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THE STATE BAR COURT STATE BAR COURT CLERK'S OFFICE
HEARING DEPARTMENT - SAN FRANCISCO SAN FRANCISCO

In the Matter of)	Case No(s). 01-O-05384-PEM
RODOLFO E. PETILLA)	DECISION
Member No. 109383,)	
A Member of the State Bar.)	

In this contested matter, Respondent **RODOLFO PETILLA** is found culpable, by clear and convincing evidence of unauthorized practice of the law.

On September 13, 2002, the Office of Chief Trial Counsel of the State Bar of California (“State Bar”) filed and properly served on Respondent a Notice of Disciplinary Charges (“NDC”). On October 1, 2002, Respondent filed a response.

On January 29, 2003, Respondent filed a motion for complete discovery. Respondent requested the Court to order the State Bar to provide complete, unredacted copies of certain documents. This Court denied that motion on April 22, 2003, based on the fact that Respondent sought the motion in a vacuum, in that he provided no facts, points and authorities or arguments as to why the motion should be granted. On May 14, 2003, Respondent filed an in limine motion for discovery. The Court determined that the in limine motion was a renewal of his motion for



1 complete discovery. The Court inspected the redacted material in camera and found that the
2 redacted matter was privileged.

3 On April 14, 2003, the State Bar filed a motion seeking to preclude Respondent from
4 testifying and submitting evidence at trial based upon the fact that Respondent took the Fifth
5 Amendment at his deposition and did not bring to his deposition, as requested, any documentary
6 evidence related to the charges in the NDC. This Court granted the State Bar's motion to
7 preclude Respondent from testifying and submitting evidence. Respondent was allowed to be
8 called as a witness but was precluded from answering specific questions that were related to the
9 charges of the NDC which he claimed to be protected by the Fifth Amendment privilege.
10 Similarly, Respondent was precluded from submitting evidence related to the charges of the
11 NDC for which he had invoked a privilege against self-incrimination. To all other matters not
12 protected by the Fifth Amendment, Respondent was permitted to testify.

13 A hearing was held on May 15, 2003. Deputy Trial Counsel Erica L. Dennings
14 represented the State Bar. Respondent represented himself in propria persona.

15 This proceeding was taken under submission on Thursday, May 15, 2003.

16 **III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

17 **A. Jurisdiction**

18 Respondent Petilla was admitted to the practice of law in California on December 12,
19 1983, and has been a member of the State Bar since that time.

20 **B. Finding of Facts**

21 Pursuant to the Supreme Court order in SO98905, filed October 10, 2001, entitled *In re*
22 *Rodolfo Enriquez Petilla on Discipline*, Respondent was placed on 60 days actual suspension
23 from the practice of law. The order was effective from November 9, 2001 to January 8, 2002.
24 Respondent was duly served with a copy of the Supreme Court Order.

25 Prior to December 1, 2001, Olga Felix ("Felix") and her common-law husband, Anthony
26 Gonzales ("Gonzales"), called Respondent and made arrangements to meet with him. Felix and
27 Gonzales wanted to hire Respondent to represent their 16-year-old son, Anthony Rodriguez
28 ("son"), who was incarcerated with a scheduled court appearance for December 3, 2001. They

1 were dissatisfied with the public defender representing their son. Moreover, Respondent came
2 highly recommended by relatives and friends as an attorney with a good "win" record who
3 charged reasonable rates.¹ It is undisputed that Respondent did not solicit Felix and Gonzales.

4 On December 1, 2001, Felix and Gonzales drove from Merced to Fresno to meet with
5 Respondent in his office. Felix and Gonzales brought to the December 1 meeting a copy of the
6 pertinent police report. Upon briefly reviewing the police report and explaining to Felix and
7 Gonzales the differences between juvenile and adult court, Respondent told them that he could
8 not take their case. Felix became despondent and begged Respondent to take her son's case.
9 Respondent then told Felix he could take her son's case but that he could not do anything on the
10 case until January 9, 2002. Felix and Gonzales accepted that Respondent would only take their
11 son's with an understanding that Felix and Gonzales would go to court and get a continuance
12 until January 9, 2002. Felix and Gonzales then signed an attorney-client retainer agreement with
13 Respondent and paid him \$2500 for his services. Respondent did not at any time inform Felix
14 and Gonzales that he was suspended from the practice of law.

15 On December 3, 2001, Felix and Gonzales appeared at the hearing in the Juvenile
16 Division of Merced Superior Court in their son's matter. They asked the court for a continuance
17 because Respondent would not be able to represent their son until January 9, 2002. At that
18 hearing Felix and Gonzales learned for the first time that Respondent was suspended from the
19 practice of law.² The court continued their son's matter for two weeks so that they could retain
20 new counsel.

