FILED OCTOBER 14, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **ARMAND J. PASANO**, **Member No. 145928**, A Member of the State Bar.	)	**Case No. 00-O-10775;** 00-O-12312; 00-O-13204; 01-O-02912; 01-O-03913; 02-O-12657; 03-O-01474; 03-O-01777; 03-O-02409; 03-O-03246; 03-O-03673; 03-O-04060; 03-O-04971; 04-O-14815; **06-O-10226;** 06-O-10657; 06-O-13208 **(Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this contested disciplinary proceeding, respondent **Armand J. Pasano** is charged with 56 counts of misconduct in 17 client matters. The court finds, by clear and convincing evidence, that respondent is culpable of 32 counts of those charges and four additional counts of uncharged misconduct, involving (1) failure to perform client services; (2) failure to promptly refund unearned fees; (3) failure to promptly pay client funds; (4) failure to communicate; (5) limiting liability to client without informing client to seek independent legal advice; (6) failure to promptly release client file; (7) failure to obey a court order; (8) failure to render an accounting; and (9) failure to cooperate with the State Bar.

Accordingly, in view of the serious professional misconduct and aggravating factors, including his two prior records of discipline, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case No. 00-O-10775 et al.)

On February 7, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address.

On April 10, 2006, respondent filed a response to the first NDC, and on March 10, 2008, filed an amended response. On March 1, 2006, respondent was referred by the court for evaluation for admittance to the State Bar Court's Alternative Discipline Program.[1] On August 22, 2007, respondent was found to be not eligible for the State Bar Court's Alternative Discipline Program. On August 29, 2007, this matter was ordered reassigned to this court.

Trial was held on March 11, 2008. In addition to respondent, Mark Wall, Theresa M. Daugherty, and Mary Orozio testified at trial. The State Bar was represented by Deputy Trial Counsel Eli Morgenstern. Respondent was represented by David A. Clare, Esq.

On March 11, 2008, the parties filed three stipulations as to facts and conclusions of law and one stipulation as to facts regarding the first NDC. On July 11, 2008, the parties filed an amended stipulation as to facts and conclusions of law regarding the Bozorgmanesh matter. The court approves these stipulations.

Pursuant to the stipulations, the court dismisses the following counts with prejudice in the interests of justice:

[1] The State Bar Court's Alternative Discipline Program is designed to protect the public, the courts and the legal profession, while encouraging attorneys in the disciplinary process with substance abuse and/or mental health problems to receive treatment. (Rules Proc. of State Bar, rule 800; Bus. & Prof. Code, § 6230.)

	Case Number	Counts Dismissed
1.	00-O-10775 (Lopez and Urias)	1, 2, 3
2.	00-O-13204 (Tapia)	7, 8, 9, 12, 13, 14
3.	01-O-02912 (Jimenez)	16
4.	01-O-03913 (Izaguirre)	19
5.	02-O-12657 (Hinojosa)	20
6.	03-O-01474 (Bozorgmanesh)	21, 22
7.	03-O-01777 (Wall)	27

B. Second Notice of Disciplinary Charges (Case No. 06-O-10226 et al.)

On December 26, 2007, the State Bar filed and properly served on respondent a second NDC at respondent's official membership records address. On June 25, 2008, respondent filed a response.

On July 10, 2008, the court ordered the two NDCs consolidated.

On July 9 and 11, 2008, the parties filed three stipulations as to facts and conclusions of law regarding the second NDC. The court approves these stipulations.

Pursuant to the stipulations, the court dismisses the following counts with prejudice in the interests of justice:

	Case Number	Counts Dismissed
1.	06-O-10226 (Frias)	1, 2
2.	06-O-10657 (Escamilla)	4, 6
3.	06-O-13208 (Balanzar)	7, 10

The consolidated matter was submitted for decision on July 16, 2008, after the parties' post-trial closing briefs.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on March 13, 1990, and since that time has been a member of the State Bar of California.

B. First Notice of Disciplinary Charges (14 Client Matters)

Pursuant to the stipulations as to facts and conclusions of law, respondent admits that the following facts are true and that he is culpable of these acts of professional misconduct in violations of the provisions under the Business and Professions Code[2] and the Rules of Professional Conduct.[3]

1. The Lopez and Urias Matter (00-O-10775; Counts 4 and 5)

a. Stipulated Facts

1. On or about July 31, 1998, Alma Lopez ("Lopez") and Aureliano Urias ("Urias") employed respondent to represent them in personal injury claims arising from an automobile accident that occurred on or about July 30, 1998. Lopez and Urias are husband and wife.

2. In or about July 1999, respondent settled Lopez's personal injury claim for $2,320. On or about July 29, 1999, Allstate Insurance Company sent Lopez's $2,320 settlement check to respondent, which respondent received shortly thereafter and deposited into his trust account.

3. In or about March 2000, respondent settled Urias' personal injury claim for $4,846. On or about March 17, 2000, Allstate Insurance Company sent Urias' $4,846 settlement check to respondent, which respondent received shortly thereafter.

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[2] References to sections are to the provisions of the Business and Professions Code, unless otherwise noted.

[3] References to rules are to the Rules of Professional Conduct, unless otherwise stated.

4. After Urias provided his consent to settle his personal injury claim, he changed his mind and rejected the offer.

5. On or about June 26, 2001, Urias again decided to accept $4,846 to settle his personal injury claim.

6. On or about July 3, 2001, Allstate Insurance Company issued a new settlement check for $4,846 to respondent and Urias and sent the check to respondent.

7. In or about mid-July 2001, Lopez and Urias visited respondent at respondent's office, at which time Urias was given a settlement disbursement sheet and a check from respondent's client trust account for $1,300, his portion of the settlement funds. Lopez was also provided a disbursement sheet indicating that her entire settlement of $2,320 would be used to pay her medical bills.

8. In or about 2001, Lopez and Urias' medical providers were paid.

b. Stipulated Conclusions of Law

Count 4 - Failure to Return Client Funds Promptly (Rule 4-100(B)(4))

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive. By not promptly paying Lopez's medical providers for approximately two years, at Lopez's request, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 5 - Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in his possession and render appropriate accounts to the client. By failing to provide Lopez with a written breakdown of how he planned to disburse Lopez's settlement funds among her medical providers until July 2001, respondent failed to promptly render appropriate accounts to a client regarding all funds coming into his possession in willful violation of rule 4-100(B)(3).

2. The Tapia Matter (00-O-13204; Counts 10 and 11)

a. Stipulated Facts

1. On or about November 25, 1996, Amada Peredo Tapia ("Amada") employed respondent to represent her in a personal injury case arising from an automobile accident that occurred on or about November 19, 1996. At the time of the accident, Amada was driving a vehicle owned by her brother Filiberto Tapia ("Filiberto").

2. On or about June 3, 1997, respondent filed an action in Los Angeles County Superior Court on behalf of Amada and Filiberto, entitled *Amada Tapia, et al v. Robert Forehand*, case No. 779939 ("Tapia action").

3. In or about June 1999, respondent settled Amada's bodily injury claim for $2,816.25 and Filiberto's property damage claim for $1,294.13 with Sterling Casualty Insurance Co.

4. On or about June 11, 1999, Sterling Casualty Insurance Co. issued a bodily injury settlement check payable to respondent and Amada in the amount of $2,816.25 and a property damage settlement check payable to Filiberto and respondent in the amount of $1,294.13.

5. On or about July 27, 1999, respondent deposited the Amada and Filiberto's respective settlement checks into his client trust account at Bank of America, account No. 16640-06495, ("respondent's CTA").

6. By March 28, 2001, respondent had not disbursed any of Amada's settlement funds, including the undisputed portion of the funds belonging to Amada, from respondent's CTA to Amada or to a lienholder on her behalf.

7. By March 28, 2001, respondent had not disbursed any portion of Filiberto's property damage settlement funds from respondent's CTA to Filiberto or to any lien holder on his behalf.

8. After subtracting respondent's contingency fee from Amada's settlement funds, respondent was required to maintain in respondent's CTA the approximate sum of $937 on behalf of Amada and her lien holders.

9. Respondent was required to maintain in respondent's CTA the sum of $1,294.13 on behalf of Filiberto.

10. On March 28, 2001, the balance in respondent's CTA dropped to -$1,164.84.

11. Respondent has not maintained his client trust account records for respondent's CTA, including the written trust account journal and each monthly reconciliation for respondent's CTA pursuant to rule 4-100(C).

b. Stipulated Conclusions of Law

Count 10 - Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. By not maintaining at least $937 received on behalf of Amada in respondent's CTA, respondent willfully failed to maintain client funds in a trust account in violation of rule 4-100(A).

Count 11 - Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))

By not maintaining at least $1,294.13 received on behalf of Filiberto in respondent's CTA, respondent willfully failed to maintain client funds in a trust account in violation of rule 4-100(A).

3. The Jimenez Matter (01-O-02912; Counts 15 and 17)

a. Stipulated Facts

1. In or about May 1998 Lucy Jimenez ("Jimenez") employed respondent to represent her in a personal injury claim arising from an automobile accident on May 5, 1998.

2. The one-year statute of limitations on Jimenez's claim elapsed on or about May 5, 1999. Respondent failed to file a civil lawsuit on behalf of Jimenez on or before the May 5, 1999, expiration of Jimenez's statute of limitations, or at any time thereafter. As a result of respondent's failure to timely file a civil action on behalf of Jimenez, Jimenez lost her right to pursue and collect damages for her personal injuries.

3. At no time did respondent inform Jimenez that respondent failed to file a civil action on her behalf within the one-year statute of limitations applicable to her case. Respondent also did not advise Jimenez regarding her legal options in light of respondent's failure to file the civil action.

4. On or about August 23, 1999, Jimenez went to respondent's law office and was given a check for $2,000.

5. Jimenez was also given a "Release in Full of All Claims and Rights" form by respondent's employee, which she was asked to sign, and did sign. Jimenez did not meet with respondent on August 23, 1999, nor discuss the release with him.

6. At no time prior to Jimenez's execution of the release of respondent from any liability for malpractice to Jimenez, did respondent inform Jimenez in writing that she may seek the advice of an independent lawyer regarding the settlement nor did he give Jimenez any opportunity to seek that advise.

b. Stipulated Conclusions of Law

Count 15 - Failure to Perform with Competence (Rule 3-110(A))

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. By not filing a civil action on behalf of Jimenez within the one-year statute of limitations applicable to Jimenez's case and by not advising Jimenez regarding her legal option as a result of respondent's failure to file the civil action,

respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in violation of rule 3-110(A).

