THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **JAMES CARLISLE REGAN,** **Member No. 101905,** A Member of the State Bar.	**Case No. 02-O-10741; 03-O-02856; 03-O-03346-RMT** **DECISION**

INTRODUCTION

The above-entitled matter was submitted for decision on October 18, 2004, after Respondent's answer was stricken and his default was entered for his failure to appear at trial on September 29, 2004, and after the State Bar of California, Office of the Chief Trial Counsel ("State Bar") filed a brief on the issue of discipline. The State Bar was represented in this matter by Deputy Trial Counsel Charles Weinstein and Cecilia M. Horton-Billard.[1] Respondent James Carlisle Regan ("Respondent") filed an answer to the Notice of Disciplinary Charges in propria persona but failed to appear at trial and his default was subsequently entered.

In light of Respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for three years; that execution of said suspension be stayed; and that Respondent be actually suspended from the

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[1]On March 19, 2004, Mr. Weinstein substituted in place of Deputy Trial Counsel Terrie L. Goldade in this matter. Ms. Horton-Billard associated in as co-counsel in this matter on September 23, 2004. On December 6, 2004, Ms. Horton-Billard substituted in place of Charles Weinstein and became sole counsel in this matter.

practice of law for 18 months and until the State Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rules Proc. of State Bar, rule 205(a)-(c).)

PERTINENT PROCEDURAL HISTORY

This proceeding was initiated by the State Bar's filing of a Notice of Disciplinary Charges ("NDC") against Respondent on March 12, 2004.

A copy of the NDC was properly served upon Respondent on March 12, 2004, by certified mail, return receipt requested, addressed to Respondent at his official membership records address ("official address") maintained by Respondent pursuant to Business and Profession Code section 6002.1, subdivision (a).[2]

On April 2, 2004, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in-person status conference for April 27, 2004. A copy of said notice was properly served upon Respondent by first-class mail, postage fully prepaid, on April 2, 2004, addressed to Respondent at his official address. The copy of said notice was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On April 27, 2004, the Court held a status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel. Thereafter, on April 27, 2004, the Court filed a Status Conference Order which set forth that a further in-person status conference would be held on June 2, 2004, and that the Deputy Trial Counsel was to file a motion to enter Respondent's default. A copy of said order was properly served upon Respondent by first-class mail, postage fully prepaid, on April 27, 2004, addressed to Respondent at his official address. The copy of said order was not returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

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[2]Pursuant to Evidence Code section 452(h), the Court takes judicial notice of Respondent's official membership records maintained by the State Bar of California which indicate that effective March 6, 1989, Respondent's official membership records address has been, and remains as of the date of this decision, 2445 Lyric Ave., Los Angeles, CA 90027.

On June 2, 2004, the Court held a further status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel. Thereafter, on June 9, 2004, the Court filed a Status Conference Order which set forth that a further status conference would be held by telephone on July 6, 2004. A copy of said order was properly served upon Respondent by first-class mail, postage fully prepaid, on June 9, 2004, addressed to Respondent at his official address and at 529 E. Valley Blvd., Ste. 268-B, San Gabriel, CA 91776 ("alternate address"). Neither copy of said order was returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On June 17, 2004, Respondent filed an Answer to Notice of Disciplinary Charges.[3]

On July 7, 2004,[4] the Court held a further status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel. Thereafter, on July 7, 2004, the Court filed a Status Conference Order which set forth that a further in-person status conference would be held on August 23, 2004; discovery was extended to September 15, 2004; and an Order to Show Cause for non-appearance was scheduled for August 23, 2004, at 10:45 a.m. A copy of said order was served upon Respondent by first-class mail, postage fully prepaid, on July 7, 2004, addressed to Respondent at an incorrect official address[5] and at his alternate address. Neither copy of said order was returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On August 23, 2004, the Court held a further status conference in this matter. Respondent did not appear at the status conference either in-person or through counsel. Thereafter, on August 25, 2004, the Court filed a Status Conference Order which set forth that an

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[3]Respondent's alternate address was set forth in the top, left-hand corner of Respondent's Answer to Notice of Disciplinary Charges.

[4]A member of the Court's staff left a message for Respondent on July 1, 2004 regarding the continuance of the status conference from July 6, 2004, at 10:45 a.m. to July 7, 2004, at 10:15 a.m.

