FILED FEBRUARY 16, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **RICHARD ERIC HOVE**, **Member No. 53780**, A Member of the State Bar.	)	**Case No. 01-O-01267-JMR; 03-O-01200; 04-O-11366** **DECISION**

I. Introduction

In this contested disciplinary proceeding, respondent **Richard Eric Hove** is charged with multiple acts of professional misconduct in three client matters, including (1) failing to avoid the representation of adverse interests; (2) misleading the court; (3) engaging in unauthorized practice of law and holding oneself out as entitled to practice law; (4) committing acts of moral turpitude; (5) charging or collecting illegal fees; (6) failing to communicate with a client; (7) failing to return unearned fees; (8) failing to obtain informed written consent; and (9) failing to cooperate with the State Bar.

This court finds, by clear and convincing evidence, that respondent is culpable of six of the ten alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be placed on

probation for two years with conditions, including an actual suspension of 18 months from the practice of law.

II. Pertinent Procedural History

On March 15, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a 10-count Notice of Disciplinary Charges (NDC).

Respondent filed a response. The parties entered into a stipulation as to undisputed facts on October 25, 2005.

Based on respondent's failure to provide a pretrial statement and proposed exhibits, as previously ordered, respondent was precluded from offering witnesses or exhibits at trial. A two-day trial was held on October 25, and November 8, 2005. Deputy Trial Counsel Manuel Jimenez represented the State Bar. Respondent represented himself.

The matter was taken under submission on November 18, 2005, following the filing of State Bar's brief on conflict of interest.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence and testimony introduced at this proceeding and on the parties' stipulation, which was admitted into evidence.

Respondent was admitted to the practice of law in California on December 13, 1972, and has been a member of the State Bar of California at all times since that date.

A. The Lockhart Matter

This case involves respondent representing two clients whose interests conflicted in two separate criminal matters in 1990-1991, some 15 years ago. Respondent was appointed to represent Michael Lockhart on charges of murder and attempted murder when he was also

representing Larry Galbert with possession of drugs and of a gun that was used in the same murder incident that Lockhart was alleged to be involved in.

On May 7, 1990, Terry Cooper was shot to death by a Glock 9 millimeter pistol (handgun). A few days later, an anonymous caller informed the Oakland Police Department that Larry Galbert was one of the two shooters who killed Cooper.

On May 31, 1990, the same handgun shot Roderick Lane to death and injured Herbert Jamerson.

On September 12, 1990, the police received a call from an informant named Norbert Bluitt, who also identified Galbert as Cooper's murderer. The police then searched and seized from Galbert's residence the handgun.

Thereafter, respondent was appointed to represent Galbert when he was charged with possession of drugs and the handgun in September 1990. But Galbert was not charged with the Cooper killing.

In early 1991, Lockhart was charged with Lane's murder and Jamerson's attempted murder. Respondent was then appointed to represent Lockhart on these charges.

After being appointed to represent both Lockhart and Galbert, respondent learned that the handgun found at Galbert's residence was one of the weapons used to kill both Lane and Cooper and that the police had received information from two informants implicating Galbert in Cooper's murder.

Upon learning this information, respondent had both Lockhart and Galbert execute waivers of conflict of interest on March 12, 1991, acknowledging that although they knew a conflict existed between them, they still wanted respondent to represent them. Specifically,

Lockhart's waiver stated:

> I, MICHAEL LOCKKART acknowledge that I have been advised by my attorney RICHARD E. HOVE that there exists a conflicts of interest in Mr. Hove's representation of me and another individual whom he represents name LARRY GALBERT. I have been adviced by Mr. Hove that I have the right to have counsel of my own choice who does not represent both me or Mr. Galbert. I have been advised and realize that my interest and Mr. Galbert's interest maybe and are different so that Mr. Hove's representation of both of us can cause Mr. Hove to be placed in representing competing or different interests between me and Mr. Galbert.
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> Having been advised of the above and realizing the nature and affect of the conflict it is my choice and request that Mr. Hove continue to represent me. I realize I may have the benefit of the advice of seperate counsel in deciding to waive any conflicts of interest and has chosen not to seek such. I further acknowledge that this decision is made by me freely, volunteerly and with full knowledge of its potential consequence.
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> Dated: 3-12-91. (State Bar exhibit 3 [quoted as is with errors].)

Other than the name change, Galbert's waiver of conflict of interest was identical to that of Lockhart's.

Respondent testified[1] that he provided Lockhart with copies of all discovered documents received from the District Attorney's Office, including a log that contained entries about the two calls from the anonymous caller and informant identifying Galbert as one of the killers.

Respondent further testified that Deputy District Attorney Matthew Golde was concerned about the conflict and moved the court to determine the conflict issue. As a result, respondent provided the written waivers of conflict of interest from both clients to attorney Golde and Judge Saundra Armstrong, who was presiding over Lockhart's trial.

On March 18, 1991, respondent filed the two waivers with the Alameda County Superior Court in Lockhart's and Galbert's respective criminal matters.

Respondent testified that prior to Lockhart's March 18, 1991 pretrial hearing, Judge Armstrong, attorney Golde, and he discussed the conflict in chambers. Respondent further testified that they decided that the issue regarding the two callers implicating Galbert in the Cooper homicide was not an actual conflict.[2] However, they agreed that the handgun was one of the weapons involved in the shooting, and hence, a potential conflict issue.

Respondent testified that, therefore, at the pretrial hearing, when the court questioned both respondent and Lockhart about the conflict, respondent did not reveal on the record the details of their discussion held in chambers. He testified that he believed raising the issue

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[1]All reasonable doubts must be resolved in favor of the respondent. Because respondent's testimony in this disciplinary proceeding regarding the Lockhart matter was uncontradicted, the court finds his testimony to be reasonable. (*Kapelus v. State Bar* (1987) 44 Cal.3d 179, 184, fn. 1.)

