PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **JOHN WILLIAM FINDLEY,** A Member of the State Bar.	**02-O-12058** **OPINION ON REVIEW**

Respondent, John William Findley, requests our review of the hearing judge's findings that respondent, in a one-client matter, was culpable of violating: rule 3-110(A) of the Rules of Professional Conduct,[1] failing to perform competently; section 6104 of the Business and Professions Code,[2] appearing for a party without authorization; section 6068, subdivision (m), failing to communicate; section 6103, violating a court order; and section 6068, subdivision (i), failing to participate in a disciplinary investigation. The hearing judge recommended a one-year stayed suspension and two years' probation with conditions including 30 days' actual suspension. Respondent contends that no evidence was presented to support the findings and the recommended suspension.

We have independently reviewed the record (Cal. Rules of Court, rule 951.5; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), and we adopt the findings of the hearing judge with minor modifications set forth, *post.* We further adopt all of the hearing judge's culpability conclusions and her discipline recommendation.

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[1]Unless noted otherwise, all further references to rules are to these Rules of Professional Conduct.

[2]Unless noted otherwise, all further references to sections are to the Business and Professions Code.

FACTS

Respondent was admitted to the practice of law in California on December 16, 1991, and was a member at all times pertinent to the charges herein.

Respondent was retained by Rochelle Owens (Owens) on July 17, 2001, to represent her and her husband in a bankruptcy matter. She paid respondent $500 on July 17 and $700 on July 23, 2001, for a total of $1,200 for attorney fees and filing fees. The completed bankruptcy petition was signed by clients and respondent on July 23, 2001. On this date, respondent mentioned to Owens that he would be moving his office, but failed to mention when or to what location.

After two months with no communication from respondent, and having received many phone messages from their creditors, Owens contacted the bankruptcy court in September and learned that her bankruptcy petition was not on file. She called respondent's office, learned that he was no longer there, and left repeated messages on a forwarding telephone number. When she called, she got an answering machine which answered "Office of John Findley, please leave a message." Respondent did not return her calls.

On October 3, 2001, Owens was able to reach respondent, and upon being informed by Owens that her petition was not on file, he replied that he had mailed the petition and that "the papers must be lost" and promised that he would locate them and take them to the court personally within the next day or so. He also promised Owens that if he was unable to locate the petition, he would contact her.

On October 11, 2001, not having heard from respondent, Owens contacted the bankruptcy court and learned that the petition had not yet been filed. She wrote a letter to respondent suggesting that he return the fees paid if he was unable to complete her case, so that she might seek the services of another attorney. She sent this letter to an address obtained from the

telephone company: 2815 Mitchell Dr., Walnut Creek, CA 94598.[3] The letter was returned, marked "return to sender."

On October 16, 2001, having received no response from respondent, Owens called respondent and left a message on his answering machine, terminating his services. She also wrote a letter reiterating that his services were terminated and requested the return of her fees and mailed it "certified mail - return receipt requested" to respondent at 2815 Mitchell Dr., Walnut Creek, CA 94598. This letter was also returned, marked "return to sender."

Having received no response from respondent, Owens then contacted a former partner of respondent and obtained another address for him: 167 Cleopatra Dr., Pleasant Hill, CA 94523, which was respondent's residence. On October 25, 2001, Owens sent a letter "certified mail - return receipt requested" requesting that respondent return her money since he had not held up his end of the contract. This too, was returned, marked "return to sender." Respondent testified that this was his residence and working address from September 2001 to the end of December 2001, but he insists that he did not receive any of Owens's letters.

About this time, Owens hired attorney John Vos (Vos), regarding her bankruptcy problem. He advised Owens and her husband not to file for bankruptcy but to refinance their home and pay their creditors and that filing for bankruptcy could mean the loss of their home because the equity in their home was more than the homestead protection. Owens paid Vos $1,200 for the filing of a bankruptcy petition, but Vos returned $1,000 when the bankruptcy petition was not filed and the Owenses paid off their creditors.

