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9 STATE BAR COURT
10 HEARING DEPARTMENT – SAN FRANCISCO
11

12 Case No. 13-O-1778506

13 In the matter of:

14 CHARLES DODGSON,
15 No. 999999,

16 A Member of the State Bar.
17

RESPONDENT'S MOTIONS *IN LIMINE*
AND MEMORANDUM IN SUPPORT
OF MOTIONS *IN LIMINE*
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20 Trial Date: January 20, 2015

21 Judge: Hon. John Smith
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MOTIONS IN LIMINE

Pursuant to Rules of Procedure of the State Bar 5.45, Respondent Charles Dodgson (“Mr. Dodgson”) hereby moves the Court for the rulings set forth below:

1. (Motion One) This Court lacks jurisdiction to rule on questions of California trust law, including whether the trust at issue in *Havarti v. Dodgson*, California Court of Appeal – First Appellate District, Civil Appeal No. A13423286 was valid and whether a trustee acting in defense of a trust may pay his attorneys’ fees out of trust assets without prior court approval when the trust is ultimately found to be revoked.
2. (Motion Two) To establish an attorney’s ethical violation for failure to comply with a court order pursuant to Bus. & Prof. Code § 6103, the State Bar must show the necessary element of the attorney’s ability to comply with the order.
3. (Motion Three) An attorney actively pursuing an appeal of an order and complying with state court procedures on appeal cannot be held to have committed an ethical violation for failure to comply with the subject order.
4. (Motion Four) The handling of client funds in accordance with the client’s instructions, when the funds are maintained in a separate account, does not violate Rule of Prof. Conduct 4-100(A).
5. (Motion Five) Placing client funds in a segregated account in accordance with client’s instructions is not conversion or elder abuse even if another party claims a right to the client funds.
6. When an attorney defending a trust accepts payment for legal services rendered from trust assets without prior court approval, such acceptance is not:
 - a. (Motion Six) accepting an “illegal fee” under Rule of Prof. Conduct 4-200(A); or
 - b. (Motion Seven) moral turpitude under Bus. & Prof. Code § 6106.

The requested rulings will narrow the issues and simplify the matter to be tried. Each of the motions *in limine* asks for resolution of purely legal questions prior to trial such that the trial can be specifically tailored to the few factual issues upon which evidence may be presented.

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PRELIMINARY STATEMENT

The charges alleged in the State Bar’s Notice of Disciplinary Charges (“NDC”) against Mr. Dodgson relate to the attorneys’ fees and costs paid to the law firm of Dodgson Law LLP for its representation of a client-trustee in a trust contest and will contest proceeding in San Mateo County Superior Court. The client-trustee used estate funds to pay the legal expenses he accrued defending the trust from February 2006 through February 2009. Ultimately, the *Havarti* court ruled that the trust was revoked and that the competing testamentary document, the will, controlled. It ordered Mr. Dodgson to sequester the fees his firm had been paid through the litigation pending final resolution of the trust contest. Following settlement of the trust litigation, the fees were ordered paid to the opposing party.

This case is currently on appeal on several issues, including whether the trust was in fact revived and/or republished following its alleged revocation, raising the question of whether the trust was in fact valid and controlling, and whether the Probate Court erred in ordering Mr. Dodgson to sequester and refund the fees his firm was paid.

In a separate motion, Mr. Dodgson renews his request that this matter be abated pending the outcome of the appeal because the appellate court’s ruling on certain issues being considered will bear on the outcome of this matter.

The State Bar’s charges include the following:

1. Mr. Dodgson “wilfully disobeyed or violated a court order” in violation of Bus. & Prof. Code § 6103 when he was unable to sequester over \$400,000 in attorneys’ fees and costs the client-trustee paid to the law firm over a period of years pending resolution of an appeal to determine the rightful owner of the estate’s assets (NDC ¶ 19).
2. Mr. Dodgson failed to hold the trust’s funds in a trust account in violation of Rule of Prof. Conduct 4-100(A) because they resided in a separate “general business” account (NDC ¶ 25).
3. Mr. Dodgson failed to comply with laws, including those against conversion and elder abuse (because a beneficiary under the competing testamentary document was over age 65) in violation of Bus. & Prof. Code § 6068(a) (NDC ¶ 43) due to his handling of client funds.