[2]Respondent gave several reasons for this conclusion. According to respondent, Galbert was never a real suspect; he was never arrested, charged or even questioned by the police about the Cooper murder. Respondent stated that none of the eyewitnesses to the murder had ever identified Galbert as a shooter. Furthermore, because there were multiple shooters, even if Galbert was a shooter, that would not exonerate Lockhart. Respondent concluded that he could not competently use the two informants in Lockhart's defense.

concerning the callers was unnecessary. Thus, he only disclosed that the sole basis for the conflict was the handgun, as was previously discussed with attorney Golde and Judge Armstrong.

> The Court: The record should also reflect that the court and counsel have had preliminary discussions concerning this matter off the record . . . The conflict is based upon Mr. Hove's representational services provided to Mr. Galbert, who is in possession of the gun, and the representational services provided to Mr. Lockhart. Was there any other factual basis for the conflict?
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> Respondent: I think that's the sole basis for the conflict. (State Bar exhibit 2.)

Later, Lockhart was convicted for murder and attempted murder in the May 31, 1990 shooting of Lane and Jamerson.

In April 1994, Lockhart filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of California on the grounds that respondent's conflict of interest violated Lockhart's Sixth Amendment right to counsel. In March 1999, the district court denied the writ and Lockhart appealed the ruling to the United States Court of Appeals, Ninth Circuit.

On April 27, 2001, the Ninth Circuit filed an amended opinion in *Lockhart v. C.A. Terhune, Director, California Department of Corrections,* No. 99-16010, superseding the opinion filed March 14, 2001.[3] (*Lockhart v. C.A. Terhune* (9th Cir. 2001) 250 F.3d 1223.) The Ninth Circuit found that respondent had an actual conflict when he represented both Lockhart and Galbert who were implicated in the same murder and that the actual conflict adversely

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[3]Although the State Bar did not submit the Ninth Circuit's amended opinion filed April 27, 2001 (250 F.3d 1223) into evidence, but rather submitted the superseded opinion into evidence (State Bar exhibit 7; 243 F.3d 1130, filed March 14, 2001), the error is careless but

affected Lockhart's defense because respondent was "unable to emphasize Galbert's involvement in the Cooper homicide in order to minimize Lockhart's." (*Id*. at p. 1231.)

Respondent testified that he was unaware of the federal habeas corpus appeal until the Ninth Circuit issued its opinion. Respondent was not a party to the action nor was there any evidence that his version of events was presented on appeal.[4] Under the circumstances, the Ninth Circuit's findings of fact cannot be used against respondent. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 205 [principles of collateral estoppel may be applied to preclude an attorney from relitigating, in the State Bar Court, an issue (i.e., fact) that was previously decided against him in a civil proceeding if (1) the issue is substantially identical; (2) the civil finding was made under the clear and convincing evidence burden of proof; (3) the attorney was a party to the civil proceeding; (4) there is a final judgment on the merits in the civil proceeding; and (5) no unfairness in precluding relitigation of the issue is demonstrated by the attorney].)

Thus, contrary to the Ninth Circuit's finding that "[b]ecause Lockhart did not know that Galbert had actually been accused of the Cooper murder by two people Lockhart could not have known the risk that [respondent's] inability to target Galbert as an alternative suspect actually posed to his defense" (*Id.* at p. 1232), this court could not reach a similar finding of fact based on any clear and convincing evidence. Respondent testified that he did inform Lockhart about the informants identifying Galbert as the shooter and the State Bar submitted no evidence to contradict that testimony.

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harmless. This court takes judicial notice of the April 2001 amended opinion. (Evid. Code, § 450 et seq.)

[4]There was some evidence that Lockhart's subsequent attorney contacted respondent early on regarding preparing a declaration for the appeal. However, respondent said he refused to sign it because it was inaccurate.

In summary, the Ninth Circuit held that respondent had an actual conflict of interest that adversely affected Lockhart's defense and "Lockhart's waiver of his attorney's conflict of interest was not knowing and intelligent." (*Id.* at p. 1233.)

Count 1: Avoiding the Representation of Adverse Interests (Former Rules Prof. Conduct, Rule 3-310(B))[5]

Respondent is charged with a wilful violation of current rule 3-310(C)(2), which provides that an attorney must not, without the informed written consent of each client, accept or continue representation of more than one client in a manner in which the interests of the clients actually conflict.

The current Rules of Professional Conduct have been effective since September 14, 1992. Because respondent's alleged misconduct occurred between 1990 and March 18, 1991, before the current rules became operative, his misconduct did not violate current rule 3-310(C)(2).

The applicable charge should have been former rule 3-310(B), 1989 California Rules of Professional Conduct, in effect from May 27, 1989, to September 13, 1992. That former rule 3-310(B) provides that an attorney must not concurrently represent clients whose interests conflict, except with their informed written consent. The State Bar should have had amended count one in the NDC to delete the charge of current rule 3-310(C)(2) and in its stead, add the charge of former rule 3-310(B), but did not.

Nevertheless, the court finds no due process violation in determining whether respondent violated the applicable former rule 3-310(B) because: (1) the text of former rule 3-310(B) is substantially similar to that in current rule 3-310(C)(2); (2) respondent did not argue any lack of

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[5]References to former rule 3-310(B) are to the 1989 California Rules of Professional Conduct, in effect May 27, 1989, to September 13, 1992. References to "current rule" or "rule" are to the current Rules of Professional Conduct effective September 14, 1992.

adequate notice; and (3) the trial covered respondent's conduct during the time period in which former rule 3-310(B) was in effect. (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 276-277.) More importantly, after expressing concerns to the State Bar and respondent on the issue of the applicability of current rule 3-310(C)(2) for respondent's alleged misconduct, this court instructed the parties to submit briefs on the same subject. The State Bar filed a brief but respondent did not. Hence, respondent was fully apprised of the issue and had due notice.

