FILED JANUARY 25, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **ED W. HENDREN**, **Member No. 71171**, A Member of the State Bar.	**Case No. 01-O-02662-LMA [01-O-04432; 02-O-14509; 02-O-14959; 03-O-00940; 03-O-01104; 03-O-01232; 03-O-04976; 04-O-10698; 05-O-01083; 05-O-01675; 05-O-02047]; 06-O-15319 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In these consolidated default disciplinary matters, respondent **Ed W. Hendren** is charged with 58 counts of professional misconduct in 13 client matters. The court finds by clear and convincing evidence, that respondent is culpable of most of the charges, which include failure to perform services competently; failure to communicate; failure to return unearned fees; failure to render accounts of client funds; failure to release client files; improper withdrawal from employment; and failure to cooperate with the State Bar.

In view of respondent's serious and continuous course of misconduct and the aggravating evidence, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges

On March 29, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent at his official membership records address a Notice of Disciplinary Charges (NDC) in case Nos. 01-O-02662, 01-O-04432, 02-O-14509, 02-O-14959, 03-O-00940, 03-O-01104, 03-O-01232, 03-O-04976, 04-O-10698, 05-O-01083, 05-O-01675, and 05-O-02047. Respondent acknowledged to the deputy trial counsel (DTC) assigned to the matter that he

received the NDC.

On December 28, 2006, the State Bar filed and properly served on respondent at his official membership records address the First Amended Notice of Disciplinary Charges (amended NDC) in case Nos. 01-O-02662, 01-O-04432, 02-O-14509, 02-O-14959, 03-O-00940, 03-O-01104, 03-O-01232, 03-O-04976, 04-O-10698, 05-O-01083, 05-O-01675, and 05-O-02047. (Rules Proc. of State Bar, rule 60.) Respondent informed the assigned DTC that he received the amended NDC. Respondent did not file a timely response to the amended NDC. (Rules Proc. of State Bar, rule 103.)

Because the parties were discussing resolving the case, the State Bar deferred filing a motion to enter respondent's default. On December 28, 2006, the State Bar sent respondent a proposed stipulation. Respondent indicated that he would be employing counsel to represent him. In April 2007, the State Bar informed respondent's counsel, Jonathan Arons, that it would be filing a motion to enter respondent's default. On May 21, 20007, respondent by and through his attorney, Jonathan Arons, filed an Answer to the Notice of Disciplinary Charges. At a June 6, 2007 status conference, the court determined that respondent was not cooperating with his counsel and the court. A further status conference was set for July 30, 2007. Respondent failed to appear at the July 30, 2007 status conference and his attorney was relieved as counsel of record. A further status conference was set for August 13, 2007. Respondent failed to appear. On August 28, 2007, the State Bar filed a motion to strike respondent's Answer to the Notice of Disciplinary Charges. Respondent did not file a response to the State Bar's motion to strike. On September 14, 2007, the court issued an Order to Show Cause why respondent's response to the NDC should not be stricken and his default entered.

Respondent's default was entered on October 15, 2007, and respondent was enrolled as an inactive member on October 22, 2007, under Business and Professions Code section 6007, subdivision (e).[1]

B. Second Notice of Disciplinary Charges

On August 7, 2007, the State Bar properly filed a second Notice of Disciplinary Charges in

[1]All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

case No. 06-O-15319 and properly served it on respondent at his official membership records address.

On August 13, 2007, a status conference was held in this matter. Respondent failed to appear.

On August 16, 2007, the State Bar attempted to contact respondent by telephone at his official membership records phone number. Respondent's answering machine picked up and the message identified the number as belonging to respondent. The DTC assigned to the matter left a message requesting that respondent return the call. On September 18, 2007, the assigned DTC again left a message on respondent's answering machine informing respondent that it was imperative that he return the call. The DTC advised respondent that if he did not respond a default would be entered against him. Respondent did not respond to either of the DTC's messages.

On the State Bar's motion, respondent's default was entered on October 9, 2007, and respondent was enrolled as an inactive member on October 12, 2007, under section 6007, subdivision (e).

On October 15, 2007, the court consolidated State Bar Court case No. 06-O-15319 with State Bar Court case No. 01-O-02662.

Respondent did not participate in the disciplinary proceedings. The consolidated matters were taken under submission on October 29, 2007, following the filing of the State Bar's brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs are admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 22, 1976, and has been a member of the State Bar of California at all times since that date.

B. First (Amended) Notice of Disciplinary Charges

1. The Vinyl Fabrications, Inc. Matter (Case No. 01-O-02662)

Findings of Fact

In November 1997, respondent was employed by Mike Smith (Smith) and Vinyl Fabrications, Inc. (collectively referred to as Vinyl) to file and prosecute litigation on Vinyl's behalf against Davidson Plastics Corporation (Davidson). On November 19, 1997, Vinyl paid respondent $5,000 as an advance fee for the representation.

On January 1, 1998, Vinyl and respondent entered into a "Legal Representation Agreement." Respondent filed a complaint on Vinyl's behalf, and performed various other legal services in the case entitled *Vinyl Fabrications, Inc. v. Davidson Plastics Corporation, et al.*, Butte County Superior Court Civil Docket No. 121655 (*Vinyl v. Davidson*) . Over time, Vinyl paid respondent a total of $40,158.68 for attorney fees and costs in the matter as follows:

Date Paid	Amount of Fee
November 19,1997	$5,000
March 3, 1998	$5,000
August 19, 1999	$15,397.02
September 21, 1999	$1,994.45
April 21, 2000	$7,531.57
June 9, 2000	$5,235.64

In addition, at respondent's request, Vinyl hired a certified public accountant to work on the litigation and paid him $6,770.

On or about February 24, 2000, Davidson filed a motion for summary judgment (MSJ) against Vinyl. Respondent received actual notice of the MSJ, which was set for hearing on March 27, 2000. Respondent informed Vinyl that the motion had been filed. The trial in the matter was set for May 1, 2000.

Respondent failed to file a timely opposition to the MSJ. Instead, on March 24, 2000, respondent filed an ex parte application to continue the MSJ hearing in order to permit additional discovery. At the March 27, 2000 MSJ hearing, the court admonished respondent for his lack of

preparation in the case. The court then continued the MSJ hearing to June 5, 2000, and reset the trial date to October 2, 2000. Although respondent received actual notice of the new dates, he failed to notify Vinyl of the changes.

In late May 2000, respondent and counsel for Davidson agreed to continue the June 5, 2000 MSJ hearing date to June 26, 2000. Respondent signed the stipulation and received actual notice that the court had continued the MSJ hearing to June 26, 2000. Respondent, however, failed to inform Vinyl of the new date.

Respondent also failed to timely file an opposition to the MSJ. Thus, the court took the matter under submission without oral argument and as unopposed. On August 18, 2000, the court entered summary judgment and ruled in favor of Davidson. Respondent received actual notice that judgment had been entered. Nonetheless, he did not inform Vinyl of the court's order.

Smith telephoned respondent a number of times between March and October 2000, to inquire about the status of the MSJ and the case in general. Respondent did not reply to Smith's inquiries. Finally, in October 2000, respondent met with Smith and informed him that judgment had been entered against Vinyl. At that time, as well as in a November 21, 2000 confirming letter that respondent sent to Smith, respondent said that he would file a motion for reconsideration of the summary judgment order. Respondent, however, never filed the reconsideration motion.