Count 17 - Limiting Liability to a Client (Rule 3-400(B))

Rule 3-400(B) provides that a member must not settle a claim or potential claim for the member's liability to the client for his or her professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer and is given a reasonable opportunity to seek that advice.

By settling with Jimenez's claim or potential claim against respondent for respondent's professional malpractice, without informing Jimenez that she may seek the advice of an independent lawyer regarding the settlement, and by failing to give her a reasonable opportunity to seek such advice before entering into the settlement, respondent willfully violated rule 3-400(B).

4. The Izaguirre Matter (01-O-03913; Count 18)

a. Stipulated Facts

1. On or about September 21, 2000, Pablo Izaguirre ("Izaguirre") employed respondent to represent him in pursuing a personal injury claim arising from an automobile accident Izaguirre was involved in on or about September 13, 2000. Respondent and Izaguirre agreed that respondent would be compensated by a contingency fee.

2. In or about May 2001 respondent settled Izaguirre's personal injury claim and received a settlement check from Arrowhead Claims payable to respondent and Izaguirre in the amount of $15,000. On or about May 18, 2001, respondent deposited the draft into respondent's client trust account No. 16640-06495 at Bank of America ("respondent's CTA").

3. Izaguirre approved respondent's settlement of Izaguirre's personal injury claim for $15,000, and in or about April 2001 Izaguirre executed a release of his personal injury claim in exchange for $15,000.

4. The disbursement sheet regarding Izaguirre's settlement drafted by respondent indicated that respondent would take $5,248 as his legal fees and costs, $5,752 would be paid by respondent to Izaguirre's several medical providers, and Izaguirre would receive the remaining $4,000. The medical bill of the County of Los Angeles exceeded $10,000.

5. At no time did respondent pay any of Izaguirre's funds held in respondent's CTA to Izaguirre as requested by Izaguirre.

6. At no time did respondent pay any of Izaguirre's funds held in respondent's CTA to the following medical providers as requested by Izaguirre: City of Los Angeles Fire Department, Spaulding Drive Cosmetic Surgery, John Johnson, M.D./Clyde Arnold, M.D., and Atlantic Health Center.

b. Stipulated Conclusions of Law

Count 18 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not paying Izaguirre's funds held in respondent's CTA to Izaguirre and to Izaguirre's medical providers, respondent failed to pay client funds as requested by his client in violation of rule 4-100(B)(4).

5. The Hinojosa Matter (02-O-12657; Count 20)

The Hinojosa matter is dismissed pursuant to the parties' stipulation.

6. The Bozorgmanesh Matter (03-O-01474; Counts 23 and 24)

a. Stipulated Facts

1. On or about June 25, 2001, Afshin Bozorgmanesh ("Bozorgmanesh") was involved in an automobile accident and sustained injuries. A few days later, Bozorgmanesh employed attorney Robert Speer to represent him in a personal injury claim regarding his accident.

2. On or about January 16, 2002, Bozorgmanesh met with respondent and agreed to have respondent handle his case on a contingency fee basis.

3. On or about February 11, 2002, respondent sent a letter to Clayton Thomas Noel, D.C. ("Noel"), the chiropractor Bozorgmanesh was treating with for the injuries he sustained in the accident. In his letter to Noel, respondent confirmed Noel's medical lien on any settlement funds Bozorgmanesh received. Respondent also advised Noel in his letter that money from a settlement would be reserved to satisfy Noel's lien.

4. In or about late March or early April 2002, respondent settled Bozorgmanesh's personal injury claim and received a settlement check from State Farm Insurance Company payable to respondent and Bozorgmanesh in the amount of $6,500.

5. On or about April 12, 2002, respondent deposited Bozorgmanesh's settlement check into respondent's client trust account, No. 0270311038, at Spectrum Bank ("respondent's CTA").

6. On or about April 15, 2002, Bozorgmanesh met with respondent to discuss the disbursement of his settlement funds. Bozorgmanesh approved in writing a disbursement of $2,219 to respondent for his legal fees and costs, $50 to be paid to Adobe Medical, $2,090 to be paid to Noel, and the remaining $2,141 to Bozorgmanesh.

7. At the time of the meeting, respondent believed that he had already paid Noel for the medical services that he had provided to Bozorgmanesh. As a result, respondent stated to

Bozorgmanesh that Noel's bill had been paid. In fact, respondent had mailed the client trust account check that he had issued to Noel to a medical provider named, "IPM." IPM was not associated with Bozorgmanesh's personal injury claim. Respondent made the client trust account check payable to "Clayton Thomas Noel, D.C." However, the cancelled check indicates that the check was made payable to "Clayton Thomas Noel, D.C./IPM." The words IPM were apparently added to the check by someone other than respondent.

8. In or about December 2002, Bozorgmanesh began receiving letters from Noel, complaining that respondent had not yet paid Noel any amount for the services Noel rendered to Bozorgmanesh. In or about mid-February 2003, Noel sent a letter to Bozorgmanesh advising that respondent still had not paid Noel and that Noel's lien on Bozorgmanesh's personal injury settlement had not been satisfied. In that letter, Noel advised Bozorgmanesh that Noel would be giving his lien to a collection company to attempt to collect the money from Bozorgmanesh.

9. Between in or about January and March 2003, Bozorgmanesh telephoned respondent's office numerous times in an attempt to determine why Noel had not been paid and to demand that respondent pay Noel. Respondent never spoke to Bozorgmanesh and never returned any of his telephone calls, though Bozorgmanesh left messages with respondent's secretary each time that he called. Respondent believed during this time that Noel had been paid because he had the cancelled check sent in payment; however, respondent was mistaken in believing that Noel was part of IPM.

10. On January 13, 2006, Bozorgmanesh paid $2,800 to the attorney representing the collection agency hired by Noel.

11. Respondent has agreed to reimburse Bozorgmanesh the $2,800 that he paid to the collection agency's attorney by no later than August 30, 2008.

12. On or about April 8, 2003, the State Bar opened an investigation, case No. 03-O-01474, pursuant to a complaint filed by Bozorgmanesh ("the Bozorgmanesh matter").

13. On or about December 17, 2003, State Bar Investigator Craig Peterson wrote to respondent regarding the Bozorgmanesh matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable.

14. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bozorgmanesh matter. Respondent did not respond to the investigator's December 17, 2003, letter or otherwise communicate with the investigator.

b. Stipulated Conclusions of Law

Count 23 – Failure to Communicate (Section 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Bozorgmanesh's inquiries concerning the payment of Noel's medical lien, respondent failed to respond to the reasonable status inquiries of a client in willful violation of section 6068, subdivision (m).

Count 24 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a

written response to the allegations in the Bozorgmanesh matter or otherwise cooperate in the investigation of the Bozorgmanesh matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

7. The Wall Matter (03-O-01777; Counts 25, 26 and 28)

a. Stipulated Facts

1. In or about late August 2000, Mark Wall ("Wall") employed respondent to represent him in pursuing a personal injury claim arising from an automobile accident that Wall was involved in on or about August 25, 2000. Respondent and Wall agreed that respondent would be compensated by a contingency fee.

2. On September 25, 2000, respondent sent a letter to Robert Fisher, D.C. ("Fisher"), the chiropractor Wall was treating with for injuries he sustained in the accident. In his letter to Fisher, respondent confirmed Fisher's medical lien on any settlement funds Wall received. Respondent also advised Fisher in his letter that money from a settlement would be reserved to satisfy Wall's lien.

3. In or about April 2002 respondent telephoned Wall and told Wall that respondent had received an offer to settle Wall's case for $23,000. Wall agreed to accept the settlement offer.

4. On August 2, 2002, respondent paid expert fees out of his general account in the amount of $1,400 to Fisher.

5. On or about August 14, 2002, respondent settled Wall's personal injury claim for $23,000 and received a check from 21st Century Insurance Co., made payable to respondent and Wall in the amount of $23,000.

6. On September 18, 2002, respondent deposited Wall's settlement draft into respondent's client trust account, No. 0270311038, at Spectrum Bank ("respondent's CTA").

7. On September 20, 2002, a check was issued from respondent's CTA to respondent in the sum of $14,301.61 for fees and costs incurred in connection with Wall's personal injury case.

8. After respondent deposited Wall's settlement check into respondent's CTA, Wall went to respondent's office where he was given a check for $5,640 by an employee of respondent. Wall also asked for, but was not provided with, an accounting of his $23,000 settlement.

9. At no time did respondent provide Wall an accounting of Wall's $23,000 settlement held in respondent's CTA.

10. At no time did respondent pay any of Wall's funds held in respondent's CTA to Fisher, Wall's medical provider, as respondent confirmed in writing that respondent would.

11. On or about April 17, 2003, the State Bar opened an investigation, case No. 03-O-01777, pursuant to a complaint filed by Wall ("the Wall matter").

12. On or about May 28, 2003, State Bar Investigator Craig Peterson wrote to respondent regarding the Wall matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable.

13. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Wall matter. Respondent did not respond to the investigator's May 28, 2003, letter or otherwise communicate with the investigator.

b. Stipulated Conclusions of Law

Count 25 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not paying Wall's funds held in respondent's CTA to Wall's medical provider, Fisher, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 26 - Failure to Render Account of Client (Rule 4-100(B)(3)

By not providing an accounting of Wall's settlement funds held in respondent's CTA, despite a request by Wall for such an accounting, respondent failed to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession in willful violation of rule 4-100(B)(3).

Count 28 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

By not providing a written response to the allegations in the Wall matter or otherwise cooperating in the investigation of the Wall matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

8. The Harmon Matter (03-O-02409; Counts 29, 30 and 31)

a. Stipulated Facts

1. On or about February 12, 2002, Tamiko Harmon ("Harmon") employed respondent to represent her in pursuing a personal injury claim arising from an automobile accident that occurred on or about September 24, 2001. Respondent and Harmon agreed that respondent would be compensated by a contingency fee.

2. Harmon had incurred medical bills of approximately $1,820 with Hospitality Health Center for treatment of her injuries sustained in the automobile accident. Hospitality Health Center provided medical treatment to Harmon pursuant to a properly executed written lien,

which provided that its fees would be paid directly by her attorney from any settlement Harmon received.