Accordingly, although respondent did not violate current rule 3-310(C)(2), the court hereby determines whether respondent was culpable of violating the applicable former rule 3-310(B) under the same facts and circumstances as alleged in the NDC.

The intent of the rule is clearly prophylactic. The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: "By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent." (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; see *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

"It is . . . an attorney's duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter's

free and intelligent consent given after full knowledge of all the facts and circumstances." (*Anderson v. Eaton, supra,* 211 Cal. 113, 116; see *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 350-351.)

"Existing case law as of 1976 clearly informed attorneys of their duty to refrain from representing multiple defendants in any criminal case where there was a possibility of conflicting defenses. [Citations.] It also taught that each client had a right to conflict-free advice on whether it was in his or her best interest to present such conflicting defenses. Absent such advice, no waiver of separate counsel could have been knowing and intelligent." (*Gendron v. State Bar* (1983) 35 Cal.3d 409, 424.)

In this case, although respondent obtained a written waiver of conflict of interest from Lockhart, it was not "informed written consent." Former rule 3-310(F) defined "informed" as "full disclosure to the client of the circumstances and advice to the client of any actual or reasonably foreseeable adverse effects of those circumstances upon the representation." Notwithstanding respondent's testimony that he gave all the discovered documents received from the District Attorney's Office to Lockhart that included the two informants, this disclosure does not satisfy the rule. Respondent did not fully disclose in writing to Lockhart the ramifications of his dual representation of Galbert and Lockhart or any actual or reasonably foreseeable adverse effects of those circumstances upon the representation. Exactly what, if anything, respondent may have told Lockhart about the ramifications or reasonably foreseeable adverse effects of his dual representation is absent from the record. "[I]t is because of the lawyer's greater knowledge of their legal rights and remedies that the parties consult the lawyer in the first place. It is the lawyer's duty . . . to advise each client with undivided loyalty." (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 616.) Here, respondent did

not fully explain in writing to Lockhart how his representation of Galbert would affect Lockhart's legal rights and defenses, thereby compromising respondent's undivided loyalty to Lockhart.

"The relationship between an attorney and client is a fiduciary relationship of the very highest character." (*Clancy v. State Bar* (1969) 71 Cal.2d 140, 146.) In light of respondent's fiduciary obligations to Lockhart and Galbert, and of the conflicting loyalties respondent faced between the two clients, respondent must provide a full disclosure of the circumstances to his clients. He failed to do so. Lockhart's written waiver of conflict of interest was not knowing or intelligent.

Therefore, by accepting or continuing representation of Lockhart and Galbert, without providing full written disclosure to them of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences resulting from respondent's representation of them, respondent failed to obtain an informed written consent from Lockhart in wilful violation of former rule 3-310(B).

Count 2: Misleading the Court (§ 6068, Subd. (d))

Section 6068, subdivision (d), provides that an attorney shall never seek to mislead the judge by an artifice or false statement of fact or law. The Supreme Court has held that "[t]he presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is clear violation of [section 6068, subdivision (d)]." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.) "Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney knowingly presents a false statement which tends to mislead the court. [Citation.]" (*Davis v. State Bar* (1983) 33 Cal.3d 231, 240.)

The State Bar alleges that respondent sought to mislead the court at the March 1991 pretrial hearing when he falsely stated that the only basis for the conflict was that the handgun used to murder Lane and shoot Jamerson was the same handgun found in Galbert's possession, when respondent knew that an additional basis for the conflict was that two people identified Galbert as Cooper's killer, in wilful violation of section 6068, subdivision (d).

Here, there is no clear and convincing evidence that respondent deliberately sought to mislead Judge Armstrong at the March 1991 pretrial hearing. Respondent testified that in chambers, Judge Armstrong, the deputy district attorney and he had discussed the issue regarding the two callers identifying Galbert as Cooper's killer, but decided it was not the basis for a conflict; and thus, at the pretrial hearing, when the court asked respondent whether there was any other factual basis for the conflict, other than his "representational services provided to Mr. Galbert, who is in possession of the gun, and the representational services provided to Mr. Lockhart," respondent replied: "I think that's the sole basis for the conflict." He did not have any intent to mislead the court nor did he present any false statement.

Respondent's assertion that he disclosed the two callers to the court is uncontradicted. At this trial, he further reasoned that since the Cooper murder was discussed as a "similar" at the pretrial hearing, the district attorney knew about the Cooper case and the informants' identifying Galbert as the killer. As argued by respondent, had they not talked about the informants in chambers, the district attorney would have raised it as a conflict issue during the pretrial hearing. Respondent's argument is reasonable and with merit.

Since respondent was not a party to Lockhart's appeal before the Ninth Circuit, this court could not base its findings on the Ninth Circuit's opinion. And, neither Judge Armstrong nor Deputy District Attorney Golde testified at this proceeding. (Evid. Code, §412 [party having

power to produce better evidence].) Therefore, absent clear and convincing evidence, the court does not find that respondent mislead the judge in violation of section 6068(d), as alleged in count 2.

B. The David Matter

1. Respondent's Actual Suspension from the Practice of Law (May 15 - July 29, 2002)

On September 20, 2001, the State Bar Court recommended that respondent be disciplined for his misconduct, including an actual suspension of 75 days and until he made restitution. (State Bar Court case No. 99-O-12690.)