- 1 4. Mr. Dodgson did not obtain prior court approval for the payment of attorneys’
2 fees and costs his law firm received from the decedent’s estate before accepting
3 payment from the client-trustee, thereby:
- 4 a. accepting an “illegal fee” in violation of Rule of Prof. Conduct 4-200(A)
5 (NDC ¶ 31); and
 - 6 b. committing an act of moral turpitude in violation of Bus. & Prof. Code
7 § 6106 (NDC ¶ 37).

8 The law is not nearly so clear as the State Bar contends it to be. Whether Mr. Dodgson
9 was entitled to accept payment for his services in defense of the trust from trust assets without
10 court approval during the pendency of the litigation is a point of legal debate. A trust can
11 clearly pay for its own legal defense against attack and the statutes allowing such payment
12 absolutely do not require court approval prior to making payments; however, when the trust is
13 ruled revoked, the status of the attorneys’ fees paid from trust assets comes under fire. This
14 issue is currently an undecided question of law. Mr. Dodgson contends that given such an
15 undecided issue of law, his acceptance of the fee cannot be cause for discipline, and certainly
16 not for a sanction as severe as disbarment.

17 Moreover, the State Bar contends that Mr. Dodgson wilfully violated a court order
18 requiring him to refund the fees earned to the estate. In fact, he was ordered to sequester the
19 funds in a blocked account until the rightful disposition of them could be determined; that
20 rightful disposition has yet to be adjudicated, as there are issues pending on appeal that bear
21 directly upon that question. As to Mr. Dodgson’s failure to sequester those funds, he intends to
22 establish at trial that such sequestration was impossible as he did not have in his possession
23 assets sufficient to comply with the order. Mr. Dodgson contends that to establish a wilful
24 violation of a court order, the State Bar must show an ability to comply with that order.
25 Furthermore, Mr. Dodgson contends that when appealing such an order, he cannot be
26 disciplined for failing to as yet comply with it.

27 As to the trust’s funds that Mr. Dodgson held on behalf of the trust following the sale of
28 the trust’s primary asset (the decedent’s residence), Mr. Dodgson intends to establish at trial
 that the funds were transferred via wire transfer from the escrow company to the law firm’s
 operating account, from which they were immediately transferred to a separate account as the

1 client authorized. The funds were segregated and held for the exclusive benefit of the client.
2 Mr. Dodgson contends that upon establishing these facts at trial, the only supportable legal
3 conclusion is that he complied with his ethical obligations as to handling of client funds.

4 **FACTUAL BACKGROUND**

5 The Havarti Family and Mother's Estate Planning

6 Mr. Dodgson represented Dwayne J. Havarti ("Dwayne") in consolidated probate
7 actions stemming from a dispute between Dwayne and his older brother, Thomas Havarti
8 ("Thomas"). In brief, the brothers' mother Susan Havarti ("Mother") executed a trust, then a
9 will, then perhaps revoked the trust, then amended the trust. She then died. Dwayne was
10 Mother's primary caretaker (and his father before his death). He handled her financial affairs,
11 and assisted her in having the trust (under which Dwayne inherited his parents' home) and
12 trust amendment prepared and executed. The will (under which both brothers and their sister
13 shared the home) and alleged revocation of the trust were handled by Thomas and hidden from
14 Dwayne. What Dwayne was aware of was that his parents executed a living trust leaving to
15 Dwayne their home (the only valuable asset in their estate) and then Mother amended it (after
16 father died) to remove Thomas as successor trustee and to ensure that the proceeds of her
17 home, if sold while she was alive, would be used solely for her health, maintenance and
18 support. The amendment did not change the final disposition of her home, which the parents
19 always intended to go to Dwayne.

20 Mother died on July 24, 2006, and Dwayne proceeded to administer what he believed to
21 be the only testamentary documents executed by Mother – the trust and its amendment. Mr.
22 Dodgson was hired by Dwayne as trustee. When Thomas came forward with the secret will
23 and trust revocation, alleging that he was entitled to a third of Mother's entire estate, the
24 brothers entered into years-long litigation. The fees paid to Mr. Dodgson to defend the trust in
25 that litigation are at the heart of the State Bar's complaint here.