3. On or about February 24, 2003, respondent settled Harmon's personal injury claim for $3,500. Shortly thereafter, respondent received a settlement check from Parking Concepts, Inc., in the amount of $3,500 made payable to respondent and Harmon. After Harmon's case was settled, respondent told Harmon by telephone that she would be hearing from his office in a few weeks with specific information regarding the disbursement of her settlement funds.

4. On or about March 24, 2003, respondent deposited Harmon's settlement check into respondent's client trust account, No. 0270311038, at Spectrum Bank ("respondent's CTA").

5. Approximately one month after respondent told her he had settled her case, Harmon still had not heard from respondent regarding the disbursement of her settlement funds. As a result, Harmon telephoned respondent's office regarding the status of the disbursement. At that time, Harmon spoke only to an employee of respondent, who told Harmon that respondent had received Harmon's settlement check and that respondent would send Harmon her money soon.

6. By in or about April 2003, respondent still had not provided Harmon with information regarding the disbursement of her settlement funds, nor any settlement funds. In or about April 2003, Harmon telephoned respondent again to request information regarding the disbursement of her settlement funds. At that time, respondent did not speak to Harmon, despite her request to speak to him. Instead, one of respondent's employees told Harmon that Harmon's settlement check had not arrived yet.

7. On or about May 5, 2003, Harmon again telephoned respondent because she had not received any settlement funds or any information regarding her disbursement from respondent. At the time, respondent did not speak to Harmon, despite Harmon's request to speak to him.

Instead, one of respondent's employees told Harmon that respondent would mail her check to her soon.

8. On or about May 9, 2003, Harmon again telephoned respondent because she still had not received any settlement funds or any information regarding their distribution from respondent. At that time, respondent did not speak to Harmon, despite Harmon's request to speak to him. Instead, one of respondent's employees told Harmon that a check for Harmon's portion of the settlement was going to be mailed to Harmon that day.

9. On or about May 12, 2003, Harmon again telephoned respondent because she did not receive the settlement check respondent's employee represented would be sent to her on May 9, 2003. At that time, one of respondent's employees told Harmon that her check would be mailed to Harmon that day.

10. On or about May 24, 2003, Harmon sent a letter to respondent's office that set forth respondent's failure to provide her with any settlement funds, as well as any information regarding the disbursement of her settlement funds. In her letter, Harmon demanded that respondent provide her with an accounting of her settlement funds, as well as her portion of the settlement funds.

11. Respondent did not respond in any manner to Harmon's May 24, 3003, letter.

12. On or about June 9, 2003, Harmon submitted a formal complaint to the State Bar of California regarding respondent's failure to provide her with her settlement funds.

13. Following the State Bar's initiation of a formal investigation of respondent and questioning of him regarding his failure to pay out Harmon's settlement funds to her, on or about July 28, 2003, respondent provided Harmon with a distribution sheet regarding her $3,500 settlement, which Harmon approved. Pursuant to the disbursement sheet, respondent collected

$1,552.50 in attorney fees and costs, $1,047.50 was to be paid by respondent to Harmon's medical provider, Hospitality Health Center, and Harmon was to receive $900.

14. On or about July 8, 2003, respondent gave Harmon a check from respondent's CTA for $900.

15. On June 30, 2004, respondent paid Hospitality Health Center with a check issued from his CTA.

b. Stipulated Conclusions of Law

Count 29 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not promptly paying Harmon's settlement funds held in respondent's CTA to Harmon for more than four months after respondent's receipt of the funds and by failing to pay Harmon's medical provider for over one year, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 30 - Failure to Respond to Client Inquiries (Section 6068, Subd. (m))

By failing to respond to Harmon's telephone calls and letter, respondent failed to respond to Harmon's reasonable status inquiries in willful violation of section 6068, subdivision (m).

Count 31 - Failure to Render Accounts to Client (Rule 4-100(B)(3))

By not promptly providing an accounting of Harmon's settlement funds held in respondent's CTA to Harmon for more than four months, despite repeated requests by Harmon for such an accounting, respondent failed to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession in willful violation of rule 4-100(B)(3).

9. The Mendivel Matter (03-O-03246; Counts 32 and 33)

a. Stipulated Facts

1. On or about January 5, 2003, Margarita Garcia ("Garcia") substituted respondent out as her counsel in a pending workers' compensation claim. In respondent's place, Garcia substituted in as her counsel attorney Joe Mendivel ("Mendivel").

2. On February 12, February 27, March 12, March 18, March 27, and April 7, 2003, representatives of Mendivel, on behalf of Garcia, placed telephone calls to respondent and requested that respondent release Garcia's file to Mendivel.

3. At no time did respondent release Garcia's file to Mendivel or communicate with Mendivel in any way regarding how Mendivel could obtain the file.

4. On or about August 13, 2003, the State Bar opened an investigation, case No. 03-O-03246, pursuant to a complaint filed by Mendivel ("the Mendivel matter").

5. On or about September 10, 2003, State Bar Investigator Craig Peterson wrote to respondent regarding the Mendivel matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable.

6. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Mendivel matter. Respondent did not respond to the investigator's September 10, 2003, letter or otherwise communicate with the investigator.

b. Stipulated Conclusions of Law

Count 32 - Failure to Release Client File (Rule 3-700(D)(1))

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. By not releasing Garcia's file to Mendivel, respondent failed, upon termination of employment, to release promptly to a client, at the request of the client, all the client papers in willful violation of rule 3-700(D)(1).

Count 33 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

By not providing a written response to the allegations in the Mendivel matter or otherwise cooperating in the investigation in the Mendivel matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

10. The Estrada Matter (03-O-04060; Counts 34, 35 and 36)

a. Stipulated Facts

1. In or about November 2000, Rafaela Estrada ("Estrada") employed respondent to represent her in a personal injury claim for damages Estrada suffered in an automobile accident. Respondent and Estrada agreed that respondent would be compensated by a contingency fee.

2. On or about December 8, 2000, respondent sent a letter to one of Estrada's medical providers, Torrance Doctors' Group ("Torrance"). In his letter, respondent confirmed Torrance's lien on Estrada's personal injury claim, and stated that Torrance would be paid directly by respondent from any settlement funds received on Estrada's behalf.

3. In or about January 2002, respondent settled Estrada's personal injury claim for $13,500. On or about January 16, 2002, Fireman's Fund Insurance Co. issued a settlement check made payable to respondent and Estrada for $13,500.

4. Respondent received the settlement check, and on or about January 22, 2002, respondent deposited Estrada's settlement check into his client trust account, No. 1664006495 at Bank of America (respondent's CTA").

5. On or about January 25, 2002, Estrada approved a disbursement of his $13,500 settlement which authorized respondent to take $4,750 as respondent's fees and costs; to pay $1,100 to Key Health Management, one of Estrada's medical providers; to pay $2,460 to Torrance, and to pay the remaining $5,170 to Estrada.

6. On or about May 7, 2003, Estrada received a letter from Torrance that advised Estrada that respondent had failed to pay Estrada's medical bill of $2,460 pursuant to Torrance's lien. In its letter, Torrance also advised Estrada that it had attempted to contact respondent by telephone numerous times to demand respondent pay its bill without any response from respondent.

7. On or about May 14, 2003, Estrada sent a letter to respondent regarding respondent's failure to pay Torrance's bill. In his letter, Estrada demanded that respondent pay Torrance's bill and advise Estrada that the matter has been resolved.

8. Between in or about May 2003 and mid-August 2003, Estrada called respondent on an at least weekly basis to demand that respondent pay Torrance's bill. Estrada was never able to speak to respondent, and respondent never returned Estrada's calls though Estrada left messages each time for respondent to call him.

9. At no time did respondent respond to Estrada's letter or telephone calls or otherwise communicate with Estrada.

10. By mid-August 2003, respondent had not paid out Estrada's settlement funds from respondent's CTA to Torrance. On or about August 18, 2003, Estrada filed a small claims action against respondent entitled *Rafael Estrada v. Armand Pasano* ("the small claims action") in Los

Angeles County Superior Court, case No. 03S01835, for damages caused by respondent's failure to pay Torrance.

11. On or about August 21, 2003, respondent was served with the summons and complaint in the small claims action.

12. On or about October 24, 2003, the small claims action came on for trial. Respondent failed to appear for trial, and the court entered judgment against respondent and in favor of Estrada in the amount of $2,922.50, plus costs.

13. On or about October 27, 2003, the clerk of the Los Angeles County Superior Court served by mail the Notice of Entry of Judgment in the small claims action upon respondent.

14. On May 27, 2004, respondent paid Estrada $2,453 out of his own funds as the balance due to Torrance.

15. On or about October 3, 2003, the State Bar opened an investigation, case No. 03-O-04060, pursuant to a complaint filed by Estrada ("the Estrada matter").

16. On or about December 11, 2003, State Bar Investigator Craig Peterson wrote to respondent regarding the Estrada matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable.

17. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Estrada matter. Respondent did not respond to the investigator's December 11, 2003, letter or otherwise communicate with the investigator.

b. Stipulated Conclusions of Law

Count 34 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not promptly paying Estrada's funds held in respondent's CTA to Torrance as Estrada demanded, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 35 - Failure to Respond to Client Inquiries (Section 6068, Subd. (m))

By failing to respond to Estrada's letter and his telephone calls, respondent failed to respond to Estrada's reasonable status inquiries in willful violation of section 6068, subdivision (m).

Count 36 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

By not providing a written response to the allegations in the Estrada matter or otherwise cooperating in the investigation of the Estrada matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

11. The Rios Matter (03-O-03673; Counts 37, 38 and 39)

a. Stipulated Facts

1. On or about October 11, 2000, Engracia Rios ("Rios") employed respondent to represent her in a personal injury claim arising from a pedestrian versus vehicle accident that Rios was involved in on October 10, 2002. Respondent and Rios agreed that respondent would be compensated for his services by a contingency fee. Rios received medical treatment for her injuries from Valley Medical Care and incurred medical bills of $4,125, pursuant to a lien.

2. In or about April 2002, respondent settled Rios' personal injury claim and received a settlement check from Arrowhead Claims made payable to respondent and Rios in the amount of $14,500.

3. On or about May 16, 2002, respondent deposited the $14,500 settlement check into respondent's client trust account at Spectrum Bank, account No. 0270311038 (respondent's CTA").