On April 5, 2002, the California Supreme Court adopted the State Bar Court's recommendation and suspended respondent for two years, stayed, and placed him on probation for two years on the condition that he actually be suspended for 75 days and until he made restitution. The discipline was to be effective May 5, 2002. (Supreme Court case No. S103872.)

But on April 19, 2002, respondent sought the Review Department of the State Bar Court to stay the commencement of his actual suspension. On May 9, 2002, the Review Department denied respondent's motion and ordered his actual suspension to commence on May 15, 2002.[6] Respondent learned of the May 9, 2002 order soon after it was issued.

Consequently, the effective date of respondent's actual suspension was delayed and became effective May 15 through July 29, 2002.

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[6]Contrary to the parties' stipulation that the Review Department granted respondent's motion on May 9, 2002, the court takes judicial notice that the State Bar Court in fact *denied* respondent's motion to extend the start of his actual suspension. (Evidence Code, § 452.)

2. The David Matter[7]

Daniel David was criminally charged with several counts of felony, including mail fraud and money laundering, in *United States of America v. Daniel David and Scott D. Nisbet*, case No. CR 02-0062 SI, United States District Court for the Northern District of California.

On March 9, 2002, respondent met with David and agreed to represent him in his criminal matter. Two days later, David employed respondent and paid him $25,000 in advanced fees. Respondent provided David with a fee agreement, stating that respondent's hourly rate would be $200 in consideration of providing legal representation on behalf of David in *United States of America v. Daniel David*.

On April 23, 2002, respondent provided David with a billing statement which indicated that respondent worked 65.25 hours on David's matter, that respondent was owed $13,050, and that the balance of David's funds remaining in respondent's trust account was $11,950. (April 23, 2002 Billing Statement.)

On or about May 14, 2002, respondent informed David that he would be suspended from the practice of law effective May 15. As a result, he advised David of three options: (1) hire another attorney; (2) represent himself; or (3) associate another lawyer in and respondent could work as a paralegal. They agreed to the third option. Thus, respondent, David and attorney Richard Stone signed an association of attorneys associating attorney Stone with respondent as one of David's counsel of record on May 14, 2002. The association of attorney was not filed until May 30, 2002. Hence, respondent was still the attorney of record between May 15 and May 30, 2002, during his suspension.

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[7]Based on his demeanor at trial, his questionable testimony, and his numerous felony convictions regarding dishonesty, the court finds Daniel David to be lacking in credibility.

On May 30, 2002, the Assistant U.S. Attorney wrote to the district court, indicating that he was aware of respondent's suspension and was concerned about David's representation.

Respondent knew that he was actually suspended from the practice of law from May 15 through July 29, 2002. Between May 15 and May 24, respondent conducted discovery, legal research and several telephone conferences with his client, opposing counsel and investigators. He did not change his hourly rate but continued to bill David at his attorney hourly rate of $200 for those services. However, because there is no clear and convincing evidence that he performed those duties without attorney Stone's supervision, those services constituted paralegal work and not the practice of law.

On the other hand, respondent's performance between May 27 and 30 on behalf of David went beyond the services of a paralegal. Beginning May 27, 2002, respondent started preparing certain motions wherein he declared that he was David's counsel and listed himself in the caption as "Attorney at Law" and as one of the "Attorneys for Defendant DANIEL DAVID," in addition to attorney Stone.

In his declaration in support of the motions, respondent declared: "I, RICHARD HOVE, presently represent defendant Daniel David." Although respondent signed and dated his declaration as "May 14, 2002," his own billing records show that work was done between May 27 and 30, and not May 14. After he had completed the motions on May 30, 2002, respondent then arranged for attorney Stone to sign the motions and had them filed.

On or about June 20, 2002, respondent provided David with a billing statement indicating that respondent had worked 44.75 hours on David's matter in May 2002 at an hourly rate of $200, that respondent was owed $8,950, which respondent deducted from the money respondent

was holding in trust and that the balance of David's funds remaining in respondent's trust account was $3,000. (June 20, 2002 Billing Statement.)

The June 20 billing statement included 5.75 hours at the hourly rate of $200 for work respondent performed in the motions from May 27 through May 30, 2002, for a total charge of $1,150. In those four days, he charged one hour for "rough drafts of motion," one hour for "research of motion," two hours for "preparation of motions," and 1.5 hours for "revision of motions."

Moreover, the June 20 billing statement stated respondent as the "ATTORNEY AT LAW" on the caption.

On June 14, 21, and 28, 2002, attorney Stone appeared as counsel of record before the district court. Respondent billed David 1.5 hours for each "Court Appearance-San Francisco" (a total of 4.5 hours). Respondent testified that the time charged was for attorney Stone's services as counsel of record. But attorney Stone ultimately declined to accept any compensation for his court appearances.

On or about July 1, 2002, respondent provided David with a billing statement indicating that respondent had worked 18.25 hours on David's matter in June 2002 at the rate of $200 per hour, that respondent was owed $3,650, that the balance of David's funds remaining in respondent's trust account of $3,000 was applied to the June 2002 bill and that David owed respondent an additional $650. (July 1, 2002 Billing Statement.)

In the July billing statement, respondent charged and collected $900 for attorney Stone's court appearances in June 2002. Again, the July billing statement listed respondent as "ATTORNEY AT LAW" and respondent's law office address.

Based on the June and July statements, respondent was not only managing client funds in his client trust account while he was suspended, but he was also holding himself out as entitled to practice law by listing himself as "ATTORNEY AT LAW."

On July 29, 2002, respondent's actual suspension from the practice of law terminated and he was returned to active status.