26 Mr. Dodgson and the Havarti Family

27 Mother and her late husband executed the original trust in 1995. In 2003, Mother hired
28 Mr. Dodgson to prepare the trust amendment for Mother's trust. Mr. Dodgson was not
informed about the secret will or alleged trust revocation. Mr. Dodgson communicated with
Dwayne, who cared for Mother and handled her affairs, and was not in contact with Thomas,

1 who to Dwayne and Mr. Dodgson's knowledge had no involvement in Mother's affairs.

2 Mother spoke limited English and relied on Dwayne's assistance.

3 Following Mother's death in July 2006 and Thomas's disclosure of the secret will and
4 trust revocation, Dwayne hired Mr. Dodgson to represent the trust in the trust litigation. As
5 trustee, Dwayne was authorized under the trust and by statute to retain counsel to defend the
6 trust. Unlike probate or conservatorship proceedings, no statute requires that a trustee obtain
7 court approval before paying for counsel from trust assets.

8 Mr. Dodgson As A Party To The Litigation

9 After more than two and half years of protracted brother-versus-brother litigation,
10 Thomas sued Mr. Dodgson directly for fraud, conversion, and financial elder abuse (of Thomas,
11 who is over age 65 and would have inherited under the will). The crux of Thomas's suit was
12 that Dwayne and Mr. Dodgson colluded to defraud and unduly influence Mother into changing
13 the disposition of her estate contrary to her testamentary intent, which deprived Thomas of his
14 share of Mother's estate. Thomas ultimately settled with Dwayne, and the tangential litigation
15 against Mr. Dodgson continued.

16 Payment of the Trust's Legal Fees

17 Throughout the trust contest litigation, Dwayne paid the legal fees for defense of the
18 trust from trust assets – a regularly accepted practice that has been approved by the California
19 courts. No court approval is needed for such payments. In the underlying trust contest
20 proceeding, Thomas contended that Dwayne did not have the authority to use estate funds to
21 pay for the litigation expenses because it was not in fact a trust contest – rather it was a will
22 probate matter in which court approval is needed to pay legal fees from estate assets. The two
23 were opposite sides of the same coin given the competing testamentary documents.

24 As the merits of the underlying litigation impacted the procedure by which Mr.
25 Dodgson could be paid, Mr. Dodgson and his client acted during the pendency of the litigation
26 in good faith and reasonable reliance upon the facts as they believed them to be true – that the
27 trust was valid and that the trustee was entitled to use trust assets to defend the trust.

28 In granting Thomas's motion for summary adjudication, the Probate Court ruled that, as
a matter of law, the trust was revoked and not republished or revived by the amendment. The
brothers then entered into a stipulated judgment to settle their dispute. As to Thomas's claims

1 against Mr. Dodgson, the court issued the original sequestration order requiring placement of
2 the legal fees paid to Mr. Dodgson's firm in a blocked account.

3 The order forms the basis of the State Bar's complaint and, along with the Probate
4 Court's summary adjudication, is currently pending appeal to the California Court of Appeal –
5 First Appellate District (fully briefed and awaiting decision).

6 **MOTION IN LIMINE ONE:**
7 **THIS COURT LACKS JURISDICTION TO**
8 **DETERMINE ISSUES OF STATE LAW PERTAINING TO TRUSTS**

9 Resolution of the matter herein requires resolution of multiple issues of state trust law.
10 These issues exceed the scope of the Court's jurisdiction.

11 The State Bar alleges that Mr. Dodgson wilfully violated the Probate Court order by
12 failing to sequester \$419,000 in fees. It further alleges that acceptance of the fees without prior
13 court approval was a violation of law. These violations, the State Bar alleges, constitute
14 acceptance of an illegal fee, moral turpitude and failure to comply with laws (including
15 conversion and elder abuse).

16 Each of these charges is predicated on contested legal issues that this Court does not
17 have jurisdiction to adjudicate. First, they require a determination that the order of the Probate
18 Court is final. It is clearly not; the order is on appeal. Among the issues on appeal is whether
19 the order itself violated Mr. Dodgson's due process rights, so a determination in this Court that
20 the order is final will circumvent the Court of Appeal's consideration of Mr. Dodgson's due
21 process rights.

22 Resolution of these charges also requires a determination that the trust defended by Mr.
23 Dodgson was invalid, an issue not decided at this time as the Court of Appeal is considering
24 whether the trust was revived and/or republished and thus valid and controlling. They also
25 require a determination that the trustee was not entitled to pay counsel to defend the trust
26 absent prior court approval. This issue is also being considered by the Court of Appeal.