4. Pursuant to their contingency fee agreement, on or about May 16, 2002, respondent disbursed $5,580.36 from respondent's CTA to Rios as her share of the $14,500 settlement. Respondent also disbursed $6,136.64 to himself in the form of two checks from respondent's CTA for respondent's legal fees and costs on Rios' case.

5. After the disbursements to respondent and Rios, $2,783 of Rios' settlement funds remained in respondent's CTA. Based upon the medical lien with Valley Medical Care, the amount of money disbursed directly to Rios, and what respondent's employees told Rios, Rios understood and expected that respondent would use Rios' remaining funds to satisfy the lien of Rios' medical provider, Valley Medical Care.

6. At no time did respondent make any effort to negotiate with Valley Medical Care a reduction in Rios' medical bill, nor did respondent or any member of his staff advise Rios in any manner that she may be personally responsible for payment any portion of her medical bill.

7. In or about mid-August 2003, Rios received a letter from Business Associates, a collection firm hired by Valley Medical Care. Business Associates also sent a copy of its letter to Rios to respondent.

8. Business Associates' letter to Rios advised Rios that her medical bills with Valley Medical Care remained unpaid. The letter also advised that Business Associates had sent letters and made telephone calls to respondent in an attempt to collect the money from respondent, but that respondent had not been cooperative. In its letter, Business Associates also threatened Rios with legal action if she had not worked out a payment plan with Business Associates within 30 days.

9. In response to her receipt of the letter from Business Associates, Rios called respondent's office more than three times in or about late August and early September 2003 to speak to respondent about his failure to pay Valley Medical Care. At no time did respondent speak to Rios. Instead, Rios always spoke to one of respondent's employees who failed to provide her with any information. Respondent did not respond in any manner to Rios' telephone calls.

10. On or about July 7, 2004, respondent issued and sent check No. 2969 from respondent's CTA in the amount of $2,100 made payable to Valley Medical Care to attorney E.L. Sanabria ("Sanabria") along with a cover letter indicating that the check is for Valley Medical Care's share of Rios' settlement.

11. On or about July 19, 2004, Sanabria sent a letter to respondent on behalf of his client, Valley Medical Care, informing respondent that the $2,100 check was not acceptable because Rios' medical bill totaled $4,125.

12. On or about August 9, 2004, respondent sent to E.L. Sanabria check No. 3077 from respondent's CTA in the amount of $2,783 and check in the amount of $417 from respondent's general account at Banco Popular, both made payable to Valley Medical Care, as full and final payment of Rios' medical bills, as agreed upon by Valley Medical Care and respondent.

13. On or about September 2, 2003, the State Bar opened an investigation, in case No. 03-O-03673, pursuant to a complaint filed by Rios ("the Rios matter").

14. On or about April 9, 2004, State Bar Investigator Anthony Bantiles wrote to respondent regarding the Rios matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection

by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable.

15. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Rios matter. Respondent did not respond to the investigator's April 9, 2004, letter or otherwise communicate with the investigator.

b. Stipulated Conclusions of Law

Count 37 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not promptly paying Rios' funds held in respondent's CTA to Rios' medical provider, Valley Medical Care, for more than two years, at Rios' request, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 38 - Failure to Respond to Client Inquiries (Section 6068, Subd. (m))

By failing to respond to Rios' telephone calls, respondent failed to respond to Rios' reasonable status inquiries in willful violation of section 6068, subdivision (m).

Count 39 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

By not providing a written response to the allegations in the Rios matter or otherwise cooperating in the investigation of the Rios matter, respondent failed to cooperate in a disciplinary investigation in willful violation of section 6068, subdivision (i).

12. The Medina Matter (03-O-04971; Counts 40 and 41)

a. Stipulated Facts

1. On or about March 7, 1997, Theresa Medina ("Theresa") and her minor son, Benjamin Medina ("Benjamin"), were injured in an automobile accident.

2. Shortly thereafter, Theresa employed respondent on a contingency fee basis to represent her son and her in a personal injury claim. It was determined that the driver of the

other vehicle was uninsured, so respondent pursued an uninsured motorist claim on behalf of Theresa and Benjamin against Theresa's insured, AAA.

3. In or about late April or early May 1998, respondent settled Theresa's uninsured motorist and medical payment coverage claims with AAA for a total of $8,750. Respondent also settled Benjamin's uninsured motorist and medical payment coverage claims for a total of $5,000.

4. On or about May 7, 1998, AAA issued checks Nos. 4240434 and 4240436 to respondent and Theresa in the amounts of $2,000 and $6,750 respectively. On May 7, 1998, AAA also issued check Nos. 4240435 and 4240437 to respondent and Benjamin in the amounts of $2,000 and $3,000 respectively. Respondent deposited all four checks into his client trust account at Bank of America, account No. 16640-06495 ("respondent's CTA").

5. As a result of her injuries, Theresa incurred medical expenses of $3,510 with Dr. Sonny Ho, dba Perpetual Health ("Perpetual Health"), and $635 with Citrus Valley Medical Center ("Citrus Valley"), among others, on a lien basis. As a result of his injuries, Benjamin incurred medical expenses of $2,915 from Perpetual Health, also pursuant to a lien.

6. According to the settlement distribution sheet prepared by respondent for Theresa, respondent was authorized to take $3,647.50 as his fees and costs, and pay $2,300 to Theresa. Respondent was also authorized to pay $1,550 to Perpetual Health and $600 to Citrus Valley to satisfy their liens.

7. Similarly, according to the settlement distribution sheet prepared by respondent for Benjamin, respondent was authorized to take $2,147.50 as his fees and costs, and pay $1,400 to Benjamin. Respondent was authorized to pay $1,160 to Perpetual Health to satisfy its lien.

8. In addition, based upon respondent's disbursement sheet calculations, $292.50 in Benjamin's settlement funds remained unaccounted.

9. In accordance with the settlement distribution sheets, respondent timely paid himself a total of $5,790 in attorney fees, and timely disbursed $2,300 to Theresa and $1,400 to Benjamin.

10. On or about June 29, 1998, respondent sent check No. 4102 in the amount of $600 from respondent's CTA to Citrus Valley Medical Center for payment of Theresa's medical expenses.

11. Citrus Valley returned the uncashed CTA check to respondent because it had not agreed to a reduction of its bill from $635 to $600. Citrus Valley then retained California Professional Services ("CPS") to collect the $635.

12. On or about April 8, 1999, respondent paid $600 from his client trust account, plus $400 from his general account to CPS to satisfy Theresa's medical expense, plus interest accrued, from Citrus Valley.

13. Between June 2002 and November 2003, Theresa placed more than five telephone calls to respondent's office requesting that he pay Perpetual Health for Benjamin's and her medical expenses with their settlement funds held in respondent's CTA. Respondent did not speak to Theresa at the time she called, and did not respond in any manner to the calls.

14. On or about November 3, 2003, Theresa sent a letter to respondent again requesting that he pay out Benjamin's and her remaining settlement funds to satisfy Perpetual Health's medical bill. Respondent did not respond in any manner to Theresa's letter.

15. On or about December 3, 2003, Theresa complained to the State Bar regarding respondent's failure to pay Perpetual Health.

16. In or about July 2004, respondent paid a total of $2,709.80 from respondent's CTA to Perpetual Health's representative as full and final payment of Theresa and Benjamin's medical expenses.

b. Stipulated Conclusions of Law

Count 40 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By not promptly paying Theresa's and Benjamin's funds held in respondent's CTA to Citrus Valley for more than nine months, Perpetual Health for more than six years, and by failing to pay out the remaining unaccounted for $292.50 in Benjamin's settlement funds, respondent failed to pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Count 41 - Failure to Respond to Client Inquiries (Section 6068, Subd. (m))

By failing to respond to Theresa's telephone calls and her November 2003 letter, respondent failed to respond to Theresa's reasonable status inquiries in willful violation of section 6068, subdivision (m).

13. The Martinez Matter (00-O-12312; Count 6)

Pursuant to the stipulation as to facts, respondent admits that the following facts are true.

a. Stipulated Facts

1. On or about March 16, 1999, Esperanza Martinez ("Martinez") employed attorney Hector Orozco ("Orozco") to represent her in a personal injury claim arising from an automobile accident she was involved in on or about February 22, 1999. Orozco and Martinez agreed that Orozco would be compensated on a contingency fee basis.

2. On or about May 10, 1999, Martinez advised one of Orozco's employees by telephone that she had retained the services of a new attorney. On or about May 17, 1999, Orozco sent a letter to Martinez confirming that she had retained a new attorney and that Orozco was no longer representing her.

3. On or about May 21, 1999, Orozco received a letter via facsimile from respondent that Martinez had retained his services and that respondent had assumed all further responsibility for handling Martinez's personal injury claim.

4. On or about May 24, 1999, Orozco forwarded to respondent all documents pertaining to Martinez's personal injury claim.

5. On or about May 24, 1999, Orozco sent letters to respondent and to Bob Phillips of State Farm Insurance Company, the claims representative handling Martinez's claim, that Orozco was asserting a lien for reasonable attorney fees for the legal services rendered by Orozco on behalf of Martinez.

6. In or about September 1999, respondent settled Martinez's personal injury claim for $2,500. State Farm Insurance Company sent to respondent Martinez's settlement check, which was made out to "Esperanza R. Martinez & Hector W. Orozco, her attorney & Pasano & Crawford, her attorney."

b. Testimony of Mary V. Orozco, Esq.

The court finds that the testimony of Mary Orozco, Esq., to be credible and that respondent's testimony to be at best, self-serving.

Mary Orozco ("Ms. Orozco') has been an attorney for 35 years and is the sister of Hector Orozco. Hector Orozco died in November 2007. Ms. Orozco and Hector Orozco practiced law with her brother for approximately 35 years. Ms. Orozco did not generally practice law in the personal injury area as her brother did. Their partnership ended sometime in 1998 or 1999. Thereafter, she would continue to see her brother every day as their offices were next door to each other. Her brother also lived on her premises in an attached studio apartment.

Ms. Orozco testified that Hector Orozco never allowed any office staff to sign his name to any document, even she could not sign his name. In addition, Hector Orozco would never allow another attorney to sign Hector's name to any settlement checks. Ms. Orozco testified that it was Hector's habit and custom not to allow anyone to sign his name to a check. Hector would

always send confirming letters to others. Ms. Orozco testified that it would be against Hector's habit and custom if he allowed anyone to endorse his name on a check.