Count 3: Unauthorized Practice of Law (§§ 6068(a), 6125 and 6126)

Section 6068(a) provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

Where an attorney knowingly permitted a complaint bearing his name as counsel to be filed after the effective date of his suspension from the practice of law, the attorney thereby violated the statute prohibiting practicing while suspended. Even if he prepared the complaint prior to suspension, did not intend to practice while suspended, and was only trying to assist his client by having the complaint filed, this did not constitute an excuse for respondent's conduct. (See *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480.)

Similarly, respondent knew that he was actually suspended from the practice of law from May 15 through July 29, 2002, was not entitled to practice law, and could not hold himself out as entitled to practice law. Yet, he held himself out as entitled to practice law (1) when he was attorney of record between May 15 and 30, 2002; (2) when he listed himself in the caption as David's attorney in the motions filed May 30, 2002, and declared that he represented David; and (3) when he listed himself as attorney at law on the June and July billing statements.

Furthermore, by preparing and allowing such motions to be filed, he actually practiced law between May 27 and 30, 2002.

Thus, by clear and convincing evidence, respondent wilfully violated sections 6068(a), 6125 and 6126 when he knew that he was not entitled to practice law, held himself out as entitled to practice law and actually practiced law.

However, there is no clear and convincing evidence that respondent engaged in unauthorized practice of law by attending the June court hearings in which attorney Stone appeared as counsel of record. Also, there is no clear and convincing evidence that his legal research and telephone conferences during his suspension constituted the unauthorized practice of law. The uncontradicted evidence shows that the district court and the assistant U.S. attorney were aware of his suspension, and that respondent was acting under the supervision of attorney Stone.

Count 4: Moral Turpitude (§ 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

The State Bar alleges that respondent committed acts involving moral turpitude (1) by misrepresenting to David when he informed David that the only impact the suspension had on respondent's ability to represent him was that respondent was not able to make court appearances and (2) by performing legal research, drafting motions, conducting telephone conferences with David and conducting conferences with investigators when he knew that the suspension prevented him from doing so.

However, respondent testified that he informed David about his suspension, that he gave his client three options to choose from regarding the representation of his matter, and that the

client chose to associate attorney Stone and retain respondent as a paralegal to continue to handle the matter. His performance of legal research, drafting motions and conducting conferences are not prohibited as long as he rendered those services under the supervision of attorney Stone, which was not refuted by clear and convincing evidence. (Bus. & Prof. Code, § 6133; Rules Prof. Conduct, rule 1-311.)

Therefore, there is no clear and convincing evidence that respondent committed acts of moral turpitude and dishonesty in wilful violation of section 6106 as alleged in count 4.

Count 5: Illegal Fee (Rule 4-200(A))

Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable fee agreement or charging or collecting an illegal or unconscionable fee.

While respondent was actually suspended from the practice of law, he was legally precluded from practicing law and therefore, his performance of legal services in exchange for a fee was illegal. Regardless of the fact that he was compensated pursuant to a contract, respondent was not entitled to charge or collect his fees for those services that constituted the unauthorized practice of law. (*Birbrower, Montalbana, Condon and Frank v. Superior Court* (1998) 17 Cal.4th 119, 136.) "Permitting respondent to have earned any of the money paid him by [his client], even a reasonable fee under a quantum meruit theory, would condone his unauthorized practice of law." (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.)

Despite his suspension, respondent failed to return any portion of his unearned fees to David. Rather, respondent continued to charge and collect against the amount he held in trust. It was respondent, not attorney Stone, who charged and collected the fees for the three court

appearances in June. However, respondent was not entitled to charge or collect any legal fees for his work in the motions (5.75 hours) and for attorney Stone's court appearances (4.5 hours).

Thus, by charging and collecting $1,150 (5.75 hours x $200) in legal fees for legal work respondent performed which constituted unauthorized practice of law between May 27 and May 30, 2002, and by charging and collecting $900 (4.5 hours x $200) for legal work attorney Stone performed on June 14, 21, and 28, 2002, respondent charged and collected illegal fees in wilful violation of rule 4-200(A). Even though the State Bar did not charge respondent for failure to return unearned fees, the court finds that the total amount of $2,050 collected as illegal fees should be refunded to David.

Count 6: Moral Turpitude (§ 6106)

During his actual suspension between May 15 and July 29, 2002, respondent engaged in the unauthorized practice of law, held himself out as entitled to practice law in pleadings and billing statements, charged and collected legal fees for his work between May 27 and May 30, 2002, and for attorney Stone's work in June 2002, and managed and held on to client funds. Such misconduct constituted acts of moral turpitude and dishonesty in wilful violation of section 6106.

C. The Safa Swaid Matter

In or about 1999, Safa Swaid was arrested and charged with production of methamphetamine. While awaiting trial, Safa has been held in jail for about six years.

Before August 2003, attorney Philip Schnayerson represented Safa and recommended to Safa that he accept the District Attorney's (DA) plea bargain of what would amount to basically time served. But Safa rejected the plea bargain and wanted to go to trial.

In or about July 2003, Safa's brother, Hassan Swaid, paid respondent $1,000 to meet with Safa about his case. Respondent met and discussed the case with Safa.

On or about August 5, 2003, respondent entered into a fee agreement with Hassan. Hassan agreed:

> To pay non-refundable retainer in the amount of [$10,000]. If case resolves within three weeks no additional fee required. If not resolved by then additional [$5,000] due on Sept 26, 2003. If case resolves before any motions filed, total fee is $15,000. If case assigned to trial court but resolves before a jury is called total fee is $17,500. If jury is called total fee to be $25,000. Any investigation is separate from this agreement. Balances to be paid after Sept 26, 2003 is payable at the rate of $1,000 per month.
> (State Bar exhibit 25 [quoted as is with errors].)