On November 21, 2000, respondent filed a notice of appeal of the summary judgment. But, he did not pay the filing fee of $265. On November 29, 2000, the clerk of the Court of Appeal sent respondent a letter informing respondent that the filing fee must be paid by December 14, 2000, or the case would be dismissed. Although respondent received the letter, he failed to remit the filing fee. Thus, the appeal was dismissed on December 15, 2000. On January 31, 2001, the court awarded costs in the amount of $8,183.32 against Vinyl. Respondent received actual notice of both court rulings. Respondent, however, never informed Vinyl that the appeal had been dismissed.

On February 20, 2001, respondent filed a motion from relief from default and a motion to set aside the judgment (set aside motion) on behalf of Vinyl. The set aside motion was denied as untimely, because respondent had filed it two days beyond its jurisdictional due date. Although respondent received actual notice of the court order denying the set aside motion, he never notified

Vinyl of the denial.

Between November 21, 2000 and April 30, 2001, Smith telephoned respondent numerous times to inquire about the status of the case. But, respondent never responded to Smith's inquiries. On April 30, 2001, Smith wrote to respondent regarding declarations that respondent had said he would prepare in his November 21, 2000 letter to Smith. Specifically, Smith requested that respondent forward the declarations to him. Respondent never replied to Smith's April 30, 2001 letter.

On June 5, 2001, "Smith wrote to respondent to demand the repayment of all attorney fees, because the legal services were worthless to Vinyl when respondent failed to defend his client against the MSJ", or to timely and properly file a motion to set aside the default and/or an appeal. (Amended NDC, ¶ 15: 22-25) Smith also requested that respondent reimburse Vinyl the $6,770 it had expended to hire a certified public accountant. Respondent never replied to Smith, nor did he refund or reimburse any money to Vinyl.

On September 26, 2001, Vinyl settled Davidson's outstanding cost bill for $5,000. Although respondent had agreed to reimburse Vinyl for that settlement, he never did so.

The State Bar Investigation

On July 2, 2001, the State Bar opened an investigation (the Vinyl investigation) in case No. 01-O-02662, pursuant to a complaint by Smith against respondent, dated June 27, 2001.

On August 24, 2001, a State Bar investigator wrote to respondent regarding the Vinyl complaint. On September 21, 2001, the investigator again wrote to respondent regarding the Vinyl complaint. The investigator wrote to respondent a third time on November 29, 2001, regarding the complaint. Each of the aforementioned Vinyl investigation letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Vinyl complaint.

Each of the investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to any of the Vinyl investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))[2]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A) by failing to: (1) timely file an opposition to the motion for summary judgment; (2) remit the requisite filing fee to the clerk of the Court of Appeal for the appeal of the court order granting Davidson's motion for summary judgment; and (3) timely file a motion for relief from default.

Counts 2 and 3: Failure to Communicate (Bus. & Prof. Code, § 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 Smith's numerous telephone inquiries from March to October 2000, regarding the status of the motion for summary judgment and the case in general, by failing to respond to Smith's numerous telephone inquiries from November 2000 to April 2001, regarding the status of the case, by failing to inform Smith of the two continuances of the motion for summary judgment hearing and of the continuance of the trial date, by failing to inform Smith of the court's ruling on the motion for summary judgment, by failing to inform Smith of the dismissal of the appeal, and by failing to inform Smith of the court order denying Vinyl's motion to set aside the judgment, respondent willfully failed to respond to reasonable status inquiries and failed to inform his client of significant developments, in willful violation of section 6068, subdivision (m).

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[2]References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

Count 4: Failure to Return 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. The State Bar urges that the fees totaling $40,158.65 paid by Vinyl to respondent, as well as $6,770 paid by Vinyl to a certified public accountant (CPA) should be reimbursed to Vinyl as an unearned attorney fee.

Respondent's representation of Vinyl began in November 1997 and ended in 2001. The MSJ was filed on February 24, 2000, more than two years after respondent began providing legal services to Vinyl. The amended NDC states that the parties entered into a Legal Representation Agreement in January 1998. However, the amended NDC fails to provide the terms and conditions of the Legal Representation Agreement. Nor does the amended NDC specify what services respondent actually performed in the first two years that he represented Vinyl.[3]

Given the paucity of facts alleged in Count 4 regarding the Legal Fee Agreement and the amended NDC's complete lack of facts regarding the work performed by respondent between 1997 and February 2000, the facts as set forth in the amended NDC are insufficient to support a finding by clear and convincing evidence that respondent's services were of no worth and that the fees received by respondent were unearned.

Additionally, the State Bar contends that the $6,770, which Vinyl paid to a CPA, who was hired at respondent's urging, should also be be reimbursed to the client by respondent. The State Bar's contention is without merit. The $6,770 fee, which the client paid to the CPA was not part of an advance fee for legal services, and this court cannot order that it be reimbursed as such.

Accordingly, Count Four is dismissed with prejudice.

Count 5: 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. Respondent failed to cooperate

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[3]Upon entry of a respondent's default, factual allegations set forth in a notice of disciplinary charges are admitted into evidence, unless otherwise ordered by the court based on contrary evidence. However, a conclusory statement in a notice of disciplinary charges that years of legal services provided by a respondent are of no worth must be supported by facts specified in the notice of disciplinary charges.

with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's August 24, September 21, and November 29, 2001 letters or participate in the investigation of the Vinyl matter.

2. The Brewer/Van Tassel Matter (Case No. 01-O-04432)

Findings of Fact

In November 1998, respondent was employed by Laurie Brewer and Lauren Van Tassel (collectively, Brewer/Van Tassel) to represent them in a home construction defect case. On January 5, 1999, Brewer/Van Tassel paid respondent $2,500 as an advanced attorney fee.

In January 2000, respondent wrote to Brewer/Van Tassel, stating that he had decided to restrict his law practice to estate matters only. Brewer/Van Tassel then contacted respondent to inquire whether he would continue to represent them in their construction defect case; respondent stated that he would finish the case.

In June 2000, the American Arbitration Association (the AAA) sent respondent and opposing counsel a letter about procedures in the arbitration demanded by opposing counsel. Respondent received the letter. On June 23, 2000, the AAA sent respondent and opposing counsel another letter, which included a list of fast track arbitrators and a request for each side to select arbitrators from the list within seven days. Although respondent received the letter, he failed to designate the arbitrators as requested.

On July 5, 2000, respondent telephoned Brewer/Van Tassel stating that he would be unable to conclude their case because he did not have the time to do so. Respondent requested and received permission from Brewer/Van Tassel to discuss the case with another attorney who he thought might handle it.

At respondent's suggestion, Brewer/Van Tassel employed the second attorney, who was paid an additional $2,500 as an advance fee. The second attorney took over the case on July 5, 2000, and was able to conclude Brewer/Van Tassel case in mediation.

On January 24, 2002, Brewer/Van Tassel sent respondent a letter to request an accounting of the client funds and a refund of unearned attorney fees. Respondent never replied to his client, never provided an accounting, nor did he ever refund any unearned attorney fees.

The State Bar Investigation

On June 1, 2006, the State Bar opened an investigation (the Brewer/Van Tassel investigation) in case No. 01-O-04432, pursuant to a complaint by Brewer/Van Tassel against respondent, dated May 16, 2001.