Ms. Orozco knew of the Martinez matter as it came into the office when she was still working on her files at the office. However, she was unaware that her brother had been fired from the Martinez matter.

Respondent has no recollection of whether he or an employee obtained Orozco's authorization to simulate his signature on the Martinez settlement check. Respondent is also not certain whether Orozco provided his authorization orally or in writing. At the time the Martinez case settled, respondent was going through an acrimonious divorce that caused him financial and emotional stress and he was drinking alcohol heavily and stopped coming to the office and when he did he was not really there.

Although the court finds Ms. Orozco's testimony to be credible, there is nothing in the record that proves by clear and convincing evidence that Hector Orozco did not authorize that his signature be placed on the Martinez settlement check. The State Bar argues that respondent's habit and custom, as testified to by Ms. Orozco, and respondent's detailed record-keeping in the Martinez matter clearly demonstrates that Orozco did not authorize anyone to simulate his signature on the settlement check. Unfortunately, Hector Orozco passed away and although Ms. Orozco's testimony is credible, it does not, in and of itself, provide clear and convincing evidence that her brother never authorized his signature to be placed on the settlement check. Just as importantly, the State Bar relies on Orozco's record-keeping to show that there had been no confirmation letter sent to respondent authorizing that his signature be placed on the settlement check. Orozco's records also show that Orozco never complained to anyone, to Ms. Orozco, to respondent, to Martinez, or to the State Bar, that respondent placed his signature on

the settlement check without his authorization, over a period of almost nine years before his death.

c. Conclusions of Law

Count 6 - Moral Turpitude (Section 6106)

Section 6106 provides that it is a violation of this section for an attorney to commit an act of moral turpitude, dishonesty or corruption.

The court finds that the State Bar did not meet its burden by clear and convincing evidence that respondent committed an act of moral turpitude in violation of section 6106 by placing, or at his direction, having someone to place Orozco's signature to the Martinez settlement check.

14. The Daugherty Matter (04-O-14815; Counts 42, 43 and 44)

Pursuant to the stipulation as to facts, respondent admits that the following facts are true.

a. Stipulated Facts

1. On or about November 3, 2000, Theresa Daugherty ("Daugherty") was involved in an automobile accident and suffered injuries.

2. In or about November 2000, Daugherty employed respondent on a contingency basis to represent her in a personal injury case arising from her automobile accident.

3. On or about March 9, 2001, respondent filed a lawsuit on behalf of Daugherty in Los Angeles County Superior Court, entitled *Daugherty v. Medina*, case No. 01K04528 ("the Daugherty matter").

4. On or about June 6, 2002, respondent and Daugherty participated in a court-ordered non-binding arbitration in the Daugherty matter.

5. On or about June 11, 2002, the arbitrator rendered and served his arbitration award in the Daugherty matter. The arbitrator ruled in favor of the defense and against Daugherty. On

June 12, 2002, the arbitrator's award was filed with the court. Respondent advised Daugherty of the arbitrator's adverse award, but explained that because the arbitration was non-binding, her case would still continue in court.

6. Pursuant to California Rules of Court, rule 1616(a), respondent had 30 days from the filing of the arbitration award to reject the award and request a trial by filing and serving a request for trial de novo. If a request for trial de novo is not timely filed and served within 30 days of the filing of the award, the award will be entered as the judgment in the matter.

7. Respondent did not timely file a request for trial de novo on behalf of Daugherty within 30 days of the filing of the award. On or about September 12, 2002, respondent filed the request for trial de novo following arbitration. At no time did respondent inform Daugherty that he had failed to file a request for trial de novo on her behalf in the Daugherty matter within the 30 day period, that he untimely filed the request on September 12, 2002, or inform her that his failure to file the request would and did result in judgment being entered against her.

8. In or about September 2003, the defendants in the Daugherty matter filed a motion for order striking the request for trial de novo as untimely. Respondent did not file any opposition to defendants' motion on behalf of Daugherty. Respondent did not inform Daugherty of the defendants' motion to strike.

9. The hearing on defendants' motion to strike was held on October 29, 2003. Respondent did not appear on behalf of Daugherty. The court denied the defendants' motion to strike because if found no authority for such a request. However, the court also found that because no request for trial de novo was filed within 30 days of the filing of the arbitrator's award, the arbitrator's award automatically became final on July 11, 2002. As such, the court ordered that the clerk enter judgment against Daugherty and in favor of the defendants forthwith in the Daugherty matter.

10. Notice of the court's October 29, 2003, order was served upon respondent and respondent received the notice.

11. The clerk of the court entered judgment against Daugherty in the Daugherty matter on or about October 29, 2003.

12. Respondent did not inform Daugherty of the court's October 29, 2003, order that judgment was entered against her in the Daugherty matter.

13. At no time did respondent take any steps, such as the filing of a motion to allow for the late filing of the request for trial de novo or to set aside the judgment entered against Daugherty, to prevent entry of judgment against Daugherty.

14. In or about August 2004, Daugherty complained to the State Bar regarding respondent's handling of her matter.

15. On or about July 28, 2005, respondent sent Daugherty a letter in which he for the first time informed Daugherty that he failed to timely file the request for trial de novo of the arbitrator's award, which extinguished her personal injury claim. In the letter, respondent also advised Daugherty to seek independent legal advice regarding any legal claims she may have against him for damages.

b. Testimony of Theresa Daugherty

The court finds Theresa Daugherty's ("Daugherty") testimony to be credible.

Daugherty is a police officer with the Los Angeles Police Department. Respondent represented her in a personal injury matter. Daugherty made numerous telephone calls to respondent concerning her matter and never spoke with respondent but to his office employees. Daugherty received little information about her case.

Daugherty then sought assistance from someone by the name of Mr. Oh, to see if he could help in having contact with respondent. Oh advised her that he had spoken with

respondent and that her case was active. However, Daugherty still did not hear from respondent and finally spoke with someone from respondent's office and threatened to call the State Bar. Shortly thereafter, in June 2004, Alexis, an employee of respondent, sent a facsimile of a false settlement disbursement sheet to Daugherty, who refused to sign it because not all of her medical bills were included in the disbursement.

Daugherty also requested that Mike Boguslawski, a consumer advocate, help her to discover the status of her case. Boguslawski informed her that her case had been dismissed. After she had filed her State Bar complaint against respondent, in July 2005, respondent informed her that he had failed to timely file a trial de novo and that her claim was lost.

Respondent testified that he was not aware that Alexis provided a false settlement disbursement sheet to Daugherty and that at the time, he was suffering from heavy alcohol consumption, long absences from his office and experiencing marital difficulties.

It is clear from the record that Daugherty never spoke to respondent regarding the status of case. Daugherty spoke only with respondent's office employees, who never gave her any information about her case. The office employees also never misinformed Daugherty about the status of her case. After the Daugherty's personal injury claim was dismissed by the court, respondent did not inform her of the dismissal until July 2005, nor did respondent make any false representations to Daugherty about the dismissal.

c. Conclusions of Law

Count 42 - Failure to Perform with Competence (Rule 3-110(A))

The court finds by clear and convincing evidence that respondent willfully violated rule 3-110(A) by failing to timely file a request for trial de novo following the filing of the arbitrator's award, failing to oppose or appear at the hearing on the defendants' motion to strike the untimely request for trial de novo, by failing to take any steps to prevent judgment being

entered against Daugherty in her matter, and by failing to supervise his office employee in the faxing of a false disbursement sheet to Daugherty.

Count 43 - Failure to Inform a Client of a Significant Development (Section 6068, Subd. (m))

The court finds by clear and convincing that respondent violated section 6068, subdivision (m), by failing to inform Daugherty of his failure to timely file a request for trial de novo, the filing and results of defendants' motion to strike the untimely request for trial de novo, and the entry of judgment against Daugherty in her matter.

Count 44 - Moral Turpitude (Section 6106)

The State Bar argues that respondent committed an act of moral turpitude by his grossly negligent act of supervising his office employee, Alexis, when she faxed a false disbursement sheet to Daugherty and by concealing from Daugherty that her case had been dismissed. However, the State Bar charged respondent with moral turpitude for knowingly providing, or have others provide, false information to Daugherty regarding the settlement of her case for the purpose of concealing from her his failure to timely file a request for trial de novo and any subsequent liability on his part.

The evidence on the record in this matter shows that Alexis faxed the false disbursement sheet to Daugherty, not respondent, and that there is no evidence that respondent was aware of Alexis' action. There is also no clear and convincing evidence that respondent, or anyone at his direction, attempted to conceal from Daugherty that her lawsuit had been dismissed and judgment entered against her. Respondent's acts or omissions certainly prove a failure to supervise his office staff, but such failure does not rise to the level of moral turpitude.

Therefore, the court finds that there is no clear and convincing evidence that respondent violated section 6106.

15. All 14 Cases (Count 45)

a. Findings of Fact

In the period from 1998 to 2004, respondent engaged in a course of conduct that caused harm to many clients, as set forth above. Respondent failed to pay client funds and medical providers promptly, failed to render appropriate accounting, failed to retain client funds in trust, failed to reasonably communicate with a client and failed to cooperate with the State Bar.

b. Conclusions of Law

Count 45 - Moral Turpitude - Habitual Disregard (Section 6106)

The State Bar alleges that respondent committed an act involving moral turpitude by engaging in a course of conduct that was reckless and habitual and demonstrated a callous disregard for his duties and obligations to his clients in violation of section 6106.

In light of the nine alleged counts of moral turpitude, seven of which were dismissed as stipulated to, and two of which the court found no culpability, the court does not find that respondent's course of misconduct constituted moral turpitude. However, it clearly demonstrates a pattern of misconduct, which is a serious aggravating factor.

C. Second Notice of Disciplinary Charges (Three Matters)

Pursuant to the stipulations as to facts and conclusions of law, respondent admits that the following facts are true and that he is culpable of these acts of professional misconduct in violations of the provisions under the Business and Professions Code and the Rules of Professional Conduct.

1. The Frias Matter (06-O-10226; Count 3)

a. Stipulated Facts

1. On or about January 10, 2003, Juan Frias ("Frias") was injured in a work-related motor vehicle accident while employed by Paulus Engineering, Inc. ("PE Inc.").