27 These contested issues all involve questions of state trust law that are reserved by the
28 Probate Code to the Superior Court. Probate Code § 17000. As those issues are now within the
jurisdiction of the Court of Appeal by way of Mr. Dodgson's exercise of his right to appeal

1 under Code Civ. Pro. § 916, they are not within the State Bar Court’s jurisdiction. Nor are these
2 issues before the California Supreme Court for the State Bar Court to have jurisdiction via the
3 Supreme Court’s attorney discipline authority, as the case has not progressed to the Supreme
4 Court and the issues are outside the narrow scope of the State Bar Court’s attorney discipline
5 function.

6 **MOTION IN LIMINE TWO:**
7 **ABILITY TO COMPLY WITH COURT ORDER**
8 **IS A NECESSARY ELEMENT OF A**
9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 6103**

10 The State Bar alleges that by failing to comply with the court orders relating to
11 sequestration of the funds paid by the estate to Mr. Dodgson’s law firm, Mr. Dodgson “wilfully
12 disobeyed or violated an order of the court requiring him to do or forebear an act connected
13 with or in the course of Respondent’s profession which he ought in good faith to do or forbear”
14 in violation of Business & Professions Code § 6103. (NDC ¶ 20.)¹

15 Mr. Dodgson hereby moves the Court for an order that ability to comply is a necessary
16 element of this charge.

17 The order Mr. Dodgson is alleged to have “wilfully disobeyed or violated” is the
18 direction by the Probate Court, first made in October 2009, to place “all attorney’s fees and costs
19 received from the proceeds of sale of the former home of [Mother], estimated to be
20 approximately \$419,000, and to be placed in a blocked bank account . . . pending a final
21 resolution of this case by the court.” The trust administration and litigation for which Mr.
22 Dodgson’s firm had collected approximately \$419,000 in fees and costs commenced in early
23 2006 upon Mother’s death. By the time the Probate Court’s order was made, three and a half

24 ¹ The three separate orders Mr. Dodgson is alleged in the NDC alleges to have violated are actually the
25 same order requiring sequestration of the attorneys’ fees and costs received. On October 7, 2009, the
26 Probate Court ordered that the fees received by Mr. Dodgson’s firm be placed in a blocked account
27 pending final resolution of the matter. On the proposed order prepared by Thomas’s attorneys, the
28 Probate Court added a handwritten provision. On October 27, 2009, the court re-issued the order
with the handwritten provision typed in; it did not differ from the October 7 order. On February 3,
2010, the Court of Appeal issued an Alternative Writ of Mandate requiring that much of the October
27 order be reversed, and on March 12, 2010 the Probate Court complied with the writ, maintaining
the portion of the original order requiring sequestration of the attorneys’ fees.

1 years had passed; the funds collected for fees and costs had long since been paid as salaries to
2 various attorneys and staff, office expenses, litigation costs, and similar expenses. Mr. Dodgson
3 did not have funds even approaching this amount at his disposal to comply with the order.

4 Ability to comply with a court's order is a necessary element of a contempt charge for
5 failure to comply. *Koehler v. Superior Court* (2010) 181 Cal.App.4th 1153, 1169-70 (in contempt
6 proceeding, burden is on the party seeking the contempt charge to establish that the party
7 allegedly in contempt is able to comply with the order of the court but refuses to do so; inability
8 to comply is not an affirmative defense, but ability to comply is an element of contempt);
9 *Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240, 1246 (regulatory constraints made
10 compliance with court order beyond the ability of the defendant); *In re Cassil* (1995) 37
11 Cal.App.4th 1081, 1087 (an element of contempt is ability to comply with the order alleged to
12 have been violated, and the burden to establish this element is on the proponent of the
13 contempt charge).

14 The same reasoning that makes it an element of contempt applies here; Mr. Dodgson
15 cannot "wilfully" violate an order when he is simply unable to comply with it. To hold
16 otherwise would effectively eliminate the "wilful" requirement explicit in the statute and create
17 a strict liability standard under Bus. & Prof. § 6103.

18 Mr. Dodgson intends to establish at trial that compliance with the Probate Court's order
19 was impossible. He hereby respectfully requests that the Court rule *in limine* that ability to
20 comply with a court order is a necessary element for a violation of Business & Professions Code
21 § 6103.

