000 fine, a mandatory special assessment of $25, and a term of supervised release of not more than one year.

my failure." He testified that he is complying with the terms of his criminal probation, including making monthly restitution payments of $2,500 to the FTB.

II. MITIGATION AND AGGRAVATION

The offering party bears the burden of proof for aggravation and mitigation. The State Bar must establish aggravating circumstances by clear and convincing evidence.[6] (Std. 1.2(b).) Colton has the same burden to prove mitigating circumstances. (Std. 1.2(e).)

A. Four Mitigating Factors

The hearing judge found two factors in mitigation – cooperation and community service/pro bono work. Colton requests that we assign credit for several additional factors. We find that he proved a total of four mitigating factors.[7]

1. Cooperation (Std. 1.2(e)(v))

Colton entered into a stipulation with the State Bar, and conceded that his misconduct warranted discipline. As a result, the State Bar did not call witnesses to testify at trial. Colton's cooperation greatly facilitated the trial and is entitled to significant mitigation. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [extensive weight in mitigation given to those who admit culpability and facts].)

2. Community Service/Pro Bono Work

Pro bono work and community service are mitigating factors. (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 785.) Colton testified that he has provided these services throughout his career, but expanded them to fill 200 hours per year during the past five to 10 years. He

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[6] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[7] Colton also claimed mitigation credit for: good faith; a lenient sentence in the criminal matter; family and financial difficulties at the time of his misconduct; lack of harm; and the negative impact of a stayed suspension on his law practice. We find that he failed to prove these factors by clear and convincing evidence.

performed pro bono legal work and participated in church activities, such as teaching Sunday school and playing the piano and organ. While this commendable community service merits mitigation credit, we diminish the weight because Colton offered only his own testimony. (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established solely by attorney's testimony].)

3. Recognition of and Remorse for Misconduct (Std. 1.2(e)(vii))

Although the hearing judge did not find this factor in mitigation, we assign modest weight to Colton's recognition of and remorse for his misconduct. In the criminal matter, he entered into a plea agreement and is complying with his probation terms. At his discipline trial, he admitted he carelessly failed to read the Questionnaire before he signed it. And in his brief on review, he acknowledged that "his conduct did not comport with the high duty required of attorneys in dealing with judicial matters."

4. Passage of Time Since Misconduct (Std. 1.2(e)(viii))

Standard 1.2(e)(viii) provides mitigation for the "passage of considerable time since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation." The hearing judge assigned no mitigating credit for the passage of over 10 years from 2001 (present misconduct) to 2011 (discipline trial), noting that Colton "has been the object of ongoing criminal prosecution during the majority of that time."

We assign some mitigation credit for the passage of time without misconduct. Colton practiced law without ethical problems for five years following his 2001 misconduct before the 2006 criminal charges were filed. He continued to practice law discipline-free for five more years through his 2011 discipline trial. Given his cumulative 34 years in practice, we do not believe Colton acted ethically during these 10 years simply because a criminal prosecution was pending for part of that time. (*Amante v. State Bar* (1990) 50 Cal.3d 247, 256 [three years of

untarnished post-misconduct practice given limited mitigation credit]; *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 305, 308, 316-317 [five years of unblemished post-misconduct practice demonstrated attorney's ability to adhere to standards of professional behavior and considered mitigating].)

B. One Aggravating Factor

The hearing judge properly found that Colton's 1985 record of discipline (*In the Matter of Colton* (June 14, 1985) Cal. State Bar Ct. No. 84-C-00074) is an aggravating factor. (Std. 1.2(b)(1).) We agree, but diminish its weight because the misconduct was strongly mitigated and is remote in time. Even the State Bar prosecutor conceded at trial that Colton's prior discipline is "remote in time" and that "some level of mitigation will likely be given for his discipline free record since the [1985] prior." A 1985 stipulation between the State Bar and Colton sets out the particulars of that case, as detailed below.