On behalf of Safa, Hassan paid respondent a total of $15,000: $10,000 on or about August 7, 2003, and $5,000 on or about October 3, 2003. Respondent did not obtain Safa's informed written consent to accept money from Hassan when Safa was respondent's client.

Sometime in or about late 2003, respondent concluded that Safa should accept the DA's plea bargain. Respondent conveyed this to Safa.

Between in or about late December 2003 and on or about March 18, 2004, Hassan telephoned respondent several times to obtain a status update on Safa's matter. Each time Hassan telephoned respondent, he left a message with respondent's secretary requesting that respondent return the telephone call.

Respondent received the messages, but did not return any of the telephone messages or provide Hassan with a status update on Safa's matter.

During this period, respondent spoke only once to Hassan on the phone, but said he was busy and would call back. Respondent never called back. Respondent testified that he performed all the services as required under the retainer agreement. Respondent claimed that he met with attorney Schnayerson, visited Safa twice in jail, saw and talked with him on at least five other occasions throughout his representation, met with Hassan, and appeared in court about six times. Respondent further testified that he prepared for trial and reviewed the voluminous file and Safa's recordings made in a police car as well as the items seized from Safa. Respondent needed to talk with Hassan about needing more investigation, but the funds were not forthcoming.

On or about March 18, 2004, Hassan sent a letter to respondent by registered mail and hand-delivered it to respondent's office. Hassan asserted that he had attempted to contact respondent several times over the previous three and a half months, but respondent did not return his calls. The letter also stated that respondent never contacted Safa, never returned Hassan's telephone calls, never provided a status update on Safa's matter and never sent a billing statement. The letter further requested that respondent return the $15,000 respondent received in advanced fees.

Respondent did not provide a status update or refund any money to Hassan. Instead, respondent wrote to Hassan on March 23, 2004. Respondent stated that he had previously told Hassan to come and see him, but Hassan had refused. Respondent also claimed that he was ready to try Safa's case, had earned the fee charged, and suggested that Hassan contact the bar association regarding fee disputes. (State Bar exhibit 28.)

On or about April 15, 2004, Safa's wife, Rania Swaid, also wrote to respondent, which letter was identical to Hassan's March 18, 2004 letter. Respondent received the letter soon after

it was sent. He did not respond to Rania's letter, provide her with a status update or refund any money because respondent thought that he had already stated his position in response to Hassan's letter.

Count 7: Failure to Communicate (§ 6068, Subd. (m))

Section 6068, subdivision (m), requires 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.

The State Bar alleges that respondent violated section 6068, subdivision (m), by failing to respond to the telephone calls of Hassan and Catherine Hamze, a family friend, and by failing to respond to Hassan's March 18, 2004 letter and Rania Swaid's April 15, 2004 letter.

Although Hassan hired and paid respondent to represent his brother, Safa, Hassan was not the client. Safa was the client. Respondent owed a duty of professional courtesy to communicate with Hassan, but he did not have a statutory duty to communicate with Hassan, Hamze or Rania because he did not represent any of them. (See *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 577-578.)

Hence, respondent did not violate section 6068, subdivision (m), as alleged in count 7.

Count 8: Failure to Refund Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly any part of a fee paid in advance that has not been earned.

When Hassan wrote to respondent in March 2004, demanding the refund of the $15,000, respondent was obligated to promptly refund any part of the advanced fee that had not been earned. He did not do so. Instead, he claimed that he had earned the fee charged and advised Hassan to go to fee arbitration.

Based on the retainer agreement, respondent did not provide the services as agreed and thus, did not earn all of the $15,000 in advanced fees. Respondent contracted to resolve or try the case for a set sum, but he did not complete the case. He neither resolved the matter nor brought the case to trial. In fact, Safa is still currently in jail awaiting trial. Thus, respondent did not earn all of the advanced fees and the parties should go to fee arbitration to settle their fee dispute of the $15,000.

Therefore, by failing to refund any unearned portion of the money respondent received to represent Safa, he wilfully violated rule 3-700(D)(2).

Count 9: Avoiding the Representation of Adverse Interests and Accepting Compensation from a Non-Client (Rule 3-310(F))

To avoid any conflict of interest, rule 3-310(F) provides, in part, that a member must not accept compensation for representing a client from one other than the client unless the member obtains the client's informed written consent.

Prior to accepting payment of fees from his client's brother, Safa must be informed of the terms of the arrangement and provide written consent.

Respondent did not obtain Safa's informed written consent to respondent's acceptance of the compensation. As a result, respondent violated rule 3-310(F) by accepting $15,000 from Hassan without Safa's written consent.

D. The State Bar Investigation

In June and July 2001, State Bar Investigator J.D. Pickering wrote to respondent concerning the Lockhart matter. On August 29, 2001, respondent replied in writing and explained in details his representation of Lockhart. About a year later, Deputy Trial Counsel Esther Rogers telephoned respondent regarding the Lockhart matter and left him a message.

Respondent returned the call and spoke with her about the complaint. According to respondent, nothing happened afterwards until 2005 when he received a letter from Deputy Trial Counsel Rogers and the Notice of Disciplinary Charges.

However, on October 12, 2004, the State Bar investigator Pickering wrote to respondent regarding the Safa matter by placing the letter in a sealed envelope addressed to respondent at his address as maintained by the State Bar in accordance with section 6002.1. The letter was mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date of the letter. The Postal Service did not return the letter as undeliverable or for any other reason.

The investigator's letter requested respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in this matter on or before October 26, 2004. Respondent did not respond to this letter.