22 **MOTION IN LIMINE THREE:**

23 **AN ATTORNEY PURSUING APPEAL OF AN ORDER MAY NOT BE DISCIPLINED FOR**
24 **FAILURE TO COMPLY WITH THE SUBJECT ORDER PURSUANT TO**
25 **BUSINESS & PROFESSIONS CODE § 6103**

26 Mr. Dodgson has perfected his appeal of the sequester order; briefing was completed in
27 November 2012. The parties are now waiting for the Court of Appeal to rule. Like every
28 ordinary citizen, Mr. Dodgson has a due process right to avail himself of the appellate courts of
this state to seek review of an adverse trial court order or judgment. The State Bar, however,

1 asks this Court to discipline him for failing to comply with the sequester order while Mr.
2 Dodgson's appeal is pending.

3 Mr. Dodgson hereby moves the Court for an order that when an attorney appeals an
4 order and complies with the procedures in place to perfect that appeal, he cannot be disciplined
5 for failure to comply with the order during the pendency of the appeal.

6 Here the Probate Court's order requires Mr. Dodgson to sequester and now refund over
7 \$400,000, a sum he simply does not have. Because Mr. Dodgson does not have assets sufficient
8 to use as collateral, he was unable to post a bond so Thomas placed a lien on Mr. Dodgson's
9 home and levied on his personal bank accounts. The Court of Appeal has moved forward with
10 Mr. Dodgson's appeal because Mr. Dodgson complied with its procedures. Had he not done
11 so, the appeal would not be heard.

12 The State Bar's prosecution of Mr. Dodgson for failure to comply with the Probate
13 Court's order ignores the fact that the order is on appeal. The Bar says that the order is final but
14 it simply is not. To require Mr. Dodgson to comply with the order or face disciplinary charges
15 deprives him of his due process right to pursue the appeal.

16 Mr. Dodgson requests that the Court rule *in limine* that when an attorney appeals an
17 order and complies with court procedures for perfecting that appeal, he cannot be disciplined
18 for failing to comply with the subject order during the pendency of his appeal.

19 **MOTION IN LIMINE FOUR:**

20 **IT IS PERMISSIBLE FOR AN ATTORNEY TO FOLLOW HIS CLIENT'S INSTRUCTIONS**
21 **ON HANDLING OF THE CLIENT'S FUNDS**

22 Rule of Professional Conduct 4-100(A) requires attorneys to hold client funds in
23 segregated accounts. Attorneys are not required to hold all client funds in Interest On Lawyers
24 Trust Accounts (IOLTA) accounts that earn interest that is transmitted to the State Bar. In fact,
25 when the sum is such that it would earn income for the client in excess of the costs that would
26 be incurred in setting up a separate account for the client, then setting up a separate account is
27 advised. Rules and Regulations of the State Bar of California 2.110(A). When a member of the
28 Bar acts in good faith in determining whether funds should be placed in an IOLTA account or
not, the Bar "will not bring disciplinary charges" against that member. *Id.* at 2.110(B).

1 In this case, Mr. Dodgson held for his client a portion of the proceeds from the sale of
2 Mother's home (the trust's primary asset). These funds were held in the manner requested by
3 his client – a separate account from which Mr. Dodgson could transfer funds at the client's
4 instruction to distribute the trust assets as directed in accordance with the trustee's authority.
5 Mr. Dodgson acted in good faith and his client was satisfied with his handling of the funds and
6 has made no complaint here.

7 Mr. Dodgson requests a ruling that upon a showing that the attorney followed the
8 client's instructions on handling of client funds, an attorney is not in violation of the Rules of
9 Professional Conduct.

10
11 **MOTION IN LIMINE FIVE:**
12 **PLACING CLIENT FUNDS IN SEGREGATED ACCOUNT**
13 **IN ACCORDANCE WITH CLIENT INSTRUCTIONS**
14 **CANNOT BE CONVERSION OR ELDER ABUSE**

15 Mr. Dodgson respectfully requests the Court rule *in limine* that the placing of client
16 funds in a segregated account pursuant to the client's instructions is not conversion or elder
17 abuse even if another party claims a right to the segregated funds under a competing
18 testamentary document and even if that person is over age 65.