On January 7, 2002, a State Bar investigator wrote to respondent regarding the Brewer/Van Tassel complaint. On January 31, 2002, the investigator again wrote to respondent regarding the Brewer/Van Tassel complaint. Each of the two aforementioned investigation letters requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Brewer/Van Tassel complaint.

Each of the two investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to either of the Brewer/Van Tassel investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 6: 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 client funds in his possession and render appropriate accounts to the client.

By not providing an accounting of the attorney fee advanced to him, as was requested by Brewer/Van Tassel in the July 24, 2002 letter, respondent willfully failed to render appropriate accounts to the client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 7: Failure to Return Unearned Fees (Rule 3-700(D)(2))

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

Respondent was paid an advance fee of $2,500 to represent his clients in a construction

defect case. Thereafter, respondent terminated his services and informed his clients that he would be unable to complete the legal services for which he had been retained because he did not have the time. As Count 7 contains no allegation that the $2,500 advance fee or any portion thereof paid to respondent was unearned, the court finds that the facts as set forth in the amended NDC are insufficient to support a finding by clear and convincing evidence that respondent violated rule 3-700(D)(2).

Count 8: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's January 7 and January 31, 2002 investigation letters or otherwise cooperate with the State Bar in its investigation of the Brewer/Van Tassel matter.

3. The Baker Matter (Case No. 02-O-14509)

Findings of Fact

In January 2001, Tracie and Kelly Baker (the Bakers) employed respondent. Respondent was hired to create two trusts, to dissolve the Orville Kentala Family Trust (the Kentala trust) for which Tracie Baker (Tracie) was the trustee, and to transfer titles to certain property as part of the trust work. The Bakers told respondent that it was important that these tasks be accomplished as soon as possible.

Over time, Tracie paid respondent $3,600 as an advance attorney fee in the Baker matter as follows:

Date Paid	Amount of Advanced Fee
August 2, 2001	$1,000
February 20, 2002	$1,250
March 6, 2002	$1,350

Respondent failed to perform the legal services for which he was employed, despite repeated assurances to the Bakers that he would do so.

On August 12, 2002, the Bakers sent respondent a certified letter to the address at which they had been communicating with him; the letter was returned by the United States Post Office as unclaimed. Kelly Baker (Kelly) also left a copy of the letter at respondent's office door. Moreover,

the Bakers left a message for respondent, in which they read the August 12, 2002 letter into respondent's voice mail. The letter demanded that respondent produce the two trusts that he was employed to complete, provide proof that the Kentala trust had been dissolved, and provide proof that all titles had been transferred. On September 10, 2002, the Bakers sent an additional demand letter to respondent, a copy of which they also transmitted to him by facsimile.

Respondent did not reply to either the August 12 or September 10, 2002 letter. Nor did he communicate with the Bakers after their two demand letters were sent.

The State Bar Investigation

On September 19, 2002, the State Bar opened an investigation (the Baker investigation), in case No. 02-O-14509, pursuant to a complaint by the Bakers against respondent, dated September 11, 2002.

On October 1, 2002, a State Bar investigator wrote to respondent regarding the Baker complaint. On October 16, 2002, the investigator again wrote to respondent regarding the Baker complaint. Each of the two aforementioned investigation letters requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Baker complaint.

Each of the two investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to either of the Baker investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 9: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to perform any of the services for which he had been retained, i.e., create the two trusts, dissolve the Kentala Trust, and transfer titles as part of the trust work, respondent recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Count 10: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By failing to respond to his client's August 12 and September 10, 2002 letters and by failing to respond to his clients' voice mail message, respondent willfully failed to respond to reasonable status inquiries his clients, in willful violation of section 6068, subdivision (m).

Count 11: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Respondent earned no portion of the $3,600 advance attorney fee he had been paid, because he did not perform the legal services for which he had been employed. Moreover, respondent ceased communicating with the Bakers after they sent him demand letters on August 12 and September 10, 2002, thereby effectively terminating his employment. By failing to refund the $3,600 in unearned advance attorney fees, after termination of his employment, respondent failed to promptly return a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

Count 12: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's October 1 and October 16, 2002 investigation letters or otherwise cooperate with the State Bar in its investigation of the Baker matter.

4. The Pease Matter (Case No. 02-O-14959)

Findings of Fact

In February 2002, respondent was employed by Martha J. Pease (Pease) to represent her in a family trust matter entitled *Pease Family Trust*, Butte County Superior Court Docket No. 34410. Pease paid respondent $8,000 as an advance attorney fee at that time.

Beginning in September 2002, Pease visited respondent's office several times and placed several telephone calls to respondent in order to determine the status of the *Pease Family Trust* matter, to terminate respondent's legal services, and to retrieve her original documents. Respondent, however, never responded to her inquiries for information about her case.

A hearing was set in the *Pease Family Trust* matter for September 23, 2002 at 10:30 a.m. Although respondent received actual notice of the hearing, he did not inform Pease of the hearing. Pease, who had been unable to contact respondent, learned of the hearing date only three days before the hearing by going to the courthouse and researching the court file. Pease appeared at the

September 23, 2002 hearing. But, respondent failed to appear and failed to notify Pease and/or the court that he would not appear. Pease had to represent herself because respondent did not appear.

Thereafter, Pease obtained substitute counsel, who attempted to contact respondent numerous times in order to obtain a signed substitution of attorney and to retrieve Pease's files. Respondent never responded. On October 2, 2002, substitute counsel obtained an ex parte order from the court, which substituted respondent out of the case. The ex parte order further required that respondent immediately provide to substitute counsel all original files, records and/or documentation in his possession regarding the *Pease Family Trust* matter. Respondent received notice of the order and eventually turned over the original documents. But, he never turned over the pleadings file to Pease or her attorney.

The State Bar Investigation

On October 16, 2002, the State Bar opened an investigation (the Pease investigation) in case No. 02-O-14959, pursuant to a complaint by Pease against respondent, dated October 4, 2002.

On November 12, 2002, a State Bar investigator wrote to respondent regarding the Pease complaint. On December 2, 2002, the investigator again wrote to respondent regarding the Pease complaint. Each of the two aforementioned investigation letters requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Pease complaint.

Each of the two investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to either of the Pease investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 13: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to appear at the September 23, 2002 hearing of which he had notice and by failing

to notify the court that he would not be appearing, respondent recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Counts 14 and 15: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By failing to respond to Pease's telephone inquiries requesting information about the status of the *Pease Family Trust* matter, by failing to inform his client of the September 23, 2002 hearing, and by failing to notify his client that he would not appear at that hearing, respondent willfully failed to respond to reasonable status inquiries and failed to inform his client of significant developments, in willful violation of section 6068, subdivision (m).

Counts 16 and 17: Improper Withdrawal From Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))

Rule 3-700(A)(2) provides that a member must not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

Respondent, in effect, withdrew from representation of Pease by ceasing without notice to perform legal services. Not only did respondent fail to respond to Pease's telephone calls and visits to his office, but he failed to represent Pease at the September 23, 2002 hearing in the matter for which he had been retained. Having completely lost contact with respondent, Pease had to hire other counsel to take over the matter. Respondent, however, was unavailable for contact by successor counsel to facilitate a transfer of the case. Despite successor counsel's numerous attempts to contact respondent in order to obtain a signed substitution of attorney and to retrieve the client files, respondent never responded. Substitute counsel, therefore, found it necessary to obtain an ex parte order, substituting respondent out of the case. Only in response to the court's order did respondent eventually turn over the client's original documents; but, respondent never turned over the pleadings file to the client or her new attorney. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in willful violation of rule 3-700(A)(2). Accordingly, the court finds by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2) in count 17.