On December 21, 2001, respondent filed the Owenses' bankruptcy petition, five months after it was completed, more than two months after Owens's inquiry and two months after Owens terminated respondent's services. Following the filing, Owens received a call from the

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[3]Respondent testified that this address was his correct address after January 2002, but not before.

bankruptcy court clerk who was unable to contact respondent, stating that the court needed some missing information on the petition on file. Owens was unaware that the "lost" petition had been located and filed, since she had had no contact with respondent since October 3, 2001. On December 27, 2001, Owens wrote to respondent about her call from the bankruptcy court clerk and reminded him that she had terminated his services and had requested the return of her fees. This letter was addressed to 180 Golf Club Road, #339, Pleasant Hill, CA 94523.

On January 7, 2002, Vos sent a letter to respondent requesting that he "undo" the bankruptcy filing, filed without client authorization. He informed respondent that Owens was having negative repercussions from the filing resulting in cancellation of a credit card, to whom the Owenses owed nothing, and advised him that the Owenses had paid off their creditors. Vos asked respondent to file a rescission to put the Owenses back to where they were prior to the filing.

On January 25, 2002, respondent filed a request for dismissal, not a motion for rescission as requested, thus retaining the bankruptcy on record. As a result, Owens had trouble renewing her insurance agency license, had to contact creditors, and continued to have problems with her credit card company. On January 28, 2002, Vos filed a Motion for Dismissal and Rescission of Chapter 7 and for Order Disgorging Attorney's Fees, on behalf of Owens, in the bankruptcy court. Respondent did not file a response. Vos's motion was granted by the bankruptcy court on March 12, 2002, and the court ruled that (1) respondent had filed the petition without authorization of the client; (2) the case was dismissed nunc pro tunc; (3) respondent was to disgorge forthwith $1,200 to the Owenses; and (4) respondent was not to make any appearances in bankruptcy court in the Northern District of California without permission of the court or until the $1,200 was paid in full.

On October 21, 2002, without permission from the bankruptcy court or without refunding $1,200 to Owens, respondent filed a motion to dismiss and for attorney fees in the matter of *In*

re Candie Jill Nellson in the bankruptcy court in the Northern District of California. On November 4, 2002, an Order to Show Cause (OSC) re: Contempt was issued by the court against respondent for disobeying the court order of March 12, 2002. On November 5, 2002, Vos sent a letter reminding respondent of the order that he disgorge the $1,200 fees. Respondent filed a declaration in response to the OSC, and on December 2, 2002, the court found that respondent had violated the court order of March 12, 2002, and found him in contempt of court. The court ordered full payment to Owens by January 5, 2003, and payment of an additional five dollars for every day after January 5, 2003, that the $1,200 remained unpaid. Respondent was also ordered to pay a $2,500 fine to the bankruptcy court clerk, but the fine would be stayed if payment was made in full to Owens by January 5, 2003. Respondent was also ordered not to make any appearances or file any papers in any federal court in the Northern District of California without the court's permission.

On December 3, 2002, respondent obtained a cashier's check for $1,200, but the check was not mailed to Owens until January 4, 2003, one day before the due date. The check was received on January 7, 2003.

On June 11, 2003, a State Bar investigator sent a letter requesting a response in writing to the allegations of misconduct by the Owenses. Respondent did not respond. On July 18, 2003, a second letter was sent to respondent. The letters were not returned and respondent did not respond.

On August 28, 2003, respondent entered into a Stipulation as to Facts and Admission of Documents.

DISCUSSION

Count One - rule 3-110(A) - failure to perform with competence

The hearing judge found respondent culpable of violating rule 3-110(A) by failing to file the Owenses' bankruptcy petition in a timely manner and by not having in place any office

procedure to follow through on the filing. Respondent was found to have intentionally, recklessly or repeatedly failed to perform his duties competently. We agree.

