

PUBLIC MATTER

FILED

AUG 11 2005

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

THE STATE BAR COURT HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of

ERIC A. COVER,

Member No. 183959,

A Member of the State Bar.

Case Nos. **01-O-03866-PEM;**
04-O-13448 (Cons.)

**DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT**

I. INTRODUCTION

In these two consolidated default matters, Respondent **ERIC A. COVER** is charged with professional misconduct involving seven clients within four years, including (1) failure to perform services, (2) failure to communicate, (3) failure to return client funds promptly, (4) improper withdrawal from employment, and (5) failure to cooperate with the State Bar.

The court finds, by clear and convincing evidence, that respondent is culpable of 13 of the 14 charged acts of misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred.

II. PERTINENT PROCEDURAL HISTORY

A. Case No. 01-O-03866

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) in case No. 01-O-03866 on November 18, 2004, at his official membership records address. (Rules Proc. of State Bar, rule 60.) The NDC was returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Before the NDC was filed, respondent met with the State Bar and agreed to send some



1 follow-up information, but he did not do so. On November 12, 2004, respondent left a phone
2 message with the State Bar. But when the State Bar tried to return his call on the same day, the
3 phone was not in service. The State Bar also wrote to him on the same day, advising him to call
4 again. Thereafter, the State Bar made several attempts to contact respondent by telephone at his
5 official membership records phone number and at alternative phone numbers. But the numbers were
6 either disconnected or not in service.

7 On the State Bar's motion, respondent's default was entered on January 11, 2005, and
8 respondent was enrolled as an inactive member on January 14, 2005, under Business and Professions
9 Code section 6007(e).¹ An order of entry of default was sent to respondent's official membership
10 records address but was returned as unclaimed.

11 The State Bar's brief on culpability and discipline was filed on January 27, 2005.

12 **B. Case No. 04-O-13448**

13 On January 20, 2005, the State Bar filed a second NDC in case No. 04-O-13448 and properly
14 served it on respondent at his official membership records address. The mailing was returned as
15 undeliverable. Respondent did not file a response to the NDC. In December 2004, the State Bar
16 again attempted to telephone respondent at his official membership records phone number, but the
17 number was still disconnected.

18 On January 31, 2005, the State Bar wrote to respondent, advising him that his phones were
19 out of service and that he should call the State Bar. The letter was not returned as undeliverable.
20 Respondent did not respond to the letter.

21 On the State Bar's motion, Respondent's default was entered on April 27, 2005, and
22 respondent was enrolled as an inactive member on April 30, 2005, under section 6007(e). An order
23 of entry of default was sent to respondent's official membership records address but was returned
24 as unclaimed.

25 In the interests of efficiency and economy, the court vacated the submission date of January
26

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

1 31, 2005, in case No. 01-O-03866 and consolidated the two cases on May 18, 2005.

2 Respondent did not participate in the disciplinary proceedings. The court took these matters
3 under submission on May 17, 2005, following the filing of the State Bar's brief on culpability and
4 discipline.

5 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

6 All factual allegations of the NDCs are deemed admitted upon entry of Respondent's default
7 unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule
8 200(d)(1)(A).)

9 **A. Jurisdiction**

10 Respondent was admitted to the practice of law in California on December 3, 1996, and has
11 since been a member of the State Bar of California.

12 **B. First Notice of Disciplinary Charges**

13 **1. *The Suarez Matter (Case No. 01-O-03866)***

14 In or about November or December 1999, Lillian Suarez employed respondent to represent
15 her minor son, Jesse Suarez, in a claim against a teacher and the Clovis Unified School District,
16 regarding an incident on school property.² Respondent did not file a claim on behalf of his client
17 until after the deadline had expired. As a result, Jesse Suarez lost his cause of action against the
18 school district.

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

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

22 Respondent recklessly failed to perform legal services with competence, in wilful violation
23

24 ²The date alleged in the NDC that the incident occurred on December 17, 1999, is a
25 harmless typographical error in that Suarez could not have hired respondent in November 1999,
26 before the incident happened. Nevertheless, the actual date of the incident is insignificant for the
purpose of this misconduct charge.

27 ³References to rule are to the current Rules of Professional Conduct, unless otherwise
28 noted.