[5]The Certificate of Service indicates it was sent to Respondent at 2447 Lyric Ave., Los Angeles, CA 90027, rather than at Respondent's official address of 2445 Lyric Ave., Los Angeles, CA 90027.

in-person pretrial conference would be held on September 22, 2004; a Pretrial Statement was due on September 27, 2004; and trial was set for September 29, 2004, at 10:00 a.m. At the August 23, 2004, status conference the Court also struck Respondent's Answer to the Notice of Disciplinary Charges; however, after further consideration, the Court noted the Answer would remain filed June 17, 2004, and the trial dates remained set. A copy of said order was properly served upon Respondent by first-class mail, postage fully prepaid, on August 25, 2004, addressed to Respondent at his official address and at the alternate address. Neither copy of said order was returned to the State Bar Court by the U.S. Postal Service as undeliverable or for any other reason.

On September 17, 2004, the State Bar filed its Pretrial Statement in this matter. A copy of said Pretrial Statement was properly served upon Respondent on September 17, 2004, addressed to Respondent at his official address.

On September 22, 2004, the pretrial conference was held. At the time of the pretrial conference, Respondent did not appear. However, attorney Donald Hanson, Jr. ("Hanson") made a special appearance by telephone on Respondent's behalf.[6] Hanson advised the Court that Respondent was out of the country and requested that the Court continue the September 22, 2004, proceeding and the September 29, 2004, hearing so Respondent could obtain counsel. Hanson also faxed to the Court a partial declaration of Respondent which was not filed by the Court. On September 22, 2004, the Court denied Respondent's request for a continuance and advised Hanson to inform Respondent that the hearing in this matter would proceed on September 29, 2004. Thereafter, on September 22, 2004, the Court filed a Minute Order indicating that trial remained on calendar for September 29, 2004, at 10:00 a.m. The Court noted that Respondent did not appear at the pretrial conference and had not filed a pretrial statement. The minute order also indicated that the Court would impose evidentiary sanctions at that time, and no witnesses or evidence would be allowed by Respondent. A copy of said order was properly served upon Respondent by first-class mail, postage fully prepaid, on September 23,

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[6]However, Mr. Hanson did not represent Respondent.

2004, addressed to Respondent at his official address and at the alternate address. A courtesy copy was also served on attorney Donald Hanson, Jr. at 1700 N. Pass Avenue, Burbank, CA 91505-1731, his official address.[7] None of the copies of said order were returned by the State Bar Court as undeliverable or for any other reason.

At the time of trial on September 29, 2004, Respondent failed to appear either in-person or through counsel. Therefore, on September 29, 2004, the State Bar filed a Request to (1) Strike Respondent's Answer and (2) Enter His Default which was granted by the Court.

On October 1, 2004, the Court filed an Order of Entry of Default (Rule 201-Failure to Appear) and Order of Involuntary Inactive Enrollment.[8] A copy of said order was properly served upon Respondent on October 1, 2004, by certified mail, return receipt requested, addressed to Respondent at his official address and to his alternate address. The return receipt for the copy of said order served upon Respondent at his alternate address was returned to the Stae Bar Court on October 15, 2004, without a signature or date of delivery. However, it does bear a stamped notation, "GREETINGS FROM Far Far Away" and bearing a likeness of two of the characters from the movie Shrek. The copy of said order served upon Respondent at his official address was not returned to the State Bar Court as undeliverable or for any other reason.

On October 12, 2004, the State Bar filed a brief on the issue of discipline. Thereafter, on October 18, 2004, the Court ordered that this matter stand submitted for decision as of said date.

State Bar Exhibits 1 and 2 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW[9]

Jurisdiction

Respondent was admitted to the practice of law in the State of California on December

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[7]Pursuant to Evidence Code section 452(h), the Court takes judicial notice of Mr. Hanson's official membership records address.

[8]Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007(e) was effective three days after the service of this order by mail.

[9]As Respondent's default was entered in this matter, pursuant to rule 201(c), the facts contained in the NDC are deemed admitted.

24, 1981, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

Counts One Through Six - Case No. 02-O-10741 - Respondent's Law Practice

Between in or about 1999 through in or about 2003, Respondent hired employees of Chinese descent to assist him in representing Chinese nationals in immigration matters. Respondent does not speak, read, or understand any of the Chinese dialects. Some of Respondent's employees did not speak, read, or understand English.