Our independent review of the evidence establishes clearly that the Owenses' bankruptcy petition was completed, signed and paid for in full, on July 23, 2001. Respondent neither timely filed the petition nor gave Owens a copy of it. After many attempts to contact respondent, substantiated by her telephone bills, Owens was finally able to reach respondent and informed him on October 3, 2001, that the petition was not on file. Respondent promised to hand-carry the petition when he located it. The petition was filed on December 21, 2001. Owens learned of the filing of the petition when the bankruptcy court, unable to contact respondent, contacted her to inquire about some missing information on the petition.

The testimony of respondent is as follows. He initially mailed the petition to the court on the second or third week of August, 2001. He had no documentation to show that the petition was mailed to the court and had no explanation as to the reason the petition was not mailed for two or three weeks after it was completed on July 23, 2001. He first became aware that the petition was not on file when he received the call from Owens. He admitted that he had no office procedure for follow-up on his cases, relying on his innate sense of when events should occur[4]. He opined to Owens that it could have been lost in the mail, but that he would track it down and hand-carry it to court himself within a day or so, and that if he could not locate it, he would contact her. In any event, according to respondent, because of Owens's concern about the imminent change in the bankruptcy laws, he told her that he would get it filed before the end of the year. When Owens mentioned that she had been unable to contact him, respondent explained that he had been having problems with his phone since his move from San Rafael to Contra Costa County. We discuss this further, *post*.

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[4]Respondent testified: "I knew when I sent it [the petition] and in my practice I know how long it takes. So I kind of have a-a sense generally that if I haven't heard back on something, I eventually follow up on it . . . ." "Usually within ten to fourteen days."

Respondent testified that approximately a week later, he located the petition which, according to him, had been returned by the court to his old office in San Rafael because the filing fee had not been attached. He did not have the "cheat sheet" sent by the bankruptcy court[5] detailing the deficiency. He did not contact Owens to let her know that he located the petition. Respondent explained that since he had promised to hand-carry the petition to court, he waited until he had an opportunity to go to Santa Rosa to file it personally and made a special trip on December 21, 2001. He made no attempt to contact Owens since the call from her on October 3, 2001.

We have consistently held that clients have the right to expect that attorneys will reasonably supervise the progress of cases for which they accept responsibility. "The failure to maintain an effective calendaring and follow-up system as a means of supervising employees and monitoring cases places the attorney at risk of violating rule 3-110(A), regardless of whether that attorney has actual knowledge of the status of the case. It is his or her obligation to know the status of cases, and failure to have effective systems in place to provide that information is likely to be, within the meaning of rule 3-110(A), 'reckless' . . . . " (*In the Matter of Sullivan* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 611-612.) We find by clear and convincing evidence that respondent recklessly failed to perform legal services competently especially after allegedly locating the "lost" petition in early October and then not filing it until December 21, 2001. "An attorney must use his best efforts to accomplish with reasonable speed the purpose for which he was employed. Failure to communicate with and inattention to the needs of a client are grounds

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[5] The parties stipulated that the bankruptcy court of the Northern District of California follows the following procedure on receiving a document for filing that is incomplete or deficient: An intake clerk places a courtesy call to the attorney or pro per debtor if the clerk notices an omission in the pleading. If the attorney cannot be contacted by phone, a "cheat sheet" detailing the filing deficiency will be sent to the attorney with the returned documents. The "cheat sheets" are not memorialized [in the court records]. In cases of a represented debtor, the intake clerk only contacts the debtor if the attorney of record cannot be contacted directly.

for discipline. [Citations.] Such a failure is a breach of the good faith and fiduciary duty owed by an attorney to his clients. [Citations.]" (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 931-932.) Further, respondent's claim that he failed to receive messages or letters would not exonerate respondent from his obligation under rule 3-110(A) to diligently track the progress of his cases.