1 of rule 3-110(A), by failing to timely file a claim on behalf of Jesse Suarez and thereby losing his
2 cause of action.

3 **2. *The Montagno Matter (Case No. 02-O-12835)***

4 On February 22, 2002, Carla Montagno (Montagno) hired respondent to represent her in a
5 paternal relationship matter regarding her son and her son's deceased father. She paid him \$2,000
6 in "International Trade Exchange" (ITEX) dollars. ITEX is a company which facilitates the
7 bartering of services.

8 Respondent did not perform the services for which he was hired: (1) Respondent did not
9 research the issue of jurisdiction (which was not proper in California, since the son was born in New
10 York and the father lived in Hawaii); (2) Respondent delegated his duty of communicating with
11 Montagno to a paralegal who misinformed her that a petition had been filed when, in fact, it was not;
12 and (3) Respondent's only work in the matter was drafting a petition, but it contained many errors.

13 On May 10, 2002, Montagno terminated respondent's employment and demanded a refund.
14 At the time, respondent's own records showed that he owed Montagno at least \$929.40.

15 Respondent did not refund the fees until November 1, 2003.

16 ***Count 2A: Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))***

17 Respondent recklessly and repeatedly failed to perform legal services with competence, in
18 wilful violation of rule 3-110(A), by failing to properly research the issue of jurisdiction, by failing
19 to properly supervise his paralegal so that correct information was communicated to his client, and
20 by failing to properly prepare the petition.

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

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

24 When Montagno terminated respondent's employment on May 10, 2002, respondent was
25 obligated to refund any unearned portion of the advanced fees or at least \$929.40. Respondent's
26 delayed payment in November 2003, almost six months later, was in wilful violation of rule 3-
27 700(D)(2).

28 //

1 **3. *The Gould Matter (Case No. 02-O-14128)***

2 On April 10, 2001, Vickie Gould (Gould) employed respondent to represent her concerning
3 her ex-husband's motion to enforce the judgment of their marital dissolution. Specifically, Gould
4 hired respondent to stop the enforcement of the sale of her residence by her ex-husband and
5 possibly in exchange for her agreement to forgo child support for the parties' disabled adult daughter
6 in *Leo A. Gould v. Vickie Gould*, Fresno County Superior Court, case No. 0538242-9.

7 On May 1, 2001, respondent represented Gould at the hearing on her ex-husband's motion.
8 Gould was not present. The court ordered that the residence be sold. However, respondent did not
9 inform Gould of the court's ruling, take other action to stop the sale of the residence, obtain child
10 support or otherwise protect her interest.

11 Gould did not learn of the court's order until October 19, 2001, when her ex-husband's real
12 estate agent contacted her. Thereafter, and continuing until November 30, 2001, Gould made
13 numerous telephone calls to respondent's office, leaving repeated messages regarding the status of
14 her case. Respondent received these messages but did not return any of the calls.

15 Finally, on November 30, 2001, Gould waited in respondent's office for about two hours
16 until respondent finally spoke to her.

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

18 The State Bar alleges that respondent recklessly and repeatedly failed to perform legal
19 services with competence by failing to perform services for Gould following the May 1, 2001
20 hearing.

21 The factual allegations set forth in the NDC stated that respondent was hired, on behalf of
22 Gould, to handle ex-husband's motion to enforce the sale of her residence and "possibly in exchange
23 for Gould's agreement to forgo child support for the parties' disabled adult daughter." Based on the
24 alleged facts, respondent did appear at the hearing and the court ruled against his client. It is
25 unclear as to what other services respondent was hired to perform. The State Bar's allegation that
26 respondent was hired to "*possibly* in exchange for Gould's agreement to forgo child support" does
27 not demonstrate by clear and convincing evidence that Respondent was hired to obtain child support.
28 Rather, it reads that forgoing child support was a possible term to negotiate in exchange for

1 stopping the sale of the residence. Whether respondent presented the term at the court hearing was
2 unclear. The gravamen of his misconduct was his failure to inform his client of the court's ruling,
3 which is discussed in count 3B below, and not his failure to perform competently.

4 Therefore, respondent did not violate rule 3-110(A) in that there is insufficient evidence to
5 support the charge that respondent was culpable of reckless failure to perform other services after
6 the May 2001 hearing.