2. In or about February 2003, Frias hired respondent to represent him in his workers' compensation case against PE Inc. and in a personal injury action against the owner and operator of the other vehicle, Jessop Sales Corp.

3. At or about the time that Frias employed respondent, respondent filed a petition on behalf of Frias with the Workers' Compensation Appeals Board.

4. On or about January 5, 2005, respondent filed a complaint on behalf of Frias alleging personal injury from a motor vehicle accident in the Superior Court of California, County of Orange ("Superior Court"), titled *Juan Frias v. Jesse Gonzales, Jessop Sales Corp.*, case No. 05NL15069 ("*Frias v. Gonzales*"). It was not anticipated that this personal injury lawsuit would generate any additional recovery for Frias beyond what he could recover from his workers' compensation case; instead, it was intended as a back-up action in the event that anything went wrong with the workers' compensation case.

5. On or about January 5, 2005, the Superior Court set a Case Management Conference ("CMC") on *Frias v. Gonzales* for June 22, 2005. Respondent received notice of the CMC from the court.

6. On or about June 22, 2005, respondent failed to appear for the CMC on *Frias v. Gonzales*, and the Superior Court dismissed the complaint for failure to appear and/or failure to prosecute. Respondent received notice of the dismissal from the court.

7. In or about June 2005, Frias terminated respondent and hired the Law Office of Kampf, Schiavone & Associates ("Kampf-Schiavone") to represent him in his workers' compensation case against PE Inc. and his personal injury action against American Asphalt.

8. In June 2005, Frias decided to terminate respondent as his attorney in his workers' compensation case, and on June 27, 2005, his new attorneys, Kampf-Schiavone, wrote to respondent, referencing only the workers' compensation case, and advising him that Frias was

substituting him out of the workers' compensation case and requesting that file. A Notice of Dismissal of Attorney for the workers' compensation case and a Substitution of Attorney for the personal injury case, which erroneously identified the defendant in the personal injury case as "American Asphalt," were enclosed in this letter for respondent's signature. Respondent, or someone in his office at his direction, promptly signed and returned the Notice of Dismissal and Substitution of Attorney to Kampf-Schiavone; however, the substitution was for a personal injury case that did not exist, namely, *Frias v. American Asphalt*, and contained no court case number. Kampf-Schiavone did not file the substitution.

9. On June 29, 2005, a litigation assistant employed by Kampf-Schiavone wrote to respondent referencing the erroneous title of "*Juan M. Frias vs. American Asphalt*" and advising respondent that her office had been retained by Frias to represent him in the workers' compensation case and his personal injury claim versus American Asphalt. The letter advised that arrangements would be made to retrieve "the file" from respondent. Respondent promptly turned over his file on Frias' workers' compensation case. No request was ever made by Kampf-Schiavone for respondent to either sign a substitution of attorney or turn over his file on Frias' personal injury case against Jesse Gonzales and Jessop Sales Corp., Orange County Superior Court case No. 05NL15069.

10. On or about July 21, 2005, respondent's secretary mailed a letter to Kampf-Schiavone stating that respondent did not represent Frias in a personal injury action against American Asphalt. Kampf-Schiavone received the letter.

11. On or about July 27, 2005, Frias mailed a letter to respondent requesting a copy of his retainer agreement "from my personal injury case against American Asphalt." Respondent received the letter.

12. On or about July 29, 2005, respondent's secretary mailed a letter to Frias with a courtesy copy to Kampf-Schiavone stating that respondent was hired to represent Frias in his workers' compensation proceeding against PE Inc., but had not been hired to represent Frias in a personal injury action against American Asphalt. Respondent's secretary also stated that Frias' workers' compensation file had been forwarded to Kampf-Schiavone on July 21, 2005. Frias received the letter.

13. On or about August 2, 2005, the Superior Court gave respondent notice that it had dismissed *Frias v. Gonzales* on or about June 22, 2005. Respondent received the notice.

14. On or about August 19, 2005, a litigation assistant from Kampf-Schiavone mailed a letter to respondent stating that her office was "in receipt of your letter dated July 29, 2005, wherein you state that your office does not represent Mr. Frias regarding a personal injury arising from a work-related accident against American Asphalt in January 2003." The letter requested that respondent provide Kampf-Schiavone with copies of every retainer agreement that Frias signed. Respondent's Corona office received the letter; respondent's office was located at 615 W. Grand Boulevard, Corona, California 92882 (the "Corona office").

15. Respondent did not respond to the letter or otherwise communicate with Kampf-Schiavone.

16. On or about September 25, 2005, Frias mailed a letter to respondent requesting copies of all retainer agreements within five days. Respondent's Corona office received the letter.

17. Respondent did not respond to the letter or otherwise communicate with Frias or Kampf-Schiavone.

18. On or about September 30, 2005, respondent filed a motion to set aside the dismissal in *Frias v. Gonzales* claiming that he had failed to calendar the CMC and therefore failed to appear.

19. On or about October 21, 2005, respondent had an attorney appear on his behalf for the motion to set aside the dismissal in *Frias v. Gonzales*. The Superior Court set aside the dismissal and set a CMC for November 30, 2005. The attorney who appeared on respondent's behalf faxed notice of the CMC to respondent. Respondent received the faxed notice.

20. On or about November 30, 2005, respondent failed to appear for the CMC for *Frias v. Gonzales*, and the Superior Court set an order to show cause ("OSC") why the matter should not be dismissed with monetary sanctions for January 4, 2006. Respondent received notice of the OSC from the court.

21. On or about January 4, 2006, respondent had an attorney appear on his behalf for the OSC in *Frias v. Gonzales*. The Superior Court ordered respondent to pay sanctions of $150 to the court within 30 days, set a CMC for February 1, 2006, and ordered respondent to give notice of the sanctions and CMC.

22. Respondent did not pay the $150 sanctions within 30 days of January 4, 2006, nor did he seek relief from the sanctions.

23. On or about February 1, 2006, respondent had an attorney appear on his behalf for the CMC on *Frias v. Gonzales*. At the CMC, the Superior Court set an OSC re dismissal for March 1, 2006, and admonished the attorney appearing on behalf of respondent that the matter would be dismissed if service was not effected. The court also ordered respondent to pay sanctions of $100 for failing to file a CMC statement at least 15 days prior to the CMC pursuant to rule 212(g)(1) of the California Rules of Court.

24. To date, respondent has not paid the $100 sanction, nor has he sought relief from the sanction.

25. On or about February 7, 2006, respondent mailed a letter by certified mail to Frias requesting that Frias immediately contact respondent concerning *Frias v. Gonzales*. Frias received the letter.

26. On or about March 1, 2006, respondent had an attorney appear on his behalf for the OSC in *Frias v. Gonzales*. The Superior Court dismissed the matter without prejudice for failure to prosecute. Respondent received notice of the dismissal.

27. On or about March 21, 2006, respondent paid the sanctions of $150 ordered by the Superior Court on January 23, 2006.

28. On October 6, 2006, the court granted respondent's motion to vacate the dismissal in *Frias v. Gonzales*, and "re-set" the CMC in the matter for November 8, 2006. The court also set the matter for an OSC re: monetary sanctions against plaintiff for failure to appear at the CMC on March 1, 2006, for the same date.

29. Subsequently, respondent advised J. Edward Noneman, Jr. ("Noneman"), an attorney with Kampf-Schiavone, that the court had reinstated *Frias v. Gonzales* and of the CMC date. Respondent also stated that he had submitted a Substitution of Attorney to the court for filing. Noneman told respondent that he would appear on behalf of Frias at the November 8, 2006, CMC.

30. On November 8, 2006, Noneman appeared on Frias' behalf at the CMC in *Frias v. Gonzales*. The court imposed monetary sanctions of $300 against respondent for the failure to appear at the March 1, 2006, CMC and for his failure to appear at the November 8, 2006, OSC re: Monetary Terminating Sanctions. Respondent was provided notice of the court's sanction order.

31. To date, respondent has not paid the $300 sanction, nor has he sought relief from the sanction.

32. On November 29, 2006, Kampf-Schiavone became attorney of record for Frias in *Frias v. Gonzales*.

33. On January 16, 2007, upon Kampf-Schiavone's motion on behalf of Frias, the court dismissed *Frias v. Gonzales*. Kampf-Schiavone recommended this action to Frias because the personal injury action did not provide an additional remedy to him above what he received in the workers' compensation case.

b. Stipulated Conclusions of Law

Count 3 - Failure to Obey a Court Order (Section 6103)

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

By failing to pay the $150 sanction within 30 days as ordered at the OSC on January 4, 2006, and by failing to pay the $100 sanction as ordered at the CMC on February 1, 2006, and the $300 sanction as ordered at the November 8, 2006, OSC, respondent disobeyed or violated orders of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

2. The Escamilla Matter (06-O-10657; Count 5)

a. Stipulated Facts

1. On or about March 12, 1998, Cristina Escamilla ("Escamilla") - a minor - was bitten by a dog owned by Angel Tarango ("Tarango").

2. On or about August 28, 1998, Escamilla's parents hired respondent to represent Escamilla.

3. On or about August 25, 1995, and December 4, 1998, respondent caused letters to be mailed to Tarango stating that respondent represented Escamilla in her personal injury action

against Tarango and requesting that he forward the letter to his insurance carrier. Tarango received the letters.

4. On or about August 28, 1998, and January 4, 1999, an attorney mailed letters to respondent's legal assistant on behalf of Tarango stating that Tarango did not have any insurance coverage for the injury to Escamilla. Respondent received the letters.

5. On or about February 22, 2000, respondent filed a complaint in the Superior Court of California, County of Los Angeles ("Superior Court"), titled *Cristina Escamilla, a minor, by and through her guardian ad litem Benito Escamilla v. Angel Tarango, Pilar Tarango*, case No. BC225239 ("*Escamilla v. Tarango*").

6. On or about May 1, 2000, an answer was filed on behalf of Tarango by his attorney, Gilbert Quinones, Esq. ("Quinones"), in *Escamilla v. Tarango*.

7. On or about May 19, 2000, respondent filed a request for trial setting in *Escamilla v. Tarango*.

8. On or about June 23, 2000, a trial setting conference was conducted in *Escamilla v. Tarango*. At the trial setting conference, the court set the matter for a final status conference on November 8, 2000, and set a trial date for November 15, 2000.