Because of the language barrier, Respondent could not and did not train his employees or audit their work.

Because of the language barrier, Respondent could not and did not personally communicate directly with his clients.

Respondent relied upon his employees to prepare the immigration forms which he then signed and had filed. Most of the documents were written in Chinese, so Respondent did not know the content of those documents. Respondent relied upon his office manager Ying Zhang Elliott ("Elliott") to bring in and meet with potential clients. Elliott has never been a licensed attorney.[10] Respondent had an agreement with Elliott that she would receive 60% of the fees paid by clients she brought into the office, and fees were split between Respondent and Elliott in such a manner.

In or about 2000, Respondent permitted Elliott to open up a "satellite office." Although Respondent visited that office once when it first opened, he did not visit it again. Elliott operated an unknown type of law office known as Xibu Business Services, Inc. ("XBS") from this location. Elliott filed official INS documents with INS for Respondent's law office and for herself on behalf of XBS. Many of the documents were "political asylum" cases.[11]

Respondent believed that Elliott had accepted about 40 cases without Respondent's

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[10]Pursuant to Evidence Code section 452(h), the Court takes judicial notice of the State Bar of California's official membership records which reveal that Ying Zhang Elliott is not a member of the State Bar of California.

[11]State Bar Exhibit 1, page 000007.

knowledge. Respondent discovered a client list indicating that Elliott had personally represented over 40 clients at the satellite office; that fees had been accepted for the services; and the money collected for these clients was never reported. Respondent also believed that Elliott had coached the clients to lie in order to obtain asylum. Respondent also believed that Elliott had taken client files from his office.

On or about November 21, 2001, Elliott was banned as a translator from the Los Angeles Asylum Office because of her inability to provide verbatim translations. Respondent was aware of such ban.

On or about January 5, 2002, Respondent made a police report alleging that Elliott had embezzled money from Respondent's law practice. During the police investigation, Respondent also made other allegations against Elliott, including that she falsified immigration documents in Respondent's name and removed files from his office.

Respondent continued his relationship with Elliott through at least March 8, 2003, when he placed an advertisement in a Chinese periodical with the address of the satellite office and Elliott's telephone number.

In or about 2001, Respondent placed an advertisement in the Chinese Consumer Yellow Pages of 2001. That ad listed, in Chinese, the various areas of law that Respondent practiced for "Law Offices of James C. Regan and Associates" and then listed Victor Li, James L. Andion, Edward D. Johnson, and Chester E. Bennet as attorneys.

In or about 2002, Respondent placed an advertisement in the Chinese Consumer Yellow Pages of 2002. That ad listed, in Chinese, the various areas of law that Respondent practiced for "Law Offices of James C. Regan and Associates" and then listed Donald E. Hanson Jr., Mason Yost, and Richard C. Harding.

None of the attorneys listed were ever associates, partners, officers, or shareholders of Respondent or his law offices.

On or about March 19, 2003, Respondent testified in a hearing before a labor commissioner that Elliott stopped working for him in January 2002. However, as late as March 8, 2003, Respondent was running advertisements in Chinese periodicals with the address of the

satellite office and Elliott's telephone number. Thus, at the time Respondent testified in the hearing before the labor commissioner, Elliott was still working for Respondent. Respondent therefore made a misrepresentation to the labor commissioner during his testimony in the hearing.

Count One - Rule 1-300(A) of the Rules of Professional Conduct[12]

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 1-300(A). Rule 1-300(A) states, "A member shall not aid any person or entity in the unauthorized practice of law." By failing to properly supervise Elliott, thereby permitting her to accept and represent clients without Respondent's knowledge and to file INS documents, including political asylum cases, with the INS for herself on behalf of the law office known as XBS, which she operated in the location where Respondent believed he had a satellite law office, Respondent aided Elliott in the unauthorized practice of law.

Count Two - Rule 1-310

The State Bar failed to prove by clear and convincing evidence that Respondent wilfully violated rule 1-310. Rule 1-310 states, "A member shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law." Elliott was employed as Respondent's office manager. Although Respondent did share fees with a non-lawyer, this alone does not establish that a partnership existed, especially when it is likely the profit sharing constituted Elliott's wages as Respondent's employee. (*In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, 623.) There is no evidence that Elliott had any ownership interest in any assets of Respondent's law offices; no evidence that Elliott had any ownership interest in the office files; no evidence that Elliott was obligated to pay any share of the offices' liabilities; no evidence that Elliott referred to herself as Respondent's partner; no evidence that Respondent and Elliott held themselves out as partners to others; and no evidence that Elliott had access to any firm bank accounts, although she did have access to cash funds.