7 ***Count 3B: Failure to Respond to Status Inquiries (Bus. & Prof. Code, § 6068(m))***

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

11 Respondent did not inform Gould about the court's ruling. Instead, she learned about it five
12 months later from her ex-husband's real estate agent. Thus, by failing to inform Gould of the May
13 1, 2001 court order and to respond to her numerous phone calls thereafter, between October and
14 November 2001, regarding the her case status, respondent failed to inform his client of a significant
15 development and to respond to her reasonable status inquiries in wilful violation of section 6068,
16 subdivision (m).

17 ***4. The Greenwood Matter (Case No. 03-O-00578)***

18 In 2000, Stephanie Greenwood (Stephanie) employed respondent to represent her in a
19 marital dissolution matter in *Stephanie Greenwood v. William Greenwood, Jr.*, Fresno County
20 Superior Court, case No. 657065-9.

21 In July 2002, William Greenwood (William) and his attorney signed the final dissolution
22 papers and sent them to respondent. Respondent did not inform Stephanie that he had received the
23 papers. She found out about the papers when she spoke with William in October 2002.

24 Stephanie immediately contacted respondent's office and asked him to complete the
25 dissolution. Respondent did not send the papers to her until December 17, 2002. She promptly
26 signed the papers and returned them to respondent. Thereafter, respondent did not perform any
27 further services for Stephanie until March 26, 2003, when he sent the papers to the court.

28 On April 12, 2003, Stephanie sent respondent a letter by certified mail, terminating his

1 employment and requesting that respondent release her client file. Because respondent refused to
2 sign for the letter, it was returned.

3 ***Count 4A: Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))***

4 Respondent recklessly and repeatedly failed to perform legal services with competence, in
5 wilful violation of rule 3-110(A), by failing to complete his client's dissolution in a diligent manner.

6 ***Count 4B: Failure to Communicate (§ 6068(m))***

7 Respondent did not inform Stephanie that her husband had signed the dissolution papers.
8 Instead, she learned about it three months later when she spoke with William. Thus, respondent
9 failed to inform his client of a significant development in wilful violation of section 6068,
10 subdivision (m).

11 ***5. The Goiburn Matter (Case No. 03-O-01832)***

12 On March 28, 2003, Carol Goiburn (Goiburn) employed respondent to obtain an order
13 granting her custody of her grandson. Goiburn's daughter, the mother of the child, had just left
14 California to join the Army and Goiburn was taking care of the grandson. Respondent agreed to
15 immediately file papers seeking to join Goiburn in her daughter's ongoing marital dissolution
16 proceeding. Respondent agreed to handle this matter on an emergency basis because Goiburn was
17 afraid that the father of the child would take custody.

18 Goiburn paid Respondent \$2,500 by credit card for the custody representation and for the
19 representation of the daughter in the dissolution matter.

20 Thereafter, respondent failed to prepare the court papers in a timely and competent manner.
21 The papers were rife with errors and were never filed with the court.

22 During the period between March 28 and April 24, 2003, Goiburn lived in constant fear that
23 her grandson would be taken away from her. Respondent knew of her concern but nevertheless
24 failed to competently proceed on Goiburn's request for a custody order.

25 On April 24, 2003, Goiburn sent a letter to respondent, terminating his services and
26 demanding a refund of the unearned fees. Respondent received the letter but did not respond or
27 provide any refund. He did not earn any substantial portion of the advanced fee. On June 27, 2003,
28 Goiburn was able to remove the \$2,500 charge from her credit card account.

1 ***Count 5: Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))***

2 Respondent intentionally, recklessly, and repeatedly failed to perform legal services with
3 competence, in wilful violation of rule 3-110(A), by failing to prepare the court papers in a timely
4 and competent manner on behalf of Goiburn.

5 ***Count 5: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

6 When Goiburn terminated respondent's employment on March 24, 2003, respondent was
7 obligated to refund any unearned portion of the advanced fees of \$2,500. Although Goiburn was
8 able to remove the charge from her credit card two months later, respondent's failure to refund
9 promptly any part of the unearned fees was in wilful violation of rule 3-700(D)(2).

10 ***6. The DeLeon Matter (Case No. 03-O-02597)***

11 In January 2001, Beatrice DeLeon (DeLeon) hired respondent to represent her in a
12 dissolution matter. Respondent did not diligently obtain a marital dissolution for DeLeon or
13 promptly take the steps necessary for her to receive child support. He also did not respond promptly
14 to her reasonable status inquiries. Two and a half years later, DeLeon terminated respondent's
15 employment in June 2003.