21 After returning from court, Gonzales telephoned Respondent and told him what had
22 happened. Shortly thereafter Respondent met with Gonzales and returned the retainer of \$2500
23 and expressed remorse for not revealing his suspension.

24 At the hearing on this matter Felix and Gonzales testified that while they would not have
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26 ¹ Respondent recently had won a trial where Gonzales' nephew was acquitted of attempting to
27 murder two police officers.

28 ² Felix and Gonzales testified that court personnel appeared to be laughing at them when they
informed them that Respondent could not appear for their son. They knew he was suspended.

1 hired Respondent if they had known he was suspended, they harbored no ill-feeling toward
2 Respondent.

3 **C. Conclusions of Law**

4 **1. Count One – Section 6068(a) (Engaging in the Unauthorized Practice of Law)**

5 Respondent is charged in Count One of the NDC with a violation of Business and
6 Professions Code section 6068, subdivision (a)³, which provides that a member of the State Bar
7 has the duty to support the Constitution and laws of the United States and of the State of
8 California. The State Bar charges that Respondent violated section 6068, subdivision (a) by
9 improperly holding himself out as entitled to engage in the practice of law in violation of sections
10 6125 and 6126.

11 Section 6125 provides that no person shall practice law in California unless he or she is
12 an active member of the State Bar. Section 6126, subdivision (b), provides that any person who
13 has been involuntarily enrolled as an inactive member of the State Bar or who has been
14 suspended from practice and thereafter holds himself out as entitled as practicing law or entitled
15 to practice is guilty of a crime.

16 Charging an attorney with a violation of the duty to support the constitution and laws, by
17 reason of the attorney's violation of the statutes prohibiting practicing law while suspended,
18 provides the basis for imposition of discipline for the unauthorized practice of law. (*In the*
19 *Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of*
20 *Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 126.)

21 Respondent argued at the hearing on this matter that he neither practiced law nor held
22 himself as entitled to practice law while suspended for the following reasons: (a) Respondent's
23 office did not contain any signs identifying him as an attorney; (b) Respondent was not listed in
24 the telephone directory as an attorney; (c) there was no message on this answering machine
25 indicating that he was currently entitled to engage in the practice of law; (d) Respondent never
26 met his prospective client during the 60 days he was suspended; (e) Respondent did not have

27
28 ³ All future references to "section(s)" are to the Business and Professions Code unless otherwise
stated.

1 business cards that indicated that he was a lawyer; (f) Respondent told Felix and Gonzales that
2 he could not do anything for them until after January 9, 2002; (g) Respondent never made any
3 court appearances on any case; (h) he never advertised availability for consultation and legal
4 advice; (i) Felix testified that she knew that she could not consult with Respondent about her
5 son's case until January 9, 2001; (j) Respondent never made any phone calls to the son's public
6 defender regarding his case; (k) Respondent's retainer agreement was for future services; and (l)
7 Respondent was not required to inform clients because there was no 955 finding in his previous
8 disciplinary order.

9 The Court has considered and rejects Respondent's arguments. Respondent held himself
10 out to Felix and Gonzales as entitled to practice law in violation of sections 6125 and 6126,
11 subdivision (b). He never informed them that he was suspended from the practice of law. They
12 were led to believe that they had hired a practicing attorney on that day. They both testified that
13 had they known Respondent was suspended they would not have hired him. Moreover, on
14 December 1, 2001, Respondent signed a retainer agreement where he is referred to as an attorney
15 and was paid a \$2500 non-refundable fee on that date.

16 Although he knew of the suspension order, Respondent met with Felix and Gonzales,
17 agreed to represent their son and accepted a retainer, all during the period of actual suspension.
18 In so doing, he violated sections 6125 and 6126(a) and failed to support the laws of this state in
19 wilful violation of section 6068(a).

20 **2. Count Two – Section 6106 (Moral Turpitude)**

21 Respondent is charged in Count Two of the NDC with a violation of section 6106, which
22 provides that the commission of an act involving moral turpitude, dishonesty or corruption
23 constitutes grounds for disbarment or suspension. The State Bar charges that Respondent
24 committed an act of moral turpitude, dishonesty or corruption by misleading Felix and Gonzales
25 by creating the impression that he was entitled to practice law.

26 Moral turpitude has been described as an act of baseness, vileness or depravity in the
27 private and social duties which a man owes to his fellowmen, or to society in general, contrary to
28 the accepted and customary rule of right and duty between man and man." (*In re Craig* (1938) 12

1 Cal.2d 93, 97.) It has been described as any crime or misconduct without excuse (*In re Hallinan*
2 (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve
3 an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18
4 Cal.3d 468, 472, grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In*
5 *re Ford* (1988) 44 Cal.3d 810) may establish moral turpitude. Although an evil intent is not
6 necessary for moral turpitude, at least gross negligence of some level of guilty knowledge is
7 required. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr 363.)