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[12]Unless otherwise indicated, all further references to rules refer to the Rules of Professional Conduct of the State Bar of California.

(*Ibid.*) The Court therefore finds that there is no clear and convincing evidence that Respondent formed a partnership with Elliott in which the practice of law was one of the activities of the partnership. Count two is therefore dismissed with prejudice.

Count Three - Rule 1-320(A)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 1-320(A). Rule 1-320(A) provides, with certain specified exceptions, that a member or a law firm cannot directly or indirectly share legal fees with a non-lawyer. Elliott received 60% of the fees paid by clients she brought into the office. Thus, Respondent shared legal fees with a non-lawyer in wilful violation of rule 1-320(A).

Count Four - Rule 1-400(D)(2)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 1-400(D)(2). In pertinent part, rule 1-400(D)(2) provides that a communication, such as an advertisement, may not "[c]ontain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive or mislead the public . . . ." Respondent wilfully violated rule 1-400(D)(2) by placing an advertisement in the Chinese Consumer Yellow Pages of 2001 and 2002 which was false, deceptive, or which tended to confuse, deceive or mislead the public in that: (1) in or about 2001, Respondent placed an advertisement in the Chinese Consumer Yellow Pages of 2001 listing the various areas of law that Respondent practiced for "Law Offices of James C. Regan and Associates" and then listed Victor Li, James L. Andion, Edward D. Johnson, and Chester E. Bennet as attorneys when none of these attorneys were ever associates, partners, officers, or shareholders of Respondent or his law offices; and (2) in or about 2002, Respondent placed an advertisement in the Chinese Consumer Yellow Pages of 2002 listing the various areas of law that Respondent practiced for "Law Offices of James C. Regan and Associates" and then listing Donald E. Hanson Jr., Mason Yost, and Richard C. Harding thereby implying that these individuals were attorneys practicing in Respondent's law firm when none of these individuals were ever associates, partners, officers, or shareholders of Respondent or his law offices.

Count Five - Business and Professions Code Section 6068(d)[13]

The State Bar failed to prove by clear and convincing evidence that Respondent wilfully violated section 6068(d). Section 6068(d) provides that it is an attorney's duty "[t]o employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." In this matter, the NDC alleges that "[b]y testifying that Elliott had stopped working for Respondent when she had not, Respondent sought to mislead a judicial officer by an artifice or false statement of fact." Respondent was charged in the NDC only with violating the second part of section 6068(d) and not the first part of the statute which provides that it is an attorney's duty "[t]o employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth." The labor commissioner, however, before whom Respondent testified is not a judge or judicial officer as required by section 6068(d). (See *Sinnamon v. McKay* (1983) 142 Cal.App.3d 847, 852 [trial de novo right based on fact legislature lacked power, absent constitutional provision authorizing such, to confer judicial functions on labor commissioner]; *Collier & Wallis, Ltd. v. Astor* (1937) 9 Cal.2d 202, 204 [labor commissioner possesses no judicial powers and is only an administrative officer with state-wide authority].) As such, Respondent cannot be found culpable of a wilful violation of section 6068(d) for seeking to mislead a judge or judicial officer, and count five is dismissed with prejudice.

Count Six - Section 6106

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6106. Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. Respondent engaged in acts of dishonesty, moral turpitude or corruption in wilful violation of section 6106 by knowingly, or at least with gross negligence, aiding the unauthorized practice of law and by

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[13]Unless otherwise indicated, all further references to sections refer to provisions of the California Business and Professions Code.

making a misrepresentation to the labor commissioner.

Count Seven - Case No. 02-O-10741 - Failing to Report Filing of Lawsuits

On or about September 6, 2002, Toyin Dawodu ("Dawodu") filed a complaint against Respondent for, inter alia, malpractice.

On or about September 18, 2002, Bin Zhao ("Zhao") filed a complaint against Respondent before the Labor Commissioner for unpaid wages.

On or about September 18, 2002, Jiawei Xie ("Xie") filed a complaint against Respondent before the Labor Commissioner for unpaid wages.