9. On or about November 6, 2000, Quinones faxed and mailed a letter to respondent stating that Tarango did not have any insurance coverage for the injury to Escamilla. Respondent received the letter.

10. On or about November 8, 2000, respondent appeared for a status conference in *Escamilla v. Tarango*. The Superior Court set the matter for a final status conference on February 13, 2001, and set a trial date for February 20, 2001.

11. On or about February 12, 2001, Tarango agreed to settle the case for $4,500, with Tarango making monthly payments of $500 per month until the principal sum was paid –

approximately nine months. Attorney Allan Gonzalez ("Gonzalez"), an associate attorney in respondent's office, handled the settlement of the case.

12. On or about February 13, 2001, the Superior Court conducted a telephone conference with respondent's secretary regarding *Escamilla v. Tarango*. Respondent's secretary told the court that *Escamilla v. Tarango* had settled. The Superior Court set an order to show cause ("OSC") re Dismissal for April 3, 2001, and ordered respondent to give notice of the OSC.

13. On or about April 3, 2001, Gonzalez did not appear for the OSC in *Escamilla v. Tarango*, and the matter was dismissed by the Superior Court for respondent's failure to appear. The Superior Court mailed notice of the dismissal to respondent. Respondent's office received the notice.

14. Patricia Botillo ("Botillo"), Escamilla's mother, and Escamilla went to respondent's office once or twice a year without appointment from 2001 to 2006 to obtain status reports on *Escamilla v. Tarango*, specifically inquiring about the status of the settlement. Botillo and Escamilla would go to respondent's office because respondent would not return the telephone messages that Botillo left with respondent's secretary requesting status reports.

15. On or about January 11, 2006, Botillo and Escamilla went to respondent's office and spoke with respondent. Respondent advised them that he would take the proper course of action to collect the settlement agreed to by Tarango in *Escamilla v. Tarango* or, alternatively, commence a new action after Escamilla reached the age of majority, i.e., 18 years of age.

16. Respondent did not communicate with either Escamilla or her parents after January 11, 2006.

17. Escamilla turned 18 years old on February 22, 2006.

18. Respondent did not take any action to collect the settlement agreed to by Tarango in *Escamilla v. Tarango*. At no time did respondent commence a new action against Tarango on behalf of Escamilla after her 18th birthday.

19. To date, Tarango has not made any payment to Escamilla.

b. Conclusions of Law

Count 5 - Failure to Respond to Reasonable Status Inquiries of Client (Section 6068, Subd. (m))

By failing to respond to Botillo and Escamilla's inquiries between 2001 and 2006, respondent failed to respond to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

3. The Balanzar Matter (06-O-13208; Counts 8, 9 and 11)

a. Stipulated Facts

1. On or about October 4, 2001, Miguel Balanzar ("Balanzar") was injured in a motor vehicle accident with a vehicle driven by Cuc Thi Pham, who was insured at the time by Farmers' Insurance Group ("Farmers").

2. Between on or about October 4, 2001, and December 27, 2001, Balanzar sought treatment from Terry Vidal, Jr., D.C. ("Dr. Vidal") for his injuries from the motor vehicle accident. Dr. Vidal provided chiropractic health care and billed Balanzar for it in the amount of $3,280.

3. On or about October 4, 2001, Balanzar signed a medical lien directing his attorney to pay Dr. Vidal out of any settlement funds and granting Dr. Vidal a lien on any settlement funds.

4. On or about June 21, 2002, Balanzar hired respondent to represent him with regard to the motor vehicle accident on or about October 4, 2001.

5. On or before June 21, 2002, respondent's employee signed respondent's name on a medical lien granting Dr. Vidal a lien on any settlement funds. Respondent's employee faxed the medical lien to Dr. Vidal from respondent's office located at 615 W. Grand Boulevard, Corona, California 92882 (the "Corona office").

6. In or about September 2003, respondent settled Balanzar's bodily injury claim with Farmers for $3,750 because Balanzar was an uninsured motorist subject to the restrictions of Proposition 213. Respondent also settled Balanzar's property damage claim for $1,700 and his car rental reimbursement claim for $260.

7. On or about September 25, 2003, Farmers mailed respondent settlement checks for $3,750, $1,700, and $260 that stated that they were "not good after six months." The check for $3,750 was made payable to "Miguel Balanzar, Armand J. Pasano and lien holder Western Law Connection, Inc. and the Law Offices of Carlos J. Castanedea" ("first check"). The checks for $1,700 and $260 were made payable to "Miguel Balanzar." Respondent received the checks.

8. Balanzar told respondent that he insisted on receiving some money from the $3,750 settlement and that he did not authorize respondent to pay Dr. Vidal's lien.

9. On or about December 12, 2003, respondent deposited the checks for $1,700 and $260 into an account for the Law Offices of Armand J. Pasano, but never deposited the first check.

10. On or about March 25, 2004, the first check expired. Between September 25, 2003, and March 25, 2004, respondent did not contact attorney Carlos J. Castanedea, the Western Law Connection, Inc., or Dr. Vidal, in an effort to negotiate their liens.

11. On or about April 16, 2004, respondent mailed a letter to Farmers enclosing the first check that had expired and requesting that Farmers issue a new check for that amount. Farmers received the letter.

12. On or about September 29, 2004, respondent caused a fax cover sheet to be sent to Farmers attaching the April 16, 2004, letter and enclosure, and requesting that Farmers provide a status report on issuing a new check for $3,750. Farmers received the letter.

13. On or about January 21, 2005, Dr. Vidal mailed a letter to respondent at the Corona office stating, *inter alia*, that Dr. Vidal had been informed that Balanzar's personal injury action had settled in July 2004. The letter requested payment for the chiropractic health care provided to Balanzar or to have respondent contact Dr. Vidal to discuss the matter. Respondent's office received the letter.

14. Respondent did not respond to the letter or otherwise communicate with Dr. Vidal.

15. Between on or about January 21, 2005 and in or about March 2006, Dr. Vidal spoke on the telephone with Josie, respondent's paralegal, on approximately 12 occasions in order to inquire about the status of respondent's efforts in disbursing Balanzar's settlement funds.

16. On or about October 31, 2005, respondent mailed a letter to Farmers stating in pertinent part that he had returned the first check on or about "September 16, 2004" (sic) and demanded a replacement check. Farmers received the letter.

17. On or about November 21, 2005, Farmers mailed respondent a new check for $3,750 and stated that it was "not good after six months" and was payable to "Miguel Balanzar, Armand J. Pasano, Western Law Connection, Inc. and the Law Offices of Carlos J. Castanedea" ("second check"). Respondent received the check.

18. On or about January 27, 2006, Dr. Vidal faxed and mailed a letter to respondent in which he demanded full and immediate payment of $3,280 for the chiropractic health care that he provided to Balanzar, and threatened to file a lawsuit against respondent if the payment was not made. Dr. Vidal attached a copy of the medical lien signed by Balanzar and respondent's

employee. Respondent's office received the letter and medical lien by fax and U.S. First Class Mail. However, respondent did not respond to the letter.

19. On or about March 9, 2006, respondent failed to appear for the trial of the small claims case titled *Terry Vidal, Jr., D.C. v. Armand J. Pasano, Esq.*, small claims case No. HP06S0020 ("*Vidal v. Pasano*"), because he was in Turin, Italy attending the Winter Olympics. Dr. Vidal obtained a judgment against respondent for $3,280 in principal plus $55 in costs. Respondent received notice of the judgment.

20. On or about April 10, 2006, respondent filed a motion to vacate (cancel) the judgment entered on March 9, 2006, in *Vidal v. Pasano*, claiming that he had been improperly served and had not received notice of the trial. The clerk of the court set a hearing on the motion for May 10, 2006. Respondent received notice of the hearing from the clerk of the court.

21. On or about April 24, 2006, respondent called and spoke with Christopher J. Weston, Esq., of the Western Law Connection ("Weston") about the settlement of Balanzar's case, which was the first time that respondent had personally contacted Weston or the Western Law Connection about the settlement proceeds from Balanzar's case. Weston told respondent that he would accept a nominal sum of a few hundred dollars in satisfaction of his lien and authorized respondent to endorse the settlement check on behalf of Western Law Connection.

22. In or about May 2006, respondent called and spoke with Carol J. Castanedea, Esq. ("Castanedea"), about the settlement of Balanzar's case, which was the first time that respondent had personally contacted Castanedea about the settlement proceeds from Balanzar's case. Castanedea told respondent that he would accept $250 in satisfaction of his lien and that respondent could endorse the settlement check on his behalf.

23. On or about May 10, 2006, respondent did not appear before the Superior Court of California, County of Los Angeles, on the motion to vacate judgment in *Vidal v. Pisano.* Dr.

Vidal appeared and the court denied the motion. Respondent received notice that his motion had been denied and the judgment of $3,280 stood as entered.

24. After the hearing on the motion to vacate judgment in *Vidal v. Pasano*, respondent called and spoke with Dr. Vidal about the settlement of Balanzar's case, which was the first time that respondent had spoken with Dr. Vidal about the settlement proceeds from Balanzar's case.

25. On or about May 25, 2006, respondent deposited the second check for $3,750.

26. To date, respondent has not disbursed any of Balanzar's settlement funds to Dr. Vidal.

27. On or about July 3, 2006, the State Bar opened an investigation, case No. 06-O-13208, pursuant to a complaint filed by Dr. Vidal (the "Dr. Vidal matter").

28. On or about September 25, 2006, a State Bar Investigator ("Investigator") mailed a letter to respondent at his then official membership address. The letter requested that respondent respond in writing by October 9, 2006. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the letter. Respondent received the letter.

29. The letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Dr.Vidal matter, including seven questions regarding respondent's handling of the settlement proceeds from Balanzar's case. One of the questions was regarding his client trust account:

> Please provide a copy of your client trust account records for the period from one month prior to the settlement to the present including the monthly statements, a copy of the front and back of all items deposited and the accompanying deposit slips, the front and back of all checks and/or withdrawals against the account and, the written trust account journal and each monthly reconciliation for your client trust account maintained pursuant to Rule 4-100(C) of the Rules of Professional Conduct.

30. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

31. On or about January 18, 2007, the investigator called and spoke with respondent by telephone. The investigator told respondent that the investigator had not received a response to the letter dated September 25, 2006, and that respondent needed to provide a written response with the requested documents regarding the settlement proceeds from Balanzar's case.