8 Although Respondent did not solicit Felix and Gonzales' business and they both credibly
9 testified that Respondent made it abundantly clear that he could not render legal service until
10 January 2002, there is clear and convincing evidence of a violation of 6106. They sought his
11 legal services for their son believing that he was a practicing lawyer, yet he did not disclose to
12 them that he was suspended from practicing. Instead, he discussed with them proceedings in
13 juvenile and adult courts, executed a retainer agreement and accepted \$2500 to assure his
14 representation in January 2002. (See, *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State
15 Bar Ct. Rptr. 563, 577.) Felix and Gonzalez credibly testified that they would not have retained
16 him had they known about the suspension.

17 **IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

18 **A. Mitigation**

19 Respondent demonstrated spontaneous candor and cooperation to the victims of his
20 misconduct and to the State Bar and was remorseful. (Standards 1.2(e)(v) and (vii), Standards
21 for Attorney Sanctions for Professional Misconduct ("standard(s)"). Respondent returned the
22 money to Felix and Gonzales within a day and recommended an attorney that the parents were
23 satisfied with. He expressed remorse and cooperated with the State Bar's investigation.

24 Respondent engages in community services. He is a nonsalaried officer of the nonprofit
25 Filipino-American Association in Fresno and vicinity. They raise funds and make charitable
26 donations. He also serves as the public relations officer for Visayas Mindao Association in
27 Fresno.

1 **B. Aggravation**

2 As previously noted, Respondent has a prior record of discipline. (Standard 1.2(b)(i).) In
3 case no. S098905, filed October 10, 2001, the Supreme Court ordered discipline consisting of
4 two years stayed suspension and two years probation on conditions including 60 days actual
5 suspension and restitution. Respondent was found culpable of violating section 6106 by
6 incurring over \$19,000 in credit card debt without intending to repay them.

7 Respondent's misconduct significantly harmed clients and the administration of justice.
8 (Standard 1.2(b)(iv).) He misled desperate, vulnerable parents of a minor son who was in
9 custody. They were embarrassed when they found out for the first time in court that Respondent
10 was suspended. They had to obtain other counsel quickly during a difficult time. The
11 proceedings were delayed so they could do so.

12 **DISCUSSION**

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

17 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
18 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
19 imposing discipline. If two or more acts of professional misconduct are found in a single
20 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable
21 sanctions. Standard 1.6(a).) The level of discipline is progressive. Standard 1.7(b).) The
22 standards, however, are guidelines from which the Court may deviate in fashioning the most
23 appropriate discipline considering all the proven facts and circumstances of a given matter. (*In*
24 *re Young* (1989) 49 Cal.3d 257, 267 fn. 11); *Howard v. State Bar* (1990) 51 Cal.3d 215.) They
25 are "not mandatory 'sentences' imposed in a blind or mechanical manner." (*Gary v. State Bar*
26 (1988) 44 Cal.3d 820, 828.)

27 In the instant case, the recommended level of discipline ranges from suspension to
28 disbarment. (Standards 2.3; 2.6(a) and (d).) The most severe sanction is found at standard 2.3

1 which recommends actual suspension or disbarment for culpability of an act of moral turpitude,
2 fraud, intentional dishonesty or of concealment of a material fact from a court, client or other
3 person, depending on the extent to which the victim of the misconduct is harmed or misled and
4 depending upon the magnitude of the act of misconduct and the degree to which it relates to the
5 attorney's acts within the practice of law.

6 OCTC recommends at least six months actual suspension. After considering the
7 misconduct and balancing the aggravating and mitigating circumstances, the Court recommends,
8 among other things, 90 days actual suspension as sufficient to protect the public in this case.

9 The Court found *Farnham v. State Bar* (1976) 17 Cal.3d 605 instructive.

10 In *Farnham*, two years stayed suspension and six months actual suspension was imposed
11 because the attorney abandoned two clients, misrepresented the status of the case to one of them
12 and engaged in the unauthorized practice of law as to the other. During the time that Respondent
13 Farnham was suspended from the practice of law, he met with a client, told him that he would
14 accept his case and, on two occasions, told him that he would have a complaint ready to file by
15 certain dates, both within the time of his suspension. The Supreme Court noted that the
16 unauthorized practice of law "includes the mere holding out by a layman or a suspended attorney
17 that he is practicing or is entitled to practice law. [Citation omitted.] ... While [Respondent] did
18 not sign any legal documents or make a court appearance on [his client's] behalf, in a larger
19 sense, the practice of law includes legal advice and counsel and the mere preparation of legal
20 instruments. [Citation omitted.]" *Id.* at p. 612. In aggravation, the Court considered
21 Respondent's lack of insight into his misconduct and two prior instances of discipline.⁴ No
22 mitigating circumstances are noted.