16 ***Count 6A: Failure to Perform (Rules Prof. Conduct, Rule 3-110(A))***

17 Respondent recklessly failed to perform legal services competently in wilful violation of
18 rule 3-110(A) by failing to obtain a marital dissolution for DeLeon or promptly take the steps
19 necessary for her to receive child support. She finally terminated his employment two and a half
20 years later.

21 ***Count 6B: Failure to Respond to Status Inquiries (§ 6068(m))***

22 Respondent failed to respond promptly to DeLeon's reasonable status inquiries in wilful
23 violation of section 6068, subdivision (m).

24 ***C. Second Notice of Disciplinary Charges (The Bundy Matter – Case No. 04-O-13448)***

25 On May 29, 2003, Fred Bundy (Bundy), a Santa Clara County resident, hired respondent to
26 represent him in a marital dissolution matter and paid Respondent \$500 as attorney fees. During
27 telephone conversations, respondent asked Bundy for the same information which Bundy had
28 already given him. Respondent's receptionist told Bundy to send \$300 for a filing fee in Fresno

1 County. Bundy reminded the receptionist that he was a resident of Santa Clara County.

2 Thereafter, respondent would not accept Bundy's telephone calls or return his calls.
3 Respondent's receptionist told Bundy that his file had been lost. Respondent took no action on
4 behalf of Bundy and did not refund any portion of the unearned fees.

5 On August 12 and September 13, 2004, a State Bar investigator wrote to respondent
6 regarding the Bundy matter and requested a written reply. The letters were properly sent to
7 respondent at his official address. They were not returned as undeliverable or for any other reason.

8 Respondent never responded to the letters or otherwise cooperated in the investigation of
9 the Bundy matter.

10 ***Count 1: Improper Withdrawal from Employment (Rule 3-700(A)(2))***

11 Rule 3-700(A)(2) provides that an attorney must not withdraw from employment until he has
12 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

13 Respondent was hired to represent Bundy. Yet, he abandoned Bundy without giving him
14 due notice and even lost his file. Thus, by failing to notify Bundy of his withdrawal from
15 employment, respondent wilfully failed to take reasonable steps to avoid reasonably foreseeable
16 prejudice to his client, in wilful violation of rule 3-700(A)(2).

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

18 Respondent's failure to refund promptly any part of the unearned fees was in wilful violation
19 of rule 3-700(D)(2).

20 ***Count 3: Failure to Cooperate With the State Bar (§ 6068(i))***

21 Section 6068(i) provides that an attorney must cooperate and participate in any disciplinary
22 investigation or proceeding pending against the attorney. By failing to respond to the State Bar's
23 August and September 2004 letters or participate in the investigation of the Bundy matter,
24 respondent failed to cooperate with the State Bar in wilful violation of section 6068(i).

25 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

26 **A. Mitigation**

27 No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds.
28

1 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

2 **B. Aggravation**

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

4 Respondent's misconduct demonstrates a pattern of misconduct. (Std. 1.2(b)(ii).) Three
5 years after he was admitted to the practice of law, respondent began his misconduct in 1999. Within
6 four years, he failed to perform services competently, failed to communicate with his clients, failed
7 to return unearned fees, and improperly withdrew from employment in seven client matters.

8 Respondent's misconduct caused his clients substantial harm. For example, DeLeon's case
9 were unduly delayed, his failure to communicate caused Goiburn duress, and his failure to perform
10 caused Suarez to lose his cause of action. (Std. 1.2(b)(iv).)

11 Respondent's failure to return unearned fees demonstrates indifference toward rectification
12 of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

13 Respondent's failure to participate in this disciplinary matter before the entry of his default
14 is also a serious aggravating factor. (Std. 1.2(b)(vi).)

15 **V. DISCUSSION**

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

20 Respondent's misconduct involved seven client matters. The standards provide a broad range
21 of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and
22 the harm to the client. (Stds. 1.6, 2.4(a), and 2.6.)

23 Standard 2.4(a) provides that culpability of a member's pattern of wilful failure to perform
24 services demonstrating the attorney's abandonment of the causes in which he was retained must
25 result in disbarment.