In 1979, the year after Colton was admitted to the Bar, several church members hired him to represent Major Dynamics. This company offered solar energy tax shelters to investors. Before long, the principals began defrauding the investors by misusing the investment monies. Colton did not initially suspect the fraud nor did he know that the investment tax deductions and credits were improper. By 1980, he knew that people managing Major Dynamics were back-dating contracts. And by 1981, he was on notice "as to the need to inquire further regarding serious irregularities in the operation of Major Dynamics." Yet, in 1981, he prepared tax returns for an investor and the investor's wife claiming invalid deductions and credits for the solar panels. His willful failure to inquire about the company's irregularities before preparing those returns constituted "a reckless indifference for the truth."

Federal prosecutors charged Colton with violating 26 U.S.C. § 7206(2) (aiding and abetting the preparation and filing of false income tax returns). In 1983, he pled guilty and was

sentenced to a suspended two-year prison term, subject to a five-year probation period, and 60 days in a jail-type institution.[8]

In 1985, Colton was disciplined for his conviction that involved moral turpitude, in violation of section 6101. No aggravating circumstances existed and there were 11 factors in mitigation.[9] Colton received a public reproval with conditions.

In assigning full aggravating weight to Colton's prior discipline, the hearing judge miscalculated the time period as only six years between that case (1985) and the present misconduct (2001). Correcting the time span to 16 years, and considering the minimal discipline imposed, we properly afford only limited aggravating weight to Colton's 1985 discipline case. (See *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, 713 [no significant aggravation for prior discipline where misconduct occurred 17 years earlier, resulted in private reproval, and involved acts unrelated to present misconduct]; *In the Matter of Shinn* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 96 [no significant aggravation for prior discipline where misconduct occurred 20 years earlier, resulted in public reproval, and involved acts unrelated to present misconduct].)

III. LEVEL OF DISCIPLINE

This proceeding is not intended to punish Colton for his wrongdoing; the criminal court has handled that. Instead, the purpose of attorney discipline is to protect the public, the courts

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[8] The record does not establish whether Colton's 1985 conviction was a felony or misdemeanor. At oral argument, the State Bar represented that all parties understood it was a misdemeanor.

[9] Those stipulated pre-standard mitigating factors were that Colton: (1) had no disciplinary record; (2) was young and inexperienced; (3) trusted the principals; (4) provided a valid legal tax opinion when first hired; (5) believed the investment would be successful; (6) never actually knew the investor funds were being misused; (7) had himself been an investor victim; (8) believed the tax deductions and credits were proper when he prepared the investor's return; (9) visited the company's office only twice and had no access to its files; (10) voluntarily paid the investors $130,000 as returned commissions; and (11) produced character and support letters from investors who had lost money.

and the legal profession, to preserve public confidence in the profession, and to maintain high professional standards for attorneys. (Std. 1.3.) Ultimately, we balance all relevant factors, including mitigating and aggravating circumstances, on a case-by-case basis to ensure that the discipline imposed is consistent with its purpose. (*In re Young* (1989) 49 Cal.3d 257, 266.) Our analysis begins with the standards, which are guidelines we follow whenever possible to promote uniformity of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.)

A. No Progressive Discipline Under Standard 1.7(A)

On review, Colton requests the same discipline he received in his 1985 case – a public reproval with conditions. Standard 1.7(a) provides for progressive discipline unless the prior record was (1) so remote, and (2) the misconduct was so minimal that it would be manifestly unjust to impose a greater discipline. Colton argues that since he meets this two-prong exception, progressive discipline is not warranted. We agree.

As to the first prong, Colton's 1985 prior discipline is remote in time, as the State Bar conceded at trial. He assisted his clients in filing false tax returns in 1981, was convicted of the criminal offense in 1983, and was publicly reproved in 1985. Then in 2001, he committed his present misconduct, 20 years after his past wrongdoing, and 16 years after he was publicly reproved for it. In total, it has been 32 years to date since Colton committed the misconduct in his prior discipline case (1981 to 2013).

As to the second prong, Colton's past misconduct involving moral turpitude was significantly mitigated. He received only a public reproval, a lenient discipline reflecting that the misconduct was minor. (See *In the Matter of Hanson, supra,* 2 Cal. State Bar Ct. Rptr. at p. 713 [private reproval in previous discipline case indicated "misconduct itself was minimal in nature"].)