On or about November 19, 2004, the State Bar investigator wrote another letter to respondent regarding the Safa matter by placing the letter in a sealed envelope correctly addressed to respondent at his official address. The letter was sent by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date of the letter. The letter was not returned as undeliverable or for any other reason. Respondent did not respond to this letter.

Respondent testified that he never received the State Bar's October and November 2004 letters regarding the Safa matter. He never spoke with the State Bar investigator Pickering on the telephone. And, he was unaware of the Safa complaint until he received the NDC in March 2005.

Count 10: Failure to Cooperate With the State Bar (§ 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.

The State Bar alleges that respondent failed to cooperate in the disciplinary investigations regarding the Lockhart and Swaid matters.

Because respondent answered the State Bar's letters concerning Lockhart, albeit late, and spoke with deputy trial counsel about it, he cooperated with the State Bar in its investigation and thus, did not violate section 6068, subdivision (i).

With respect to the Safa matter, respondent testified that he did not receive the State Bar's October and November 2004 letters; and thus, respondent could not have responded to letters that he was unaware of.

"[O]nce respondent had met with the deputy trial counsel and had indicated in that meeting his willingness to cooperate through his counsel in any and all matters raised by the State Bar, he should be accorded the benefit of the doubt in assuming cooperation with the deputy trial counsel was cooperation with the State Bar." (*In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 684.) Similarly, since respondent cooperated in the State Bar's investigation concerning the Lockhart matter by replying to State Bar's investigative letters and by returning deputy trial counsel's telephone call, respondent is accorded the benefit of the doubt in assuming that he was willing to cooperate with the State Bar regarding additional investigative letters subsequently sent to him had he received them. Thus, the evidence fails to establish that respondent did not cooperate with the State Bar regarding the Safa Swaid matter in wilful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)[8]

B. Aggravation

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

Respondent has three prior records of discipline. (Standard 1.2(b)(i).)

1. Respondent stipulated to a six-month stayed suspension, one-year probation and 30- day actual suspension for his failure to timely comply with California Rules of Court, rule 955, as ordered in his criminal conviction matter, and to cooperate and participate in the disciplinary investigation. His criminal conviction was subsequently overturned. Respondent's rule 955 violation resulted from his miscalculation of the affidavit's due date by nine days. (Supreme Court case No. S039769, effective August 20, 1994; State Bar Court case No. 92-O-12619; 93-N-14141 (Cons.).)

2. Respondent stipulated to a public reproval for failing to timely comply with a probation condition (Ethics School) as ordered in his first prior disciplinary case due to his inadvertence. (State Bar Court case No. 96-O-02426, effective April 3, 1997.)

3. Respondent was suspended for two years, stayed, and placed on probation for two years with conditions, including an actual suspension of 75 days and until he makes restitution for his misconduct involving two clients, including failure to

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[8]All further references to standards are to this source.

perform services, failure to return unearned fees, failure to communicate with his client, and failing to cooperate with the State Bar. (Supreme Court case No. S103872, effective May 5, 2002, actual suspension delayed, effective May 15, 2002; State Bar Court case No. 99-O-12690; 00-O-12490 (Cons.).)

Respondent committed multiple acts of wrongdoing, including failing to avoid the representation of adverse interests; engaging in unauthorized practice of law; committing acts of moral turpitude; charging and collecting illegal fees; failing to return unearned fees; and accepting fees from a non-client without an informed written consent. (Standard 1.2(b)(ii).)

Respondent significantly harmed his clients and the administration of justice by failing to avoid adverse interests, engaging in unauthorized practice of law, holding himself out as entitled to practice law, charging and collecting illegal fees of $2,050, and failing to return unearned fees. (Standard 1.2(b)(iv).)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Standard 1.2(b)(v).) He has yet to return any portion of the unearned fees to Hassan or to David.

V. Discussion

The purpose of 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.)

Respondent's misconduct involved three client matters. 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 client. The applicable standards in this matter are standards 1.6, 1.7,

2.3, 2.6, and 2.10. The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id*. at p. 251.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Standard 1.7(b) provides that if the attorney has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Here, respondent has three prior records of discipline. The misconduct in the first two priors resulted from his cavalier attitude towards the importance of complying with court orders (failure to timely comply with California Rules of Court, rule 955, and to timely attend the Ethics School). His third prior involved professional misconduct in two client matters. Consequently, respondent was disciplined with an actual suspension of 30 days in 1994, a public reproval in 1997 and an actual suspension of 75 days in 2002. While respondent's misconduct in the last 10 years reflects his difficulties in complying with his professional obligations, their collective lack of severity and the gravity of the current offenses do not yet justify disbarment in this proceeding.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person must result in actual suspension or disbarment. As discussed above, respondent's unauthorized practice of law were acts of moral turpitude.

Standards 2.6 and 2.10 provide that culpability of unauthorized practice of law and wilful violation of a rule of professional conduct will result in reproval, suspension or disbarment, depending on the gravity of the offense or the harm to the client.

Respondent denies any wrongdoing.

The State Bar urges two years actual suspension with four years stayed suspension and four years probation, citing cases in support of its recommendation, including *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211; *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602; and *Olguin v. State Bar* (1980) 28 Cal.3d 195.

The court finds these cases distinguishable from this matter.

For example, in *Jeffers*, the attorney was given a one-year stayed suspension and two-year probation for misleading the settlement conference judge regarding his client's death and failing to appear as ordered at a mandatory settlement conference. No period of actual suspension was imposed, contrary to State Bar's recommendation in this matter.