26 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
27

28 ⁴All further references to standards are to this source.

1 (In the Matter of Moriarty (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach
2 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at
3 p. 251.)

4 The State Bar urges a two-year actual suspension. In support of its recommended discipline,
5 the State Bar cited several cases, including *Farnham v. State Bar* (1988) 47 Cal.3d 429 and *Pineda*
6 *v. State Bar* (1989) 49 Cal.3d 753.

7 In *Farnham*, the Supreme Court disbarred the attorney and found that his actions "evidence
8 a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to
9 communicate with him and eventually abandoned their causes." (*Farnham v. State Bar* (1976) 17
10 Cal.3d 605, 612.)

11 In *Pineda v. State Bar* (1989) 49 Cal.3d 753, the Supreme Court actually suspended the
12 attorney for two years and placed him on probation for five years with a five-year stayed suspension
13 because he had accepted fees from clients, failed to perform the services for which he was retained,
14 refused to communicate with his clients, then abandoned them and kept the fees in seven client
15 matters over a course of about eight years. His misconduct began four years after he was admitted
16 to the practice of law. Misappropriation of client funds by itself is a gross violation of an attorney's
17 professional oath and generally merits an actual suspension of at least one year. (*Id.* at p. 759.) He
18 was not disbarred in view of the mitigating factors, including his cooperation with the State Bar, his
19 demonstrated remorse and his concurrent family problems.

20 Similarly, respondent's misconduct also involved seven clients over a course of four years.
21 However, unlike *Pineda*, respondent has no mitigation.

22 Respondent has displayed total indifference and lack of remorse by ignoring this disciplinary
23 proceeding. Such failure to participate leaves the court without information about the underlying
24 cause of respondent's offense or of any mitigating circumstances surrounding his misconduct. His
25 lack of participation indicates that far more severe discipline is required to achieve the purposes of
26 attorney discipline set forth in standard 1.3.

27 These Supreme Court cases are also instructive.

28 In *Baca v. State Bar* (1990) 52 Cal.3d 294, the Supreme Court disbarred the attorney for one

1 client abandonment and misappropriation in another matter, stating, "Baca's failure to cooperate
2 until the recommendation of disbarment was made reflects a disdain and contempt for the orderly
3 process and rule of law on the part of an attorney who has sworn to uphold the law." (*Id.* at p. 305.)

4 In *Barnum v. State Bar* (1990) 52 Cal.3d 104, the Supreme Court disbarred the attorney for
5 collecting an unconscionable fee and disobeying court orders to return the fee and refusing to
6 participate in the disciplinary proceeding. The Court concluded that Barnum was "not a good
7 candidate for suspension and/or probation. He has breached two separate terms of our prior
8 disciplinary order, leading to the imposition of additional sanctions. He also defaulted before the
9 State Bar here and in one other proceeding." (*Id.* at p. 106.)

10 Similarly, respondent here is not a good candidate for suspension and/or probation. He failed
11 to participate in this disciplinary proceeding even though he was aware of it. These facts reflect
12 respondent's disdain and contempt for the orderly process and rule of law and clearly demonstrate
13 that the risk of future misconduct is great.

14 In conclusion, in view of his repeated acts of client abandonment and the lack of any
15 mitigating factors, the court recommends disbarment to protect the public and the integrity of the
16 legal profession.

17 VI. RECOMMENDED DISCIPLINE

18 Accordingly, the court hereby recommends that Respondent **ERIC A. COVER** be disbarred
19 from the practice of law in the State of California and that his name be stricken from the rolls of
20 attorneys in this State.

21 It is also recommended that the Supreme Court order respondent to comply with rule 955,
22 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
23 effective date of its order imposing discipline in this matter.

24 VII. COSTS

25 The court recommends that costs be awarded to the State Bar pursuant to Business and
26 Professions Code section 6086.10, and paid in accordance with section 6140.7.

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Dated: August 10, 2005

Pat McElroy
PAT McELROY
 Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on August 11, 2005, I deposited a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT,
filed AUGUST 11, 2005**

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ERIC A. COVER
330 N FULTON ST
FRESNO CA 93701**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ROBIN BRUNE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 11, 2005.


Laretta Cramer
Case Administrator
State Bar Court