On or about October 18, 2002, Respondent made his first appearance in the Dawodu action.

Respondent was aware of the Zhao and Xie complaints and testified in the hearings on the complaints on or about March 19, 2003.

At no time did Respondent notify the State Bar of California that three or more lawsuits had been filed against him during a 12-month period.

Count Seven - Section 6068(o)(1)

The State Bar failed to prove by clear and convincing evidence that Respondent wilfully violated section 6068(o)(1). Section 6068(o)(1) provides that it is the duty of an attorney to report to the State Bar, in writing, the filing of three or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity, within 30 days of the time the attorney has knowledge of said lawsuits. Respondent had no duty to report to the State Bar the filing of three lawsuits in a 12-month period, as the Court does not find that three such lawsuits were filed against Respondent over a 12-month period. The Court does not find that Zhao and Xie's complaints for unpaid wages filed before the Labor Commissioner were lawsuits within the meaning of section 6068(o)(1).

Counts Eight - Case No. 03-O-02856 - The Bradley Matter

In or about May 2000, Niall Bradley ("Bradley") employed Respondent to initiate a civil action against a hotel where Bradley had been personally injured on March 18, 1999. On or about November 24, 2000, Respondent was paid approximately $200 to represent Bradley.

On or about February 13, 2001, Respondent filed a complaint for damages for, inter alia, breach of contract and negligence on behalf of Bradley.

On or about March 14, 2001, the defendant filed a cross-complaint against Bradley and properly served Respondent. Respondent did not inform Bradley of such cross-complaint.

On or about April 26, 2001, the court served an order to show cause on Respondent stating that the Bradley matter might be dismissed if Respondent did not file proof of service and/or memorandum to set case for trial. The hearing was set for September 12, 2001. Respondent did not inform Bradley of such order.

On or about May 15, 2001, the defendant filed and properly served Respondent with a motion to dismiss Bradley's matter because the statue of limitations for Bradley's matter was one year. Respondent did not inform Bradley of such motion.

On or about July 12, 2001, the court dismissed the Bradley matter. Respondent did not inform Bradley of such dismissal.

Count Eight - Section 6068(m)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6068(m). Section 6068(m) provides, in pertinent part, that it is an attorney's duty "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 inform Bradley: (1) that the defendant filed a cross-complaint against Bradley; (2) of the order to show cause issued by the court; (3) of the motion to dismiss; and (4) that his matter was dismissed by the court, Respondent failed to keep Bradley reasonably informed of significant developments in his legal matter.

Count Nine - Case No. 03-O-02856 - The Bradley Matter

On or about July 14, 2003, the State Bar opened an investigation, Case No. 03-O-02856, pursuant to a complaint filed by Joseph Comyn on behalf of Niall Bradley ("the Bradley matter").

On or about October 1, 2003, State Bar Investigator Benson Hom ("Investigator Hom") wrote to Respondent regarding the Bradley matter.

On or about October 17, 2003, Investigator Hom wrote to Respondent again regarding the

Bradley matter.

On or about December 23, 2003, Investigator Hom wrote to Respondent again regarding the Bradley mattter.

The October 1, October 17, and December 23, 2003, letters were placed in sealed envelopes addressed to Respondent at his State Bar of California membership records address. The letters were mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date on each letter. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Bradley matter. Respondent did not provide a substantive response to the investigator's letters.

On or about October 31 and December 11, 2003, and January 1 and 28, 2004, Respondent spoke with Investigator Hom by telephone and indicated that he was aware that he was to provide a written response to Investigator Hom's letters.

Count Nine - Section 6068(i)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6068(i). Section 6068(i) requires an attorney to cooperate with and participate in a State Bar disciplinary investigation or proceeding. Respondent wilfully violated section 6068(i) by failing to provide a substantive written response to Investigator Hom's letters of October 1, 2003, October 17, 2003, and December 23, 2003.

Counts Ten Through Twelve - Case No. 03-O-03346 - The Yanez Matter

On or about January 31, 2003, Francisco Yanez ("Yanez") employed Respondent to file a Chapter 7 bankruptcy. On that date, Yanez paid Respondent $3,000.

In or about May 2003, Yanez went to Respondent's office and spoke with Respondent who informed Yanez that Respondent had been very busy but that Respondent would start work on Yanez's matter right away.