23 The instant case is distinguishable from *Farnham*. The Supreme Court considered two
24 prior acts of discipline related to the practice of law in *Farnham* whereas here, Respondent has
25 one prior act of discipline unrelated to the practice of law. Respondent did not abandon his client
26 as did Respondent *Farnham*. Also, Respondent herein presented some mitigation. Accordingly,

27
28 ⁴This Court notes that one such prior discipline was for nonpayment of dues. The other was for
abandonment of four clients which resulted in a three-month actual suspension.

1 the Court recommends less discipline than *Farnham* in the instant case.

2 **VI. RECOMMENDED DISCIPLINE**

3 Accordingly, it is recommended that Respondent RODOLFO PETILLA be suspended
4 from the practice of law for one year, that execution of that suspension be stayed, and that
5 Respondent be placed on probation for two years, with the following conditions:

- 6 1. Respondent shall be actually suspended from the practice of law for the first 90 days of
7 probation.
- 8 2. During the probation period Respondent shall comply with the State Bar Act and the
9 Rules of Professional Conduct.
- 10 3. Within ten (10) days of any change, Respondent shall report to the Membership Records
11 Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and
12 to the Probation Unit, all changes of information, including current office address and
13 telephone number, or if no office is maintained, the address to be used for State Bar
14 purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- 15 4. Respondent shall submit written quarterly reports to the Probation Unit on each January
16 10, April 10, July 10, and October 10 of the period of probation. Under penalty of
17 perjury, Respondent shall state whether respondent has complied with the State Bar Act,
18 the Rules of Professional Conduct, and all conditions of probation during the preceding
19 calendar quarter. If the first report will cover less than thirty (30) days, that report shall
20 be submitted on the next following quarter date, and cover the extended period.
21 In addition to all quarterly reports, a final report, containing the same information, is due
22 no earlier than twenty (20) days before the last day of the probation period and no later
23 than the last day of the probation period.
- 24 5. Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly,
25 and truthfully, any inquiries of the Probation Unit of the Office of the Chief Trial
26 Counsel, which are directed to Respondent personally or in writing, relating to whether
27 Respondent is complying or has complied with the conditions contained herein.

- 1 6. Within one (1) year of the effective date of the discipline herein, Respondent shall
2 provide to the Probation Unit satisfactory proof of attendance at a session of the Ethics
3 School, given periodically by the State Bar at either 180 Howard Street, San Francisco,
4 California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299,
5 and passage of the test given at the end of that session. Arrangements to attend Ethics
6 School must be made in advance by calling (213) 765-1287, and paying the required fee.
7 This requirement is separate from any Minimum Continuing Legal Education
8 Requirement (MCLE), and Respondent shall not receive MCLE credit for attending
9 Ethics School. (Rule 3201, Rules of Procedure of the State Bar.)
- 10 7. The period of probation shall commence on the effective date of the order of the Supreme
11 Court imposing discipline in this matter.
- 12 8. At the expiration of the period of this probation, if Respondent has complied with all the
13 terms of probation, the order of the Supreme Court suspending Respondent from the
14 practice of law for one year shall be satisfied and that suspension shall be terminated.

15
16 It is not recommended that Respondent take and pass the Multistate Professional
17 Responsibility Examination (MPRE) because he was ordered to do so in case no. S098905.

18 It is further recommended that Respondent be ordered to comply with rule 955, California
19 Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within
20 thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court order
21 herein. **Wilful failure to comply with the provisions of rule 955 may result in revocation of**
22 **probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or**
23 **criminal conviction.**

24 ///

25 ///

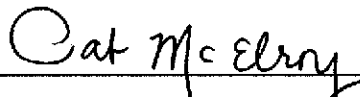
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VII. COSTS

The Court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

Dated: August 4, 2003


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. 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 4, 2003, I deposited a true copy of the following document(s):

DECISION

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

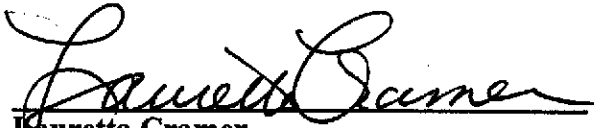
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

RODOLFO ENRIQUEZ PETILLA
280 N BUNDY AVE
FRESNO CA 93727

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

ERICA DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 4, 2003.


Lauretta Cramer
Case Administrator
State Bar Court