Count Two - section 6104 - appearing for party without authorization

The hearing judge found that respondent filed the bankruptcy petition on December 21, 2001, after his services had been terminated, and without any contact with Owens since October 3, 2001. We agree with these findings and with the hearing judge's conclusion that respondent thereby willfully and without authority appeared as attorney for Owens in violation of section 6104.

Count Three - section 6068, subdivision (m) - failure to respond to client inquiries and to keep client informed of significant developments

The hearing judge found that respondent willfully violated section 6068, subdivision (m), by not responding to Owens's many telephone inquiries and letters regarding the status of her matter, and by not informing Owens of significant developments in her case, i.e., the date of respondent's move, respondent's new office address and telephone number, respondent's retrieval of the "lost" bankruptcy petition, and respondent's filing of the bankruptcy petition.

We find respondent's insistence that he did not receive any of Owens's telephone calls or messages as not credible, and even suspect, since he testified that he was accessible by telephone 24 hours a day. The hearing judge also rejected, as lacking in credibility, respondent's claim that none of her messages were received. We defer to the hearing judge's finding of credibility as she was in the best position to observe and make that determination. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 640.) However, we give no weight to the violation of section 6068(m) in considering discipline, since we find it to be duplicative of the facts relied upon for our culpability determination of failure to perform competently.

Count Four - section 6103 - failure to obey a court order

The hearing judge concluded, and we agree, that respondent willfully violated section 6103 by filing without permission of the court, a motion for dismissal on behalf of his client in the matter of *In re Candie Jill Nelson*, in the bankruptcy court in the Northern District of California on October 21, 2002. He also, failed to pay the $1,200 to Owens, contrary to the order of the bankruptcy court on March 12, 2002. Respondent's failure to comply with the order under these circumstances constituted a violation of section 6103. (See *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9-10 [attorney culpable of violating section 6103 where he knew of court order and failed to obey it, notwithstanding attorney's lack of intent to deliberately defy a court order"].)

Count Five - section 6068, subdivision (i) - failure to cooperate in State Bar investigation

On June 11, 2003, and July 18, 2003, a State Bar investigator sent inquiries to respondent in reference to the complaint filed by Owens, requesting that he respond in writing. " Section 6068 [subdivision] (i) requires attorneys to respond in some fashion to State Bar investigator's letters. . . . If the attorney simply remains silent, the attorney . . . violates section 6068 [subdivision] (i) . . . . " (*In the Matter of Bach, supra*, 1 Cal. State Bar Ct. Rptr. at p.644.) Further, an attorney may be found culpable based on a failure to respond to a State Bar investigator's letters even if he or she subsequently cooperates in a State Bar proceeding. (Ibid.) We have held that "[b]y choosing not to reply in writing to the State Bar's investigatory letter . . . when he knew a written reply was necessary, respondent intentionally violated section 6068(i)". (*In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr 179, 189.) We agree with the hearing judge that respondent violated section 6068(i).

Respondent's Claims

Respondent contends that there was absolutely no evidence to support the findings of the hearing judge. He insists that his testimony was without opposing evidence and therefore must

be accepted and that the hearing judge's determination of credibility was not appropriate. He also asserts that none of the alleged violations were willful. It has been held that "[t]he term 'willful' does not require evil intent, but it implies the person knows what he is doing, intends to do what he is doing, and is a free agent. [Citation.]" (*Morales v. State Bar* (1983) 35 Cal.3d 1, 6.) Here respondent consistently failed to respond to the many inquiries from Owens, did not file the "lost" petition allegedly found in October 2001 until December 2001, and he failed to comply with the court order of March 12, 2002.

Respondent insists that he gave Owens his new address on July 23, 2001. As proof, he points to the bankruptcy petition signed by the Owenses, on which is the new address: 180 Golf Club Road, #339, Pleasant Hill, CA 94523. Respondent recollects that he gave her a copy of the petition, which she denies, and stated that he, therefore, did not find it necessary to send her a notice of his move.