However, as the court has already found respondent culpable of willfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 16. 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.

The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than rule 3-700(D)(1). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring the prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to promptly return the original file and to return the pleadings file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1). The court, therefore, dismisses Count 16 with prejudice.

Count 18: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's November 12 and December 2, 2002 investigation letters or otherwise cooperate with the State Bar in its investigation of the Pease matter.

5. The Anfinson Matter (Case No. 03-O-00940)

Findings of Fact

In June 2001, respondent was employed by Thomas E. Anfinson (Anfinson) to represent him as co-trustee in a trust matter entitled *In the Matter of the Jane S. Weinrich 1997 Revocable Trust*, Glenn County Superior Court Docket No. 99PR8668. On June 21, 2001, Anfinson paid respondent $10,000 as an advance attorney fee.

Specifically, respondent was employed by Anfinson to defend against a motion to fix and assess surcharge upon him as trustee and for related relief. Anfinson requested that respondent communicate information about the case with Anfinson's local counsel in Washington, D.C.

Respondent, however, failed to complete the legal services for which he was employed. In

August and September 2001, Anfinson's local counsel attempted to contact respondent numerous times by telephone and by e-mail to discuss the status of the case. Respondent did not respond. On September 13, 2001, Anfinson's local counsel wrote to respondent. In his letter, local counsel informed respondent that he was very concerned and requested that respondent telephone him. Respondent, however, did not reply. Thereafter, Anfinson terminated respondent's services, requested an accounting of the client fees, and also requested a refund of unearned attorney fees. Anfinson then employed new counsel. Respondent signed the substitution of attorney on September 19, 2001. But, he never provided an accounting to Anfinson or refunded unearned attorney fees.

The State Bar Investigation

On July 2, 2001, the State Bar opened an investigation (the Anfinson investigation) in case No. 03-O-00940, pursuant to a complaint by Anfinson against respondent, dated February 25, 2003.

On April 2, 2003, a State Bar investigator wrote to respondent regarding the Anfinson complaint. On April 23, 2003, the investigator again wrote to respondent regarding the Anfinson complaint. Each of the two aforementioned investigation letters requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Anfinson complaint.

Each of the two investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to either of the Anfinson investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 19: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to complete the legal services for which he was employed, respondent recklessly failed to perform legal services with competence.

Count 20: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

When respondent was employed by Anfinson, Anfinson requested that respondent communicate information about the case with Anfinson's local counsel. By failing to respond to local counsel's numerous telephone and e-mail inquiries about the status of the case, respondent willfully failed to respond to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

Count 21: Failure to Return Unearned Fees (Rule 3-700(D)(2))

It is alleged in Count 21 that in June 2001 respondent was employed by Anfinson to represent him in a trust matter. Respondent was paid an advance fee of $10,000. Respondent, however, failed to complete the services for which he was employed. After September 13, 2001, Anfinson terminated respondent's services and requested an accounting of the fees that had been advanced to respondent, as well as a refund of unearned fees. Although it is alleged that respondent failed to complete the services for which he was employed, there is no allegation in the amended NDC, that respondent failed to earn any portion of the $10,000 fee that had been advanced to him. Given the facts as set forth in Count 21of the amended NDC, the allegations therein are insufficient to support a finding by clear and convincing evidence that the $10,000 fee, or any portion thereof, was unearned. Thus Count 21 is dismissed with prejudice.

Count 22: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

By not providing an accounting of the $10,000 attorney fee advanced to him, as was requested by Anfinson, respondent willfully failed to render appropriate accounts to the client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 23: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's April 2 and April 23, 2003 investigation letters or otherwise cooperate with the State Bar in its investigation of the Anfinson matter.

6. The Gomez Matter (Case No. 03-O-01104)

Findings of Fact

In June 2001, respondent was employed by Salvador Gomez (Gomez) to represent him as a defendant in litigation entitled *Techright Enterprises, Ltd. v. Brodsky, et al.,* Butte County Superior

Court Docket No. 125220. On June 6, 2001, Gomez paid respondent $10,000 as an advance attorney fee. Thereafter, Gomez paid respondent an additional $1,800 in advanced attorney fees.

Between June 2001 and September 2002, Gomez made numerous telephone calls to respondent for status updates on the case and to obtain an accounting of the fees he had advanced to respondent. Respondent did not respond to Gomez's numerous calls. Moreover, he performed no legal services of value in the *Techright* litigation for Gomez. Nor did respondent refund to Gomez any part of the $11,800 advance fee he had been paid.

In September 2002,Gomez sought assistance from another attorney to communicate with respondent on his behalf. The other attorney twice telephoned respondent. Although he left messages on respondent's voice mail, respondent never returned the calls.

On September 19, 2002, the other attorney wrote to respondent and requested a return call. He also asked respondent to provide an accounting of the tasks performed on Gomez's behalf and to render an account of the client funds. Respondent never responded.

On January 9, 2003, Gomez wrote to respondent demanding an accounting of the client funds, terminating respondent's legal services, and requesting the return of his client file. Respondent never replied. Nor did he provide an accounting or return the client file.

The State Bar Investigation

On March 21, 2003, the State Bar opened an investigation (the Gomez investigation) in case No. 03-O-01104, pursuant to a complaint by Gomez against respondent, dated February 14, 2003.

On June 9, 2003, a State Bar investigator wrote to respondent regarding the Gomez complaint. On June 24, 2003, the investigator again wrote to respondent regarding the Gomez complaint. Each of the two aforementioned investigation letters requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the Gomez complaint.

Each of the two investigation letters was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letters as undeliverable or for any other reason.

Respondent failed to provide a written response to either of the Gomez investigation letters, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letters.

Conclusions of Law

Count 24: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to perform any legal services of value in the *Techright* litigation, respondent recklessly failed to perform legal services with competence.

Count 25: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By failing to respond to the Gomez's numerous telephone calls, made between June 2001 and September 2002, for status updates and by failing to respond to the telephone calls from the attorney who was attempting to communicate with respondent on Gomez's behalf, respondent willfully failed to respond to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

Count 26: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to refund the $11, 800 advance fee upon termination of his employment, after having performed no legal services of value, respondent willfully violated rule 3-700(D)(2).

Count 27: Failure to Render Accounts of Client Funds (Rule 4-100(B)(3))

By not providing an accounting of the $11,800 attorney fee advanced to him, as was requested by Gomez, respondent willfully failed to render appropriate accounts to the client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 28: Failure to Return 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 papers and property. Respondent willfully violated rule 3-700(D)(1) by failing to return the client file which Gomez requested in his January 9, 2003 letter to respondent.

Count 29: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's June 9 and June 24, 2003 investigation letters

or otherwise cooperate with the State Bar in its investigation of the Gomez matter.