In or about July 2003, Yanez discovered that Respondent had not filed Yanez's Chapter 7

bankruptcy.

Respondent did not perform any legal services for Yanez or file a Chapter 7 bankruptcy.

Respondent did not inform Yanez of Respondent's intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Yanez.

On or about July 17, 2003, Yanez sent a letter to Respondent telling Respondent not to file Yanez's Chapter 7 bankruptcy and requesting that Respondent refund Yanez's $3,000.

By failing to perform, Respondent constructively withdrew from Yanez's matter. Respondent did not earn any portion of the fees advanced by Yanez. As of March 12, 2004, Respondent had failed to refund any portion of the unearned fees to Yanez.

Count Ten - Rule 3-110(A)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 3-110(A). Rule 3-110(A) provides that "[a] member shall not intentionally, recklessly, or repeatedly failed to perform legal services with competence." By failing to perform any legal services for Yanez or file a Chapter 7 bankruptcy on his behalf, Respondent recklessly, repeatedly or intentionally failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Eleven - Rule 3-700(A)(2)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 3-700(A)(2). Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid reasonably foreseeable prejudice to the client's rights. By failing to perform any legal services for Yanez or filing a Chapter 7 bankruptcy on his behalf, Respondent constructively terminated his services. He was therefore required to take steps to avoid reasonably foreseeable prejudice to Yanez's rights. Respondent, however, failed to inform Yanez of his intent to withdraw from his representation of Yanez or take any other steps to avoid reasonably foreseeable prejudice to Yanez in wilful violation of rule 3-700(A)(2).

Count Twelve - Rule 3-700(D)(2)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated

rule 3-700(D)(2). Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees. Respondent performed no services for Yanez and constructively withdrew from Yanez's matter. He therefore did not earn any portion of the fees advanced by Yanez. Respondent therefore wilfully violated rule 3-700(D)(2) by failing to return to Yanez any portion of $3000 advance fee paid by Yanez.

Count Thirteen - Case No. 03-O-03346 - Failure to Cooperate in Investigation

On or about August 13, 2003, the State Bar opened an investigation, Case No. 03-O-03346, pursuant to a complaint filed by Francisco Yanez ("the Yanez matter").

On or about September 19, 2003, State Bar Investigator Benson Hom wrote to Respondent regarding the Yanez matter.

On or about November 4, 2003, Investigator Hom wrote to Respondent again regarding the Yanez matter.

On or about December 23, 2003, Investigator Hom wrote to Respondent again regarding the Yanez matter.

The September 19, November 4, and December 23, 2003, letters were placed in sealed envelopes addressed to Respondent at his State Bar of California membership records address. The letters were mailed by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date on each letter. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that Respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Yanez matter. Respondent did not provide a substantive response to the investigator's letters.

On or about October 31 and December 11, 2003, and January 21 and 28, 2004, Respondent spoke with Investigator Hom by telephone and indicated that he was aware that he was to provide a written response to Investigator Hom's letters.

Count Thirteen - Section 6068(i)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated

section 6068(i). Respondent wilfully violated section 6068(i) by failing to provide a substantive written response to Investigator Hom's letters of September 19, November 4, and December 23, 2003.

MITIGATING/AGGRAVATING CIRCUMSTANCES

As Respondent's default was entered in this matter, Respondent failed to introduce any mitigating evidence on his behalf, and none can be gleaned from the record.

In aggravation, Respondent has a prior record of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(i) ("standard").) On August 15, 2003, the Hearing Department of the State Bar Court issued a decision in Case No. 00-O-10318 finding Respondent culpable of wilfully violating sections 6104, 6068(d), 6068(m) and 6106, and rules 3-700(D)(1) in one matter involving two clients and recommending that Respondent be suspended from the practice of law for two years and until he has shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct; that execution of said suspension be stayed; and that Respondent be placed on probation for two years subject to certain conditions of probation, including a 75-day period of actual suspension.

The fact that Respondent engaged in multiple acts of misconduct in this matter is also an aggravating circumstance. (Standard 1.2(b)(ii).)

Respondent's failure to participate in the status conferences or pretrial conference prior to the entry of his default is a further aggravating circumstance. (Standard 1.2(b)(vi).)