Respondent's explanation is incredible, in light of the effort Owens made to try to contact respondent. Moreover, because respondent testified that he received messages from his other clients, it is impossible to believe he would not have received Owens's many contacts.

On the question of the "lost" petition, respondent testified that he found that the petition had been returned to his old office in San Rafael. This is again questionable, since, his new address in Pleasant Hill was on the bankruptcy petition as of July 23, 2001, and it is incomprehensible that the petition would not have been returned to the address on the petition by the court.

As for respondent's telephone problems, Owens's testimony about her many telephone calls to respondent is corroborated by her telephone bills. Respondent claims that he was unaware that he was having problems with his incoming calls, but should have been alerted to the problem very early on, especially since, as he testified, he was available by phone 24 hours a day. His testimony is that the phone was finally repaired on or about October 3, 2001, when he

received the call from Owens informing him that the petition was not on file, but Owens's subsequent telephone calls and messages again went unanswered. He claims that he then discovered that he had problems with his answering service, which were resolved in late October. He contends that he did not receive any messages from Owens after October 3, 2001, even though he received messages from other clients.

Candie Nelson, another client, testified on behalf of respondent that she remembered the problems of his phone after his move and she couldn't get through, but that the problem lasted about a day or two – not weeks. She also stated that when she left a message for respondent, he always returned her calls. Again, we find respondent's credibility to be questionable.

Respondent testified that Owens agreed that respondent could file the bankruptcy petition before the end of the year. Owens testified that she did not agree that respondent could file the petition at the end of the year. She testified that she was "freaking out' because she was getting calls from her creditors and she did not know what was going on. She also mentioned to respondent that she was concerned that her petition had not been filed because the rumors were that the bankruptcy laws were going to change after the first of the year.

Based on all of the above, respondent's overall credibility was appropriately found to be lacking by the hearing judge. As she found, respondent had an excuse for everything and he placed responsibility for all that transpired on "the faulty memory" of Owens, the telephone company and the answering service. We give great weight to the determination of credibility by the hearing judge because she saw and heard the witnesses testify. (*In the Matter of Bach,* supra, 1 Cal. State Bar Ct. Rptr. at p. 640.) Our independent review of the record confirms the credibility determination, and we therefore accept and adopt it.

Lack of Candor

Respondent contends that he has been completely candid in this matter, but our de novo review of the record confirms the hearing judge's finding that respondent lacked candor. (Rules

Proc. of State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std.1.2 (b)(vi) (stds).) He testified that he gave Owens a copy of the bankruptcy petition which included his new address. He claims that for this reason he did not send her a notice of his move. This belies the conduct of Owens who continued to call respondent, who contacted the telephone company in an attempt to get his address and even contacted respondent's former partner for his address, all to no avail. It is clear that respondent's testimony was untruthful and self serving. Respondent further testified that Owens agreed that he could file the petition at the end of the year. Yet, Owens's anxiety about the status of her bankruptcy refutes this claim and is at complete odds with respondent's testimony.

Respondent displayed a lack of candor and cooperation to Owens and to the State Bar by not acknowledging his misconduct. He insists on his version of the facts, notwithstanding the lack of any corroboration of his version and the contrary evidence presented at trial.

DISCIPLINE

In weighing the degree of discipline to recommend, we first look to the mitigating and aggravating circumstances.

The hearing judge found mitigation in the absence of a record of discipline in respondent's practice of law of almost ten years prior to the misconduct, and we agree. (Std. 1.2(e)(i)). We also find that some mitigating weight should be given for respondent's entering the Stipulation as to Facts and Admission of Documents on August 28, 2003. We agree that no other mitigation was found.

In aggravation, respondent's misconduct evidences multiple acts of wrongdoing (std. 1.2(b)(ii)), notwithstanding respondent's characterization of the misconduct as a "series of unfortunate events." He failed to timely file the bankruptcy petition, failed to keep Owens informed of the status of her matter, failed to diligently track her matter and failed to comply with the bankruptcy court order.