In *Olguin*, the Supreme Court increased the recommended attorney's discipline from 90 days to six months not only because of his dereliction of duty to his client resulting in the action being dismissed but, particularly, also because of his deceptive conduct on at least two occasions – lying to a State Bar investigator about that client matter, fabricating documents for his defense, and continuing to assert their authenticity after learning of their bogus nature. Here, respondent was found not culpable of misleading the court in the Lockhart matter. Had the State Bar offered sufficient evidence to establish that respondent sought to mislead the court, or that he failed to notify his client about the informants, the court would agree that *at least* a two-year actual suspension would be warranted.

The gravamen of respondent's misconduct is his failure to provide full written disclosure of the actual conflict in the Lockhart matter, his unauthorized practice of law and collection of illegal fees while he was suspended in the David matter, and his failure to return unearned fees in

the Safa Swaid matter. The court has considered the following cases in determining the proper level of discipline to be recommended.

In *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, the attorney was actually suspended for 60 days with a one-year stayed suspension and a two-year probation for representing adverse parties without obtaining an informed consent and for failing to provide an accounting. But unlike respondent who had three prior records of discipline, the attorney here had 25 years of practice without a prior record of discipline and extensive public service.

In *Recht v. State Bar* (1933) 218 Cal. 352, the attorney was found culpable of charging an unconscionable fee and making misrepresentations to his clients in order to get them to employ him. The Supreme Court actually suspended him for three months.

In *In the Matter of Lantz* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 126, the attorney was found culpable of misappropriation through gross neglect, withholding an illegal fee, failure to perform services competently, failure to return unearned fees and failure to render an appropriate accounting in four client matters. He was given a two-year stayed suspension, a two-year probation and a one-year actual suspension and until he makes restitution of $8,000 to one client.

In *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, the attorney was actually suspended for six months for collection of an illegal fee ($266,850) with serious aggravating circumstances.

Furthermore, in *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, the attorney was actually suspended for one year for misconduct including the collection of an illegal fee for services not performed, unauthorized practice of law, improper

withdrawal, and acts of moral turpitude because he lied to his client on several occasions, telling him that he had filed a tort claim on his behalf when he had not.

There are several cases regarding the unauthorized practice of law that provide some guidance to the court, including *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229; *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639; *Chasteen v. State Bar* (1985) 40 Cal.3d 586; *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585; and *Farnham v. State Bar* (1976) 17 Cal.3d 605. The level of discipline in these cases ranges from 30 days' to six months' actual suspension.

In *Mason*, the attorney made a court appearance and signed and served a trial brief while suspended by the Supreme Court for misconduct in a prior discipline. He did not inform either the court or opposing counsel that he was suspended from the practice of law. He was found culpable of moral turpitude in practicing law while suspended. As a result, he was actually suspended for 90 days with a three-year stayed suspension and a three-year probation.

In *Chasteen*, the attorney was found culpable of the unauthorized practice of law for over a year as well as deceit of clients, commingling and failure to return fees. The bulk of his misconduct was attributable to his long history of alcoholism. In light of his prior record of discipline and mitigation, the Supreme Court imposed a two-month actual suspension and until he made restitution.

Finally, in *Farnham*, the attorney not only engaged in the unauthorized practice of law while under actual suspension but also abandoned two clients. The Supreme Court found that the attorney's actions "evidence a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes." (*Farnham v. State Bar, supra,* 17 Cal.3d at p. 612.) He also had a prior record of

discipline for abandonment of clients' interests in four separate matters and lacked insight into the impropriety of his actions. As a result, he was actually suspended for six months with a stayed suspension of two years upon conditions of probations.

In this matter, respondent's misconduct involved six counts of violations and was similar to the level of seriousness as that of the comparable cases discussed above. Because of the aggravating factors, including respondent's three prior instances of misconduct, albeit minor offenses, the recommended sanction will be severe. But the nature and extent of his prior records of discipline are not sufficiently severe to justify disbarment under standard 1.7(b). (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.)

For example, in *Blair v. State Bar* (1989) 49 Cal.3d 762, the attorney had three prior suspensions for misappropriation of trust funds. In his fourth disciplinary proceeding, he was found culpable of misconduct in three client matters. The Supreme Court did not disbar, but suspended him for five years, stayed, with five years probation on conditions including a two-year actual suspension.

The "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Although respondent's unauthorized practice of law, failure to return client funds, collection of illegal fees, and failure to avoid adverse interests do not warrant the highest level of public protection – disbarment, the case law and the standards provide that placing respondent on a long period of actual suspension would be appropriate to protect the public and to preserve public confidence in the profession. In recommending appropriate discipline, the court considers the underlying misconduct and the aggravating circumstances. Each of these factors weighs in favor of an actual suspension of 18 months.

Moreover, it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.) Therefore, the court recommends that, as probation conditions, respondent refund $2,050 to David, and provide notice to Hassan Swaid of his right to arbitration and respondent file a request for arbitration under Business and Professions Code section 6200 et seq. within 60 days of the effective date of the discipline herein to settle their fee dispute.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Richard Eric Hove** be suspended from the practice of law for two years, that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 18 months of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Within 60 days of the effective date of the discipline herein, respondent must pay restitution to Daniel David in the amount of $2,050 plus 10% interest per annum from July 1, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Daniel David, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation. Any restitution to the Client

Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d);

4. Within 60 days of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of notice to Hassan Swaid and request for arbitration concerning their fee dispute of $15,000, advance fees paid for the representation of Safa Swaid, under Business and Professions Code section 6200 et seq. Respondent must participate in fee arbitration and abide by any final order;

5. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

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

6. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1;

7. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201);

8. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and

9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years that is stayed, will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar

Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within the period of his actual suspension. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, conviction of contempt or criminal conviction.[9]

VII. Costs

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

Dated: February 16, 2006

JOANN M. REMKE
Judge of the State Bar Court

[9]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)