Respondent's misconduct significantly harmed Yanez, as Respondent did not return to Yanez any portion of the $3000 advanced fee Respondent received which was unearned. (Standard 1.2(b)(iv).)

By continuing to employ Elliott because she had good contacts for his business even after he was informed by U.S. Immigration that Elliott was falsifying statements for clients, Respondent demonstrated indifference toward atonement for or rectification of the consequences of his misconduct. (Standard 1.2(b)(v).)

DISCUSSION

In determining the appropriate discipline to recommend in this matter, the Court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of sanctions ranging from reproval to disbarment. (See Standards 2.3, 2.4(b), 2.6, and 2.10.) In addition, standard 1.6(a) states, in pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts the sanction imposed shall be the more or most severe of the different applicable sanctions." In this regard, standard 2.3 provides, "Culpability of a member of an act of moral turpitude . . . or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Furthermore, standard 1.7(b) provides that if any attorney is found culpable of misconduct in any proceeding and the member has a record of one prior imposition of discipline, the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline was remote in time and the offense was minimal in severity.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid

standards." (*Id.* at p. 251.)

The State Bar recommends that a lengthy period of actual suspension be imposed in this matter. In particular, the State Bar recommends, inter alia, that Respondent be suspended from the practice of law for four years; that execution of said suspension be stayed; and that Respondent be actually suspended from the practice of law for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii).

The Court concurs that a lengthy period of actual suspension is appropriate. However, in determining the appropriate period of actual suspension to recommend, the Court is guided by *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 and *In the Matter of Bragg*, *supra*, 3 Cal. State Bar Ct. Rptr. 615.

In *Jones*, the attorney, who had practiced law for less than three years, permitted a non-lawyer to operate a large scale personal injury practice for more than two years and split fees with the non-lawyer. The non-lawyer was not properly supervised by the attorney, and the non-lawyer used illegal methods to solicit clients. Unbeknownst to the attorney, the non-lawyer engaged in acts constituting the practice of law in the attorney's name; misused almost $60,000 withheld from client settlements for medical providers; collected more than $600,000 in fees in the attorney's name but without any attorney's performance of services; and handled millions of dollars. In the attorney's name, the non-lawyer accepted and handled on his own hundreds of clients of which the attorney was unaware. The attorney ultimately turned the non-lawyer in to the police resulting in the non-lawyer's criminal conviction.

Furthermore, in a specific client matter, the non-lawyer accepted a client matter unbeknownst to the attorney, and the matter was settled without the client's or the attorney's knowledge. The settlement funds were deposited into a general account, but the medical lienholder was not paid, and the balance in the account fell below the amount due to the lienholder.

A lienholder was also not paid in another matter accepted by the non-lawyer without the attorney's knowledge and in which the attorney had no knowledge of the medical lien or the

settlement of the matter.

Jones was found culpable in all three matters of aiding the unauthorized practice of law; dividing fees with a non-lawyer; forming a partnership with a non-lawyer in which the dominant activity was the practice of law; recklessly failing to supervise a non-lawyer's activities; and breaching his fiduciary duties amount to an act of moral turpitude. In mitigation, little weight was given to Respondent's lack of a prior record of discipline, as he had only been in practice for a little over two years when the misconduct began. However, significant mitigation was given for the cooperation and candor with the State Bar, law enforcement and potential victims, and mitigating credit was also given to the attorney's demonstration of good character, his community activities and the objective steps he took to make the lienholders whole. In aggravation, the attorney engaged in multiple acts of misconduct; the lienholders were harmed; and the attorney failed to adhere to minimal standards of professional responsibility for the operation of a law practice. The attorney was suspended from the practice of law for three years, the execution of said suspension was stayed; and the attorney was actually suspended for two years and until he proves his rehabilitation, fitness to practice and learning in the law pursuant to standard 1.4(c)(ii).

In *Bragg*, the attorney entered into an agreement for nine months with a non-lawyer in which the non-lawyer would manage the attorney's pre-litigation files. In many matters, the evaluation, negotiation and settlement were conducted by the non-lawyer or his negotiators with no attorney supervision, except that an attorney would approve the disbursement sheet and the actual disbursement of settlement funds. Compensation was to be determined on a formula, and the net profit was to be divided between the attorney and the non-lawyer. Bragg was found culpable of having an agreement to share fees with a non-lawyer. In aggravation, it was determined that the attorney aided a non-lawyer to engage in the practice of law. It was also found that the attorney's misconduct involved moral turpitude.