Colton's discipline matters are not similar enough to suggest that he needs progressive discipline as a recidivist offender who did not learn from his prior case. His present misconduct occurred during his own bankruptcy proceeding where he was represented by counsel. In contrast, the misconduct in his prior case occurred during the practice of law. Nor is this a case where Colton committed increasingly serious misconduct – failing to ensure the bankruptcy Questionnaire's accuracy is less concerning misconduct than recklessly aiding clients to file false tax returns. Thus, imposing progressive discipline would not serve the goals of attorney discipline and would be manifestly unjust to Colton. (See *In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 157 [progressive discipline warranted where misconduct aggravated by serious discipline record and dishonesty].)

B. Public Reproval with Conditions Is Appropriate Discipline

Standard 3.4 provides that discipline for a criminal conviction involving "other misconduct warranting discipline" should appropriately reflect the nature and extent of the misconduct. As noted, Colton's misconduct involves his careless failure to review the bankruptcy Questionnaire. Such negligence reflects poorly on his judgment and the legal profession in general.

The parties disagree on which standard applies. The State Bar asserts that Colton's criminal *conviction* for contempt is akin to a violation of section 6103 (willful violation of court order) and therefore standard 2.6 applies, calling for disbarment or suspension. Colton argues that his *misconduct* – submitting an inaccurate Questionnaire to the Trustee – is comparable to failing to act competently, in violation of rule 3-110(A) of the Rules of Professional Conduct.[10] Colton is correct because we examine the facts and circumstances surrounding the crime, not the conviction itself. (See *In re Gross* (1983) 33 Cal.3d 561, 568 [misconduct, not conviction,

[10] All further references to rules are to this source, unless otherwise noted.

warrants discipline]; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6 [whether acts underlying conviction amount to professional misconduct "is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction"].)

Violations of rule 3-110(A) fall within standard 2.4(b). (*In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 157.) This standard calls for a reproval or suspension depending on the gravity of the offense or harm, if any, to the victim. The State Bar conceded at trial that although Colton's present misconduct was not minimal, "it was not of the most severe nature." We agree because it involved negligence, not dishonesty. The State Bar did not argue or prove harm and presented little, if any, evidence other than the conviction itself. Colton, on the other hand, established mitigation that outweighs the limited aggravating weight of his remote 1985 prior discipline matter. Perhaps most significantly, Colton has not committed further ethical violations in nearly 12 years since his 2001 misconduct, while increasing his service to the community.

In light of Colton's 34 years of practicing law, his minimal misconduct, and his strong mitigating evidence, we conclude that a public reproval with conditions will adequately protect the public, the courts, and the legal profession. Comparable case law fully supports this discipline. (See *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757 [no culpability for rule 3-110 violation for failure to file answers to interrogatories after fourth time extension where simple calendar error due to recent computer change]; *In the Matter of Respondent G* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 175 [private reproval with conditions for repeatedly failing to perform legal services by neglecting client's needs in probate case]; *In the Matter of Hanson*, *supra*, 2 Cal. State Bar Ct. Rptr. 703 [public reproval with

conditions for failing to promptly return unearned fee with 17-year-old prior discipline; no culpability for isolated rule 3-110 violation for filing late response to motion to dismiss].)

IV. ORDER

Roland Clark Colton is ordered publicly reproved, to be effective 15 days after service of this opinion and order. (Rules Proc. of State Bar, rule 5.127(A).)

Further, Roland Clark Colton must comply with specified conditions set forth in this order. (Cal. Rules of Court, rule 9.19; Rules Proc. of State Bar, rule 5.128.) Failure to comply with any condition may constitute cause for a separate proceeding for willful breach of rule 1-110.

Roland Clark Colton is ordered to comply with the following conditions for a period of one year following the effective date of this order:

1. He must comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

2. 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, he must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

3. Within one year of the effective date of this public reproval, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending Ethics School.

4. He must take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of this public reproval and provide satisfactory proof of such passage to the Office of Probation within the same period.

5. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.

V. COSTS

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

PURCELL, J.

WE CONCUR:

REMKE, P. J.

EPSTEIN, J.

PROOF OF SERVICE
Brunilda Stephens, et al. v. Nordstroms, Inc., et al.
Civil Action No. 2:17-cv-05872-DSF (KSx)

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 6, 2018 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

COLTON LAW GROUP

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Roland C. Colton

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