7. The McKiernan Matter (Case No. 03-O-01232)

Findings of Fact

Prior to February 2003, respondent represented Robert M. McKiernan (McKiernan) in a case entitled *Estate of Eileen McKiernan*, Butte County Superior Court Docket No. PR 35406. Over time, respondent was paid $8,244.21 for his legal services.

On February 14, 2003, McKiernan's subsequent counsel wrote to respondent to request that respondent sign and return a substitution of counsel and release the client file. Respondent did not reply to the February 14, 2003 request. On March 5, 2003, McKiernan's subsequent counsel again wrote to respondent to request that it was urgent that respondent sign the substitution of counsel and release the client file. Respondent again did not reply. On March 19, 2003, McKiernan's subsequent counsel yet again wrote to respondent to request that he sign the substitution of counsel and release the client file. Respondent once more did not reply.

In April 2003, respondent sent a signed substitution of attorney to McKiernan's counsel. The signed substitution was dated "March 3, 2003." The envelope, however, was addressed to McKiernan's subsequent counsel at an address that was completely different from the correct address. Although the envelope bore a postage meter date of March 3, 2003, the mailing was postmarked April 14, 2003.

On April 24, 2003, McKiernan's subsequent counsel wrote to respondent to request the client file. Respondent never replied, nor did he ever forward the client file.

The State Bar Investigation

On March 27, 2003, the State Bar opened an investigation (the McKiernan investigation) in case No. 03-O-01232, pursuant to a complaint by McKiernan against respondent, dated March 21, 2003.

On April 13, 2003, a State Bar investigator wrote to respondent regarding the McKiernan

complaint.[4] The aforementioned investigation letter requested that respondent reply in writing to specified allegations of misconduct being investigated by the State Bar in relation to the McKiernan complaint. The letter was placed in an envelope correctly addressed to respondent at his official membership records address and properly mailed by first class mail, postage prepaid. The United States Postal Service did not return the investigation letter as undeliverable or for any other reason.

Respondent failed to provide a written response to the McKiernan investigation letter, nor did he in any way substantively respond to the allegations of misconduct being investigated by the State Bar as requested in the letter.

Conclusions of Law

Counts 30 and 31: Improper Withdrawal From Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))

Rule 3-700(A)(2) provides that a member must not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

When McKiernan attempted to obtain successor counsel, respondent did not facilitate a transfer of the case. For two months, respondent failed to mail a substitution of attorney, despite successor counsel mailing respondent three requests for the substitution of attorney and for the client file. Moreover, despite a fourth request from successor counsel for the client file, respondent never forwarded the file. Thus, respondent effectively withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in willful violation

[4]In paragraph 169 of the amended NDC, under the "General Background Allegations" relevant to the McKiernan "investigation letters," it is stated that "on or about April 17, 2003" the State Bar investigator wrote to respondent "regarding the Gomez complaint." In the next sentence, it is stated that "on or about April 13, 2003," the State Bar investigator "wrote to respondent again regarding the McKiernan complaint." The allegation regarding the "April 17, 2003" letter provides no information regarding the McKiernan investigation and provides no information regarding the McKiernan complaint. As the allegation regarding the State Bar's April 17, 2003 letter is irrelevant to the McKiernan matter, the court will not admit said allegation into evidence.

of rule 3-700(A)(2). Accordingly, the court finds by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2) in count 31.

However, as the court has already found respondent culpable of willfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 30. 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.

The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than rule 3-700(D)(1). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring the prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to promptly return the client file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1). The court, therefore, dismisses count 30 with prejudice.

Count 32: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's April 13, 2003 investigation letter or otherwise cooperate with the State Bar in its investigation of the McKiernan matter.

8. The Seeman Matter (Case No. 03-O-04976)

Findings of Fact

On January 21, 2003, respondent was employed by Gary L. Seeman (Seeman) and his wife (Mrs. Seeman) (collectively, the Seemans) to close a trust on the death of Seeman's stepmother. The fee that they agreed on was one-half of what the fee for probate services would have been. Respondent and Seeman, however, did not enter into a written legal services agreement. Seeman entrusted respondent with the original trust instrument, some original paperwork about a life insurance policy, and all the copies of the death certificate that Seeman had in his possession. Respondent stated that the work would be completed at the end of two months.

On February 3, 2003, respondent met with the Seemans. They gave respondent additional paperwork and calculations for part of the trust that was supposed to be split. Mrs. Seeman also met with respondent on February 10, 2003, to give him the original life insurance policy and a bond that had been in the safety deposit box of Seeman's stepmother. On February 20, 2003, respondent e-mailed a proposed letter of authorization to the Seemans which would allow him to talk to various financial institutes on their behalf. On March 10, 2003, the Seemans again met with respondent and provided him with all the financial information that Mrs. Seeman had collected. At that point, respondent had received all the information that was required to notify the remaining heirs and finalize the trust. On March 18, 2003, Mrs. Seeman also provided respondent with a life insurance policy.

Respondent also agreed to notify the new owner of a house that it was not part of the shared trust. However, respondent never contacted the new owner.

On April 2, 2003, the Seemans e-mailed respondent to request a status report. Respondent replied, stating that he was in court and promising to contact the Seemans the next day. Respondent, however, did not contact them. On April 11, 2003, the Seemans called respondent to ask for a status report. He was unable to talk to them; but he promised to return their calls after April 15, 2003. Respondent never returned the calls. Because the Seemans had not heard from respondent in a month and wanted a status report, they e-mailed respondent on May 8, 2003. Although respondent promised to contact them over the weekend, he did not do so.

The Seemans sent several more e-mails to respondent to inquire about their legal matter. But, respondent never replied. Finally, on June 27, 2003, Mrs. Seeman called respondent again. He told her that he had mailed the final paperwork on their behalf to the insurance company earlier in the week and was finalizing the paperwork for the bond. In fact, respondent had never mailed the final paperwork to the insurance company.

On July 22, 2003, the life insurance company wrote to the Seemans to inform them that unless it received paperwork and a death certificate, the funds from the policy would be placed into an unclaimed account and sent to the State of California. Mrs. Seeman then e-mailed and telephoned respondent many times. But, respondent did not respond. Thereafter, Mrs. Seeman contacted the

insurance company and resolved the matter directly with the company.

In September 2003, the Seemans employed a new attorney. They and their subsequent counsel contacted respondent numerous times by e-mail, telephone, and personal visits to obtain the Seemans' file. Respondent never replied, nor did he ever return the client file.

Conclusions of Law

Count 33: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

Respondent was employed in January 2003, to finalize the trust of Seeman's stepmother. He also agreed to notify the new owner of a house that it was not part of the shared trust. He informed the Seemans that the work would be completed at the end of two months. By failing to notify the owner of the new house that it was not part of the shared trust as he had agreed to do and by failing to finalize the trust in six months, respondent recklessly failed to perform legal services with competence.

Count 34: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Beginning in April 2003 and continuing through June 2003, the Seemans placed numerous telephone calls to respondent and sent numerous e-mails to him to request status updates regarding their legal matter, i.e., the finalization of the trust. By failing to respond to the clients' repeated telephone calls and e-mails, respondent willfully failed to respond to the Seemans' reasonable status inquiries, in willful violation of section 6068, subdivision (m).