19 The State Bar alleges that Mr. Dodgson "wrongfully and fraudulently converted funds
20 belonging to" Mother's estate in violation of Welfare & Institutions Code § 15610 by
21 commingling estate funds with his own. The State Bar alleges that this constitutes elder abuse
22 because Thomas, a potential beneficiary under the will, is over age 65.

23 First, Mr. Dodgson cannot be liable for conversion even if all facts alleged in the NDC
24 are proven at trial. Conversion is an act of dominion wrongfully exerted over the personal
25 property of another. *Plummer v. Day/Eisenberg, LLP* (2010) 184 Cal. App. 4th 38, 45 ("The
26 elements of a conversion are the plaintiff's ownership or right to possession of the property at
27 the time of the conversion; the defendant's conversion by a wrongful act or disposition of
28 property rights; and damages.")

1 To establish conversion, the State Bar must first prove that Thomas had an immediate
2 right to possess an identifiable portion of the estate funds that Dwayne asked Mr. Dodgson to
3 hold in the separate account. The Probate Court in the Havarti trust litigation did not find that
4 Thomas had such a right, and in fact it ruled that the funds to which Thomas asserts a right
5 were in fact disputed funds, hence its order that the funds be held in a blocked account pending
6 the outcome of the trust litigation and not to be disgorged to Thomas. One cannot be liable for
7 conversion when the money allegedly converted is held “without any indication that it was
8 held in trust” for the alleged victim. *Software Design & Application v. Hofer & Arnett, Inc.* (1996)
9 49 Cal.App.4th 472, 485.

10 The crux of the litigation between the Havarti brothers was a question of who was
11 entitled to the trust assets. It is impossible to determine prior to final adjudication of that matter
12 whether Thomas had any right at all to the trust assets. Therefore he, and the State Bar, cannot
13 under any circumstances prove that Thomas had the required immediate possessory right in
14 the funds held by Mr. Dodgson to establish conversion.

15 For these reasons, Mr. Dodgson respectfully requests that the Court rule *in limine* that
16 his acceptance of fees, without prior court approval, from trust assets to defend the trust could
17 not be conversion as a matter of law.

18 Second, as discussed above, Mr. Dodgson requests a ruling that handling of client funds
19 according to client instructions does not violate the ethical rules governing the keeping of client
20 funds. Without a violation of these rules or a finding of conversion, Mr. Dodgson cannot
21 possibly be held to have violated the laws against financial elder abuse contained in the Welfare
22 & Institutions Code because there would be no wrongful conduct upon which to base an elder
23 abuse charge.

24 Mr. Dodgson respectfully requests that the Court rule *in limine* that when an attorney
25 follows his client’s instructions to place client funds in a segregated account, the attorney is not
26 liable for conversion or elder abuse even if another party claims a right to the segregated funds
27 under a competing testamentary document and even if that person is over age 65.
28

1 No statute states or case holds that payment of those fees requires prior court approval.
2 See *Bristol v. Clark*, 2010 WL 4010822 (Cal. App. 3 Dist. – October 14, 2010) (unpublished)
3 (explicitly stating that court approval is not needed). It stands to reason that an attorney
4 defending a trust, which has the explicit and legal authority to pay its attorneys without court
5 approval, and that attorney believing in good faith and with a reasonable factual basis to do so
6 that the trust will prevail against attack, would not obtain court approval of fees during the
7 pendency of the litigation. Surely there is no authority that states that this acceptance of fees
8 would not be permitted.

9 What makes the current case unusual is that the trust was ruled revoked, thereby
10 stripping Dwayne of his role as trustee and putting Mr. Dodgson in the position of no longer
11 representing the trust because it no longer existed. Thomas then sued Mr. Dodgson personally,
12 an act rarely seen and not contemplated by the cases in the trust field. This particular set of
13 facts has not been ruled upon by the courts; the closest the courts have come is to rule that upon
14 the partial upholding of a trust against attack, the attorney for the trust was entitled to accept
15 fees. See, e.g., *Estate of Duffill* (1922) 188 Cal. 536, 554-555 (holding that when a trust is upheld
16 against attack or even partially upheld, the attorney defending the trust is entitled to payment
17 for services out of trust assets).

18 The only question is whether Mr. Dodgson committed an ethical violation by accepting
19 fees without prior court approval even where there is no authority stating that such approval is
20 needed. In *Rossmann v. State Bar*, the attorney represented a conservatorship and failed to obtain
21 court approval prior to accepting fees from the estate. (1985) 39 Cal.3d 539. There the Court
22 held that this was an “illegal fee” because acceptance of fees for a conservatorship required, *by*
23 *statute*, prior court approval.² *Id.* at 545.