32. On or about January 19, 2007, respondent provided a written response to the investigator that (A) described his alleged difficulties in disbursing the $3,750 settlement; (B) admitted that he had not disbursed the $3,750; but (C) did not respond to six of the seven questions or provide any of the records that respondent had a duty to maintain pursuant to rule 4-100(C). The letter stated that respondent would provide the supporting documentation "under separate cover next week."

33. Respondent did not provide the supporting documentation under separate cover.

34. In respondent's January 19, 2007, written response, respondent claimed, *inter alia*, that (A) "the other delay (in disbursing Balanzar's settlement funds) was getting the two prior attorneys to agree to settle their quantum meruit liens in lieu of the very small settlement"; (B) "Mr. Vidal filed suit against me even though I have no written contract with him"; and (C) Dr. Vidal "acknowledges that [he] has no written contract with him." These statements were inaccurate.

35. On or about February 8, 2007, a State Bar investigator ("investigator") mailed a letter to respondent at his then official membership records address. The letter requested that respondent respond in writing by February 22, 2007. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service did not return the letter. Respondent received the letter.

36. The letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Dr. Vidal matter and informed respondent that the State Bar had not received the supporting documentation and that the failure to produce the documentation would result in a recommendation that he failed to cooperate with the State Bar unless he provided the documentation. The letter also asked respondent to respond in writing to the question regarding his client trust account.

37. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

38. Respondent did not maintain the written trust account journal and each monthly reconciliation for his CTA pursuant to rule 4-100(C).

b. Stipulated Conclusions of Law

Count 8 - Failure to Maintain Records of Client Funds (Rule 4-100(B)(3))

By failing to maintain the records that he was required to maintain pursuant to rule 4-100(C), respondent failed to maintain, and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 9 - Failure to Pay Client Funds Promptly (Rule 4-100(B)(4))

By failing to satisfy Dr. Vidal's medical lien, respondent failed to pay client funds to a lien holder, in willful violation of rule 4-100(B)(4).

Count 11 - Failure to Cooperate in State Bar Investigation (Section 6068, Subd. (i))

By failing to provide the supporting documentation to his January 19, 2007, letter, by failing to provide written responses to all the allegations in the Dr. Vidal matter, and failing to respond to the State Bar's February 8, 2007, letter, respondent failed to cooperate in a State Bar investigation, in willful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,[4] stds. 1.2(e) and (b).)

A. Mitigation

Respondent argues that he suffered from severe emotional difficulties during the period of his misconduct (Std. 1.2(e)(iv). Respondent was involved in a protracted and acrimonious divorce proceeding that led to stress and excessive consumption of alcohol. However, it is obvious from his criminal convictions that respondent was consuming excessive amounts of alcohol prior to the time of his misconduct in these matters. Accordingly, any mitigation is somewhat lessened by his prior problems with alcohol. Any mitigation for this factor is again lessened by respondent's ongoing custody dispute with the mother of his children, including his recent guilty plea to a misdemeanor battery of the woman. Accordingly, respondent is entitled to little, if any mitigation.

Respondent also argues that he has performed pro bono services. Since 1994 he has handled about one case every two to three months on a pro bono basis. In addition, respondent has taught catechism at his church for two years and occasionally goes on some church outings with his class. Mitigation for performing pro bono services is lessened by respondent's failure to produce any documentation to support his claim that he handled about one case every two to three months. Thus, minimal weight is given to his pro bono services. (Std. 1.2(e)(vi).)

Finally, the court finds respondent's other mitigating arguments without merit.

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

[4] Future references to standard(s) or std. are to this source.

Respondent has two prior records of discipline, both of which involved criminal convictions. (Std. 1.2(b)(i).)

On January 8, 1992, the State Bar Court issued a public reproval to respondent for two criminal convictions. In State Bar Court case No. 91-C-04796, respondent was convicted of a violation of Vehicle Code section 23152(a), driving while under the influence of drugs or alcohol and Vehicle Code section 4462(b), operating a vehicle with a license plate not issued to the vehicle. In State Bar Court case No. 91-C-04797, respondent was convicted of a violation of Vehicle Code section 23103.5, reckless driving, and Vehicle Code section 14601.1(a), driving with a suspended license.

On June 2, 1993, the California Supreme Court ordered (S031847) respondent suspended from the practice of law for one year, stayed, and two years probation. The order was based on two criminal convictions. In State Bar Court case No. 92-C-10582, respondent was convicted for a violation of Vehicle Code section 23103. The underlying conviction in State Bar Court case No. 91-C-03501, respondent was convicted of violation of Vehicle Code section 23152(a), driving under the influence of alcohol or drugs (with a prior) and Vehicle Code section 23152(b), driving with a blood alcohol level of 0.8 percent or higher.

Respondent's professional malfeasance demonstrates a pattern of misconduct during a 14-year period. (Std. 1.2(b)(ii).) A year after he was admitted to the practice law, respondent began his misconduct in 1991 and continued a course of misconduct until 2005 involving 16 client matters in this proceeding.

Respondent stipulated to three uncharged violations and one additional aggravating factor (Std. 1.2(b)(iii)):

	Clients	*Violations*
1.	Tapia	Rule 4-100(C)

2. Frias Rule 3-110(A)

3. Escamilla Rule 3-110(A)

4. Balanzar Aggravating factor to section 6068, subdivision (i)

In the Tapia matter, by failing to maintain the records that he was required to maintain pursuant to rule 4-100(C), respondent willfully failed to maintain, and to preserve for five years from final appropriate disposition, complete records of all client funds coming into respondent's CTA.

In the Frias matter, by failing to take reasonable steps in *Frias v. Gonzales* to either advance or to dismiss it, respondent intentionally, recklessly, or repeatedly failed to perform services competently, in willful violation of rule 3-110(A).

And, in the Escamilla matter, by failing to take any steps to collect the settlement agreed to in *Escamilla v. Tarango*, and by failing to commence a new action against Tarango on behalf of Escamilla after she reached the age of majority, respondent intentionally, recklessly, or repeatedly failed to perform with competence in willful violation of rule 3-110(A).

Moreover, the parties stipulated that respondent's failure to verify the accuracy of his response to the State Bar in the Balanzar matter is an aggravating factor to the violation of section 6068, subdivision (i). Although respondent did not intend to deceive the State Bar, the effect of his response was to delay rather than assist the State Bar's investigation.

Furthermore, by clear and convincing evidence, respondent's failure to pay client funds, failure to maintain funds in client trust account and failure to pay funds to medical providers for one to six years in several matters are tantamount to misappropriation, which are acts of moral turpitude, an uncharged count of a section 6106 violation. (Std. 1.2(b)(iii).)

Respondent's misconduct significantly harmed his clients, the public, and the administration of justice. Respondent's misconduct caused clients to have cases dismissed and

collection actions undertaken against them by unpaid medical providers. His failure to maintain funds held in trust, failure to render accounting, failure to perform competently and failure to release client file also substantially harmed his clients. (Std. 1.2(b)(iv).

Respondent's failure to cooperate with the State Bar has already been found to have violated section 6068, subdivision (i), and thus, it is not considered as an aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, 2.2(b), 2.4, 2.6 and 2.10.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 1.7(b) provides "If a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate." Here, respondent has two prior records of discipline and no compelling mitigation.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

Standard 2.4(b) provides that culpability of failing to communicate with a client must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client.

Respondent admitted to serious misconduct involving 16 client matters. However, he argues that his mitigation outweighs his aggravation and that the appropriate level of discipline

should not exceed 90 days of actual suspension, citing *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91 in support of his arguments. The misconduct found in *Riley* is far less egregious than that of respondent and is clearly distinguishable. Here, respondent has committed 36 acts of professional misconduct between 1998 and 2005, has two prior records of discipline and has no compelling mitigation. Thus, the court rejects respondent's contentions.

The State Bar urges disbarment, citing *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 in support of its recommendation. The court agrees.

In *In the Matter of Collins*, the attorney was disbarred for committing professional misconduct in 14 matters over a six-year period. He engaged in a pattern of client abandonment and failed to refund over $17,500 in unearned fees and costs in nine matters.

Here, application of standard calling for disbarment (Std. 1.7(b)) for third imposition of discipline would be appropriate.

In determining the degree of discipline, the Supreme Court considers an attorney's prior disciplinary record and the harm resulting from his misconduct. "Significantly, in examining the combined record of this disciplinary proceeding and [the attorney's] prior discipline, we are confronted not by isolated or uncharacteristic acts but by 'a continuing course of serious professional misconduct extending over a period of several years.' [Citation.] We are therefore concerned with what appears to have become an habitual course of misconduct. We believe that the risk of [the attorney] repeating this misconduct would be considerable if he were permitted to continue in practice. [Citation.] As [the attorney] has previously demonstrated, the public and the legal profession would not be sufficiently protected if we merely, once again, suspended [him] from the practice of law. [Citation.]" (*McMorris v. State Bar* (1983) 35 Cal.3d 77, 85.) The Supreme Court's reasoning is equally applicable in this case.

Respondent here is not a candidate for suspension and/or probation. He has engaged in a continuous course of misconduct over a seven-year period involving 16 client matters. In fact, he was disciplined only a year after he became an attorney. Like *McMorris*, the risk of respondent repeating this misconduct would be considerable if he were permitted to continue in practice.

Moreover, respondent's failure to comply with his professional duties has repeatedly burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to the court. Respondent had ample opportunity to conform his conduct to the ethical requirements of the profession, but has repeatedly failed or refused to do so.

Lesser discipline than disbarment is inadequate because there are no extenuating circumstances that clearly predominate in this case. The serious, similar and prolonged nature of the misconduct in this and the two prior instances of discipline suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the prior instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. He has not learned from the past despite repeated opportunities to do so. Having considered the evidence, the standards, other relevant law and respondent's apparent serious ongoing substance abuse problem,[5] the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

[5] The court takes judicial notice that respondent currently has two pending matters before the State Bar Court (08-C-13157 and 08-C-13174) involving two additional criminal convictions for DUI on November 19, 2003, and July 17, 2008.

VI. Discipline Recommendation

Accordingly, the court hereby recommends that respondent **Armand J. Pasano** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Willful failure to comply with the provisions of rule 9.20 may result in denial of reinstatement or criminal conviction.

VII. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order Regarding Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: October 14, 2008

RICHARD A. PLATEL
Judge of the State Bar Court