In other matters, the attorney was found culpable of recklessly, repeatedly, or intentionally, failing to perform legal services with competence; failing to comply with the terms of an agreement in lieu of discipline; and violations of former rules 6-101(A)(2) and 6-101(2)

and sections 6068(a) and 6103. In mitigation, the attorney had nearly 30-years of blemish-free practice; demonstrated good moral character; engaged in community service; and had made revision in the management of his law offices. In aggravation, it was noted that the attorney had not made any effort to take the professional responsibility examination as required by the agreement in lieu of discipline. The attorney was suspended for two years; the execution of said suspension was stayed; and the attorney was actually suspended for one year.

In this matter, Respondent has been found culpable of one count each of aiding the unauthorized practice of law, sharing fees with a non-lawyer, improper solicitation, engaging in acts of moral turpitude, failing to inform a client of significant developments, recklessly, repeatedly or intentionally failing to perform legal services with competence, improper withdrawal, and failing to return unearned fees and two counts of failing to cooperate in a State Bar investigation. No mitigating circumstances were found. In aggravation, Respondent has a prior record of discipline which resulted in a 75-day actual suspension; engaged in multiple acts of misconduct; demonstrated indifference toward atonement for or rectification of the consequences of his misconduct; his misconduct significantly harmed a client ; and he failed to fully participate in this disciplinary proceeding prior to the entry of his default.

Of particular concern to this Court is Respondent's failure to fully participate in this disciplinary proceeding. Although Respondent was aware of this disciplinary proceeding, as he originally filed an answer to the NDC, he failed to participate in any status conferences or the pre-trial conference and failed to appear for trial. Respondent's failure to fully participate in this proceeding leaves the Court without any understanding as to the underlying cause or causes for Respondent's misconduct or from learning of any mitigating circumstances which would justify this Court's departure from the discipline recommended by the standards.

The Court finds the misconduct in *Jones* more egregious than in this present matter involving Respondent. However, in comparing the facts in this present matter with those in *Bragg*, the Court notes that the misconduct involving the non-lawyer in *Bragg* occurred for a much shorter time period and there was significant mitigation in *Bragg*, unlike in the present matter. Therefore, the Court finds that a period of actual suspension less than that imposed upon

the attorney in *Jones* but more than that imposed upon the attorney in *Bragg* is appropriate to recommended in this matter.

RECOMMENDED DISCIPLINE[14]

Accordingly, the Court recommends that JAMES CARLISLE REGAN be suspended from the practice of law for three years; that execution of said suspension be stayed; and that Respondent be actually suspended from the practice of law for 18 months and until the State Bar Court grants a motion to terminate Respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rules Proc. of State Bar, rule 205(a)-(c).)

If the period of actual suspension reaches or exceeds two years, it is further recommended that Respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). (See also, Rules Proc. of State Bar, rule 205(b).)

It is also recommended that Respondent be ordered to comply with any probation conditions reasonably related to this matter that may hereinafter be imposed by the State Bar Court as a condition for terminating Respondent's actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during the period of his actual suspension and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

It is further recommended that Respondent be ordered to comply with the requirements of rule 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40

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[14]Respondent's prior disciplinary matter is not yet final. However, the Court's discipline recommendation in this matter would not be changed even if the discipline recommended in Case No. 00-O-10318 is not adopted by the Supreme Court.

days of the effective date of the order showing his compliance with said order.[15]

COSTS

It is further recommended that costs be awarded to the State Bar pursuant to section 6086.10, and that such costs be payable in accordance with section 6140.7.

Dated: December 20th, 2004

ROBERT M. TALCOTT
Judge of the State Bar Court

[15]Failure to comply with rule 955 of the California Rules of Court could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

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 Los Angeles, on December 21, 2004, I deposited a true copy of the following document(s):

DECISION, filed December 21, 2004

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES C. REGAN
2445 LYRIC AVE
LOS ANGELES CA 90027

JAMES C. REGAN
529 E VALLEY BLVD, STE 268-B
SAN GABRIEL CA 91776

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

CHARLES WEINSTEIN & CECILIA HORTON-BILLARD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **December 21, 2004**.

Rose M. Luthi

Rose M. Luthi
Case Administrator
State Bar Court