24 No such statute exists with respect to trusts, nor any case law ruling that an attorney
25 who defends a trust which is ultimately ruled revoked must seek court approval prior to
26

27 ² Notably, even with such a clear statutory directive that prior court approval was needed and the
28 additional facts of the attorney openly attempting to deceive the court, the attorney in *Rossmann* was
subject to a suspension, not disbarment as is sought here. See *id.* at 546.

1 accepting fees. Under these circumstances, such an action simply cannot rise to the level of
2 certainty to call it an “illegal fee” and subject the attorney to discipline.³

3
4 **MOTION IN LIMINE SEVEN:**
5 **ACCEPTANCE OF PAYMENT WITHOUT PRIOR COURT**
6 **APPROVAL TO DEFEND A TRUST IS NOT MORAL TURPITUDE**

7 Mr. Dodgson respectfully requests the Court rule *in limine* that acceptance of a fee from
8 trust assets to defend the trust, without prior court approval, does not constitute an act of moral
9 turpitude.

10 Moral turpitude involves dishonesty and contempt for the rule of law. An act involving
11 moral turpitude has been described as one of “baseness, vileness or depravity,” and in the
12 context of attorney discipline, acts of moral turpitude are those which render an attorney
13 “unsuitable to practice law.” *In re Higbie* (1972) 6 Cal.3d 562, 569.

14 Crimes and conduct deemed to involve moral turpitude include insider trading, lying to
15 government agencies, and agreement with others to jointly lie to government agencies (*In re*
16 *Chadwick* (1989) 49 Cal.3d 103, 110-11); manslaughter and forgery (*In re Gossage* (2000) 23 Cal.4th
17 1080, 1098); perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472); grand theft (*In re Basinger* (1988)
18 45 Cal.3d 1348, 1358); and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813).

19 The common thread to these types of actions is that they involve overtly dishonest or
20 morally depraved conduct. Further, the statute allowing for sanction of attorneys committing
21 acts of moral turpitude groups them with “dishonesty” and “corruption”. (Bus. & Prof. Code

21 ³ It should also be noted that, even as this matter has made its way to the Court of Appeal, it has never
22 been questioned that an attorney defending the existence of a trust is entitled to compensation for the
23 reasonable value of his services. In this case, the Probate Court even undertook an *in camera* review
24 of Mr. Dodgson’s invoices and determined that that fees charged were reasonable. Thus there is no
25 issue here as to the amount of fees charged, only their lack of prior court approval. In *Bristol*, the
26 Court of Appeal reviewed a trial court’s disgorgement order instructing a trustee’s attorney to
27 disgorge all fees collected without court approval. In addition to holding that the trustee’s counsel
28 did not need to obtain court approval prior to accepting the fees, the court also held that it was
improper for the trial court to order disgorgement of all fees received (as the lower court did in Mr.
Dodgson’s case as well). Instead, the lower court could have reviewed the attorney’s fees for
reasonableness and ordered the disgorgement of excessive fees, but disgorgement of all fees was
improper. *Bristol*, 2010 WL 4010822. The allegations in *Bristol* were very similar to those against Mr.
Dodgson, and yet the attorney in that matter has no public record of discipline but the State Bar seeks
to disbar Mr. Dodgson.

1 § 6106 (providing “commission of any act involving moral turpitude, dishonesty or corruption”
2 is grounds for sanction).)

3 Here there is at least a genuine question of law as to whether Mr. Dodgson was entitled
4 to accept the fees he was paid without prior court approval. Given the lack of clear authority
5 stating that Mr. Dodgson should not have accepted the fees, a finding of moral turpitude would
6 be unsupportable. Mr. Dodgson respectfully requests a ruling that even if the facts alleged in
7 the NDC are proven at trial, acceptance of a fee to defend a trust, without prior court approval,
8 does not involve moral turpitude.

9 CONCLUSION

10 For the foregoing reasons, Mr. Dodgson respectfully requests that the above motions *in*
11 *limine* be granted to narrow the issues and simplify the matter to be tried.

12 Dated: March 4, 2013

Respectfully submitted,

13 _____
14 Charles Dodgson
15 Respondent
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