Counts 35 and 36: Improper Withdrawal From Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))

By cutting off communication with his clients and by failing to return the client file, despite the clients' request, respondent effectively ceased performing legal services on their behalf and otherwise terminated his professional relationship with the Seemans. The Seemans hired a new attorney whose numerous requests for the return of the client file also went unheeded. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in willful violation of rule 3-700(A)(2). Accordingly, the court finds by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2) in count 36.

However, as the court has already found respondent culpable of willfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 35. 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.

The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than rule 3-700(D)(1). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring the prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to promptly return the client file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1). The court therefore dismisses count 35 with prejudice.

9. *The Hendryx Matter (Case No. 04-O-10698)*

Findings of Fact

In October 2002, respondent was employed by June Hendryx (Hendryx) to represent her as successor trustee of the Betty J. Jenkin Trust, in administering the trust and the estate of Betty J. Jenkin, the client's sister. Respondent and Hendryx entered into a written legal services agreement on October 18, 2002. On October 25, 2002, Hendryx paid respondent $1,000 as an advance attorney fee. On March 13, 2003, Hendryx paid respondent an additional $500 advance attorney fee.

On March 13, 2003, respondent met with Hendryx and told her that he was going to prepare the 2002 income tax returns, and would obtain an extension for that purpose. Respondent, however, never contacted the Internal Revenue Service as he said he would do. In fact, respondent provided no legal services of value for Hendryx.

From March 13, 2003 until September 13, 2003, Hendryx attempted to contact respondent by making several telephone calls to him. Her attempts were fruitless.

Hendryx sent respondent a letter on or about September 13, 2003, requesting that respondent contact her to provide her with a status report. She also asked respondent to return all of her original

documents. Respondent did not respond, nor did he return her original documents to her.

Conclusions of Law

Count 37: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to provide any legal services of value for his client, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-100(A).

Count 38: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By failing to respond to the telephone calls Hendryx made to him between March 13 and September 13, 2003, and by failing to respond to Hendryx's September 13, 2003 letter requesting a status report on her legal matter, respondent failed to respond to reasonable client inquiries, in willful violation of section 6068, subdivision (m).

Counts 39, 40, and 41: Improper Withdrawal From Employment (Rule 3-700(A)(2)); Failure to Return Client File (Rule 3-700(D)(1)); and Failure to Return Unearned Fees (Rule 3-700(D)(2))

By making himself unavailable to his client from March to September 2003, and by failing to return the client's original documents, despite the client's demand for them, respondent effectively withdrew from representation of his client and terminated employment without taking reasonable steps to avoid foreseeable prejudice to the client, in willful violation of rule 3-700(A)(2). Thus, the court finds that the State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2) in count 41.

However, as discussed in Seeman matter, *ante*, the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 39. Because respondent's failure to return the client documents is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1) and, therefore, dismisses count 39 with prejudice.

Likewise, rule 3-700(A)(2) is more comprehensive than rule 3-700(D)(2). *(In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269,280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring return of unearned fees. Thus, an attorney's failure to promptly return unearned fees may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Respondent provided no services of value for Hendryx, and thus did not earn the advance attorney fee of $1,500. But, as respondent's failure to return that unearned fee is encompassed in his improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(2). The court, therefore, dismisses count 40 with prejudice.

10. *The Furtado Matter (Case No. 05-O-01083)*

Findings of Fact

On March 3, 2003, respondent was employed by Kathleen Furtado (Furtado) to represent her in a matter entitled *Estate of Donald R. Furtado*, Glenn County Superior Court Docket No. PR00048. On that same date she paid respondent $1,000 as an advanced attorney fee.

As a result of respondent's efforts on behalf of Furtado, the executor of her late husband's estate was dismissed as executor. At that time, respondent offered to assist Furtado with other estate issues should they arise.

From August to September 2003, Furtado made several telephone attempts to contact respondent, but respondent did not return her calls. Respondent, however, called Furtado in September 2003. They agreed that respondent would perform the legal services to close her husband's estate. On July 12, 2004, Furtado paid respondent $1,034 as an advance attorney fee to close the estate. Between July 12 and October 8, 2004, Furtado attempted to contact respondent on numerous occasions by telephone and e-mail. Respondent, however, did not respond to any of her communications. Moreover, respondent performed no further legal services for Furtado.

In October 2004, Furtado began requesting that respondent refund the unearned attorney fees and return the client file. Respondent did not comply with the requests.

Conclusions of Law

Count 42: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to close the estate of Furtado's late husband, i.e., failing to perform the legal services for which he was hired, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

Count 43: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

By failing to respond to Furtado's numerous telephone calls and e-mails, respondent failed

to respond to client inquiries, in willful violation of section 6068, subdivision (m).

Counts 44, 45, and 46: Improper Withdrawal From Employment (Rule 3-700(A)(2)); Failure to Return Client File (Rule 3-700(D)(1)); and Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to close the estate of Furtado's late husband, by not responding to any of the client's attempts to communicate with him from July 12 to October 8, 2004, and by performing no further legal services for Furtado, respondent effectively withdrew from representation and otherwise terminated his professional relationship with Furtado without informing her. Moreover, by failing to perform legal services after July 12, 2004, the day respondent was advanced a $1,034 fee to close the estate of Furtado's husband, he failed to earn said fee. Despite the requests, which Furtado began making in October 2004, for a refund the unearned attorney fee and the return of the client file, respondent did not comply with those requests. Thus, respondent willfully failed to take reasonable steps to avoid foreseeable prejudice to the client, in willful violation of rule 3-700(A)(2). Accordingly, the court finds that the State Bar proved by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2) in count 46.

However, as discussed in Seeman matter, *ante*, the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 44. Because respondent's failure to return the client file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1) and, therefore, dismisses count 44 with prejudice.

Likewise, as discussed in the Hendryx matter, *ante*, the court declines to find respondent culpable of willfully violating rule 3-700(D)(2) as alleged in count 45. Because respondent's failure to return the unearned fee of $1,034 is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(2) and, therefore, dismisses count 45 with prejudice.

11. *The Larson Matter (Case No. 05-O-01675)*

Findings of Fact

In June 2003, respondent was employed by Beverly Larson (Larson) to provide legal services in an estate matter. She paid him $300 as an advance attorney fee at that time. Larson entrusted her

parents' original wills, her father's death certificate, and other original documents to respondent. Respondent, however, failed to complete the legal services for which he was employed. Thereafter, he did not refund any unearned attorney fees to Larson, nor did he return the client file to her.

In April 2005, Larson attempted to contact respondent to inquire about the status of her matter. But, his telephone was disconnected and he had provided no alternative way for her to reach him.

Conclusions of Law

Count 47: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to complete the legal services for which he was hired in an estate matter, respondent recklessly failed to perform legal services with competence in willful violation of rule 3-100(A).

Count 48: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. The fact that respondent's telephone number was disconnected is not a significant development in the matter for which he was retained. The allegations of Count 48 provide no evidence that respondent failed to keep his client informed of a significant development in her case. Accordingly, count 48 is dismissed with prejudice.

Counts 49 and 51: Improper Withdrawal From Employment (Rule 3-700(A)(2)); Failure to Return Client File (Rule 3-700(D)(1)); and Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to complete the legal services for Larson in the estate matter, as respondent had agreed to do and by failing to provide Larson with any way to reach him after his telephone was disconnected, respondent effectively withdrew from representation of Larson without informing her. Respondent also failed to return the client file, consisting of original documents, including the wills of the Larson's parents and her father's death certificate. Thus, respondent willfully failed to take reasonable steps to avoid foreseeable prejudice to the client, in willful violation of rule 3-700(A)(2). Accordingly, the court finds by clear and convincing evidence that respondent willfully violated rule 3-700(A)(2) in count 51.

However, as discussed in Seeman matter, *ante*, the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 49. Because respondent's failure

to return the client documents is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1) and, therefore, dismisses count 49 with prejudice.

Count 50: Failure to Return 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. It is alleged in Count 50 of the amended NDC that Larson employed respondent to provide legal services in an estate matter and paid him an advance fee of $300. It is further alleged that respondent failed to complete the legal services for which he was employed and did not refund unearned attorney fees to his client.

What is not alleged are facts regarding the legal services that respondent did perform. Nor is it alleged that respondent did not earn the $300 advance fee. Given the paucity of facts alleged in Count 50 of the amended NDC, the allegations therein are insufficient to support a finding by clear and convincing evidence that any portion of the $300 advance fee had not been earned by respondent. Accordingly, count 50 is dismissed with prejudice.

12. *The Young Matter (Case No. 05-O-02047)*

Findings of Fact

On July 31, 2004, respondent was employed by Mary Young (Young) to represent her in an estate matter. On that same date, respondent and Young entered into a written legal services agreement. Young also paid respondent $3,659 as an advanced fee at that time. Respondent performed some of the legal services for Young. But, he did not have her home put in her name.

In August 2004, when Young attempted to contact respondent at the telephone number that she had for him, it had been disconnected. As respondent had moved his office without informing Young, she was unable to reach him. Young and her brother, however, found respondent by searching for him on the internet and were able to reconnect with him.

Respondent subsequently provided some documents for Young to review. She reviewed the documents and suggested changes, which respondent made. On October 6, 2004, respondent told Young that he would get a court date and that she should call him after December 12, 2004.

On December 21, 2004, Young telephoned respondent and left a voice mail message in which

she asked respondent to return her call. Respondent did not return the call. Young left a second voice mail message on December 27, 2004, requesting a return call. Respondent again did not reply. On January 3, 2005, Young telephoned respondent a third time, but discovered that his office telephone number, his home telephone number, and his cell phone number had been disconnected. Respondent had not provided Young with any other way to contact him. Young never again heard from respondent.

On January 21, 2005,Young and her brother traveled to the court in Oroville to research whether the home had been placed in her name, and discovered that it had not.

Conclusions of Law

Count 52: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

In Count 52, it is alleged that "respondent was employed by Ms. Young to represent her in an estate matter." Although it is further alleged that respondent and Young entered into a written legal services agreement, none of the details of that agreement are provided in the amended NDC. Given the failure of the State Bar to set forth the terms of the legal services agreement in Count 52, the failure to allege with reasonable specificity the services for which respondent was retained or the services actually performed by respondent, the allegations in Count 52 are insufficient to support a finding by clear and convincing evidence that respondent failed to perform with competence by repeatedly failing " to complete legal services on the trust[5] matter for Ms. Young." (Amended NDC, Count 52, ¶278:24-25.) Accordingly, Count 52 is dismissed with prejudice.

Count 53: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Count 53 alleges that respondent violated section 6068, subdivision (m) by "failing to inform Ms. Young of an alternative way to contact him when his telephone

[5]In paragraph 278 of Count 52, the amended NDC alleges that respondent failed to perform with competence in a trust matter. In paragraph 267 of Count 52, the amended NDC alleges that respondent was employed to represent Young in an estate matter. The court assumes that the reference to a "trust" in paragraph 278 is in error. Nonetheless, the State Bar, has a duty to insure the accuracy of its work and not depend on the court to glean its intent.

numbers were disconnected on two occasions. . . ." That respondent failed to inform his client of an alternative way to contact him when his phone numbers were disconnected is not a significant development in the matter for which he was retained. (But, see Count 55, *infra*.) Thus, the amended NDC provides no evidence relevant to Count 53 that respondent failed to keep his client informed of significant developments in her case. Accordingly, count 53 is dismissed with prejudice.

Count 54: Failure to Return Unearned Fees (Rule 3-700(D)(2))

It is alleged in Count 54 of the amended NDC that Young employed respondent to represent her in an estate matter and paid him an advance fee of $3,659. It is further alleged that respondent performed some of the legal services for which he was employed, but "failed to have her home put into her name."

What is not alleged are facts regarding the terms of the written legal fee agreement and respondent's compliance therewith. Given the paucity of facts alleged in Count 54, the allegations therein are insufficient to support a finding by clear and convincing evidence that there was any part of the $3,659 advance fee that had not been earned by respondent. Accordingly, Count 54 is dismissed with prejudice.

Count 55: Improper Withdrawal From Employment (Rule 3-700(A)(2))

On October 6, 2004, respondent informed Larson that he would get a court date for her and that she should call him after December 12, 2004. Respondent then failed to return Larson's December 21 and December 27, 2004 telephone calls. At some time between December 27, 2004 and January 3, 2005, respondent's office telephone number, his home telephone number and his cell telephone number were all disconnected. By failing to provide Larson with any way to reach him after his office, home and cellular telephones were disconnected and by failing to obtain a court date for her as he had informed her he would do, respondent constructively terminated his employment with Larson and ceased to perform legal services on her behalf without taking any steps to avoid reasonably foreseeable prejudice to the client.

Accordingly, the court finds by clear and convincing evidence that respondent improperly withdrew from employment in willful violation of rule 3-700(A)(2).

C. Second Notice of Disciplinary Charges

The Jackson Matter (Case No. 06-O-15319)

Findings of Fact

On March 20, 2006, John and Charlene Jackson (the Jacksons) met with respondent and employed him to represent them in a trust and estate matter. Specifically respondent was employed to prepare a living trust, to fund a bank account, and to transfer a deed. Respondent agreed to represent the Jacksons for a flat fee of $2,250. The Jacksons paid respondent $500 as an advance attorney fee. Respondent, however, never gave the Jacksons an attorney fee agreement.

On August 8, 2006, respondent went to the Jacksons' home with a copy of the living trust and advanced health care directives, which he had prepared for them. At that time, he requested that they pay him the balance due of $1,750.

However, there were numerous problems with the documents. First, the Jacksons had not requested advanced health care directives, since they could have had the directives prepared for them free of charge by their health insurance carrier. Second, respondent included incorrect names in the living trust. Third, respondent failed to include necessary addresses. Fourth, respondent failed to break down the property in the trust as the Jacksons had asked him to do. The Jacksons, therefore, gave the documents back to respondent. They refused to pay him until he corrected the errors, explained the revised documents to them, transferred the deed, and funded the bank account as he had agreed to do.

Respondent then told the Jacksons that they could fund the bank account and transfer the deed on their own. The Jacksons countered that responded had agreed to fund the bank accounts and transfer the deed that as part of his fee. Respondent again insisted that he should be paid the remainder of his fee, stating that after he was paid he would finish the work as he had agreed to do. The Jacksons then advanced respondent another $500, relying on his promise that he would complete the work.

During the week of August 13, 2006, respondent telephoned the Jacksons; they gave him the percentages for each child to be included in the living trust. Respondent agreed to revise the trust document and provide it within a short time to the Jacksons. The Jacksons, however, never received the corrected living trust from respondent. On August 20, 2006, Mrs. Jackson telephoned respondent

and left a voice mail message for him, requesting a return call. Respondent never replied.

On September 15, 2006, the Jacksons sent respondent an e-mail, and requested that he call them and give them a status update. Respondent never replied to the e-mail or called the Jacksons in response. On October 17 and October 18, 2006, the Jacksons called respondent's office telephone number a total of four times to request a status update. But, the telephone was not answered and there was no telephone answering machine. On October 18, 2006, the Jacksons also wrote to respondent by certified mail, return receipt requested, to request a status update. Respondent received the letter, but never replied.

Respondent never provided the Jacksons with the corrected living trust documents; nor did he fund the bank account or transfer the deed as he had been employed to do. His services were of no worth to the Jacksons. Yet, respondent never refunded any part of the $1,000 advance attorney fee that he had been paid.

Conclusions of Law

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))

By failing to provide the final (corrected) living trust documents, by failing to fund the bank account, and transfer the deed, respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-100(A).

Count 2: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

On August 13, 2006, respondent agreed to provide the Jacksons within a short time with the completed trust documents that he had been employed to prepare. On August 20, 2006, Mrs. Jackson telephoned respondent and left a voice mail message for him in which she requested a return call. Respondent never replied. On September 15, 2006, the Jacksons sent respondent an e-mail, requesting that he call them and give them a status update. Respondent did not reply by e-mail, nor did he call the Jacksons. On October 17 and 18, 2006, the Jacksons telephoned respondent's office four times; but, the telephone was not answered, nor was the call answered by a message machine. On October 18, 2006, the Jacksons wrote to respondent by certified mail to request a status update. Although respondent received the letter, he did not reply.

By failing to respond to the Jacksons' repeated attempts to contact him by telephone, e-mail,

and certified mail, respondent failed to respond to reasonable status inquires of a client, in willful violation of section 6068, subdivision (m).

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

Respondent earned no portion of the $1,000 advance attorney fee because he performed no services of any worth for the Jacksons. Respondent never provided the corrected living trust, funded the bank account, or transferred the deed as he was retained to do. Moreover, after August 13, 2006, respondent ceased communicating with or performing legal services for the Jacksons, thereby effectively terminating his employment. By failing to refund the $1,000 unearned attorney fee to his clients, after termination of his employment, respondent failed to promptly return a fee paid in advance that was not earned, in willful violation of rule 3-700(D)(2).

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, std. 1.2(e).)[6] Although respondent has no record of prior discipline in his 24 years of practice when the misconduct began in 2000, his lack of record is not considered as mitigation because his present misconduct is very serious.

B. Aggravation

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

Respondent's professional misconduct demonstrates a pattern of misconduct. Respondent's misconduct in 13 client matters demonstrates a pattern of wrongdoing over a period of six years, including failing to perform services, failing to communicate with his clients, failing to return client files, failing to return unearned fees, failing to render accounts of client funds, improperly withdrawing from employment, and failing to cooperate with the State Bar. (Std. 1.2(b)(ii).)

Respondent's misconduct caused his clients substantial harm. Respondent's failure to return unearned fees deprived five of his clients of their funds. Several of them had to hire another attorney to substitute in his place. Furthermore, respondent's failure to file an opposition to the MSJ in the

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

Vinyl matter resulted in the court awarding costs in the amount of $8,183.32 against Vinyl.

Respondent's failure to return unearned fees of $18,934 to five clients demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

Finally, respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious 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.)

Respondent's misconduct involved 13 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 victim. The standards applicable to this case are standards 1.6, 2.4(a), 2.6, and 2.10.

Standard 2.4(a) provides that culpability of a member's pattern of wilful failure to perform services demonstrating the attorney's abandonment of the causes in which he was retained must result in disbarment. Here, there is clear and convincing evidence that respondent engaged in a pattern of abandoning his clients without performing the legal services for which he was employed.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept., August 24, 2006, No. 99-O-12923) __ Cal. State Bar Ct. Rptr. ___.) It has been long-held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment. In support of its recommended discipline the State Bar cited *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363 and *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459).

In *Myrdall*, the attorney disobeyed a court order, made false statements to the court, and habitually disregarded her clients' interests. She recklessly and repeatedly failed to provide competent legal services in seven matters, did not properly forward client files in four matters, and did not appropriately communicate with clients in two matters. Given the attorney's serious and wide-ranging misconduct in 12 matters, as well as significant aggravation and limited mitigation, the court found disbarment to be appropriate.

While the court finds *Myrdall* instructive regarding the level of discipline to be recommended, it finds the State Bar's urging that "respondent's habitual disregard of his clients' interests 'involves moral turpitude even if such disregard results only from carelessness or gross negligence,'" to be inapposite. In this default matter, the respondent is not charged with moral turpitude. A charge raised for the first time in the State Bar's brief on discipline cannot be considered as an aggravating circumstance. (Cf. *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585,589 ["Uncharged facts can not be relied upon for evidence of aggravation in a default matter because the respondent is not fairly apprised of the fact that additional uncharged facts will be used against him."].)

In addition to *Myrdall*, the court also finds *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1) instructive. In *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 more than $17,500 in unearned fees and costs in nine matters. The review department found disbarment to be the appropriate discipline.

Here, respondent's misconduct spanned a period of six years. In 10 counts, respondent failed to provide competent legal services. In seven counts, he did not properly forward client files. In nine counts, he did not properly communicate with clients. He failed to render an appropriate account of client funds in three counts. He also failed to return unearned fees, which amount to $18,934 in five client matters. The enormous harm to clients and to the public weigh heavily in assessing the appropriate level of discipline.

In recommending discipline, 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.) "It is clear

that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this hearing leaves the court without information about the underlying cause of respondent's offense or any mitigating circumstances surrounding his misconduct. Therefore, based on respondent's serious misconduct, the aggravating circumstances, the standards and the case law, the court finds disbarment warranted to protect the public and preserve public confidence in the profession.

Although the State Bar did not request that respondent be ordered to make restitution, the court recommends that respondent be ordered to pay restitution to the five clients to whom he failed to return unearned fees. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) It 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.)

VI. Recommended Discipline

Accordingly, the court recommends that respondent **Ed W. Hendren** 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 recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. Tracie Baker in the amount of $3,600 plus 10% interest per annum from September 10, 2002 (or to the Client Security Fund to the extent of any payment from the fund to Tracie Baker, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. Salvador Gomez in the amount of $11,800 plus 10% interest per annum from January 9, 2003 (or to the Client Security Fund to the extent of any payment from the fund to Salvador Gomez, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. June Hendryx in the amount of $1,500 plus 10% interest per annum from September 13, 2003 (or to the Client Security Fund to the extent of any payment from the fund to June Hendryx, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
4. to Kathleen Furtado in the amount of $1,034 plus 10% interest per annum from October 8, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Kathleen Furtado, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
5. to John and Charlene Jackson in the amount of $1,000 plus 10% interest per annum from August 13, 2006 (or to the Client Security Fund to the extent of any payment from the fund to John and Charlene Jackson, plus interest and costs, in accordance with Business and Professions Code section 6140.5)

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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.

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 of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under

section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: January ___, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court