Respondent's misconduct significantly harmed his client, Owens (std. 1.2(b)(iv)), in that she went through a great deal of anxiety trying to contact respondent to learn of the status of her matter and she had to hire another attorney to assist her in her bankruptcy matter and to assist her in having the unauthorized petition filed by respondent rescinded at an added cost. Owens had trouble renewing her insurance agency license, had to contact her creditors, and had problems with her credit card company. Further, Owens had to wait until January 7, 2003, before she obtained the return of her legal fees from respondent.

We find that respondent's meritless excuses or defenses clearly demonstrate respondent's lack of insight into the seriousness of his misconduct and evidences his lack of concern for the needs of his client and for his obligations as an attorney. Respondent contends, rather cavalierly, that Owens did not suffer significant harm, only annoyance and slight inconvenience. He has expressed no remorse for the anxiety Owens had to go through and fails to take any responsibility for his omissions. His failure to recognize the seriousness of his misconduct, to express remorse for his persistent failure to diligently perform the services for which he was engaged and for which he accepted fees is particularly of concern to this court. We find no assurance that this conduct will not be repeated.

The primary purposes of sanctions imposed for professional misconduct are the protection of the public, the courts, and the legal profession; the maintenance of high professional standards by its members; and the preservation of public trust in the legal profession. (Std. 1.3.)

The applicable sanctions are found in standards 2.4(b)[6] and 2.6[7], which provide discipline

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[6] Std.2.4(b) provides: "Culpability . . . of wilfully failing to perform services in an individual matter . . . of wilfully failing to communicate with a client shall result in reproval or suspension depending upon the extent of the misconduct and the degree of harm to the client."

[7]Std.2.6 provides: "Culpability . . .of [Sections 6068 and 6103] shall result in disbarment or suspension depending on the gravity of the offense or the harm . . . ."

ranging from reproval to disbarment, depending on the extent of the misconduct, the gravity of the offense, and the degree of harm to the client or victim of the misconduct.

Having found the aggravating circumstances outweigh the mitigating circumstances, we then look to similar cases to determine the proper discipline to recommend. *In the Matter of Nunez* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 196 (*Nunez*) involved one client matter in which the attorney was found culpable of failure to perform competently, failure to communicate with the client, failure to return the file promptly, failure to deposit advanced costs in a client trust account, and withdrawal from employment without taking reasonable steps to avoid prejudice to the client. The court found the mitigating evidence outweighed the aggravating evidence and recommended 30 days' actual suspension.

In *Layton v. State Bar* (1990) 50 Cal.3d 889 (*Layton*), also involving a one client matter, the attorney as the executor and trustee of an estate, failed to conserve assets of the estate, failed to file an accounting over a 5-year period, and failed to communicate with the primary beneficiary. In mitigation, the court found that Layton had been in practice for more than 30 years without any disciplinary record. Layton was suspended for 3 years, stayed, and 3 years' probation on conditions, including a 30-day actual suspension.

In *Bach v. State Bar* (1991) 52 Cal.3d 1201 (*Bach*), in a single client matter of an uncontested marital dissolution, Bach was found culpable of failing to perform competently, withdrawing from representation without client consent or court approval, failing to refund unearned fees, and failing to respond to two letters from the State Bar. Bach failed to bring this matter to a conclusion in two and a half years and failed to communicate with his client for months at a time despite repeated telephone calls and office visits from the client. Bach was given credit for his many years of practice without any disciplinary record, and the discipline imposed was twelve months' suspension, stayed, and twelve months of probation on conditions, including thirty days of actual suspension.

In *Van Sloten v. State Bar,* supra, 48 Cal.3d 921, another single client matter involving a marital dissolution case, after working on the matter for five months, Van Sloten submitted a settlement agreement, then subsequently failed to communicate with the client, failed to take further action, and failed to withdraw. He was given credit for no prior disciplinary record and for committing no serious harm to his client. The court imposed six months' suspension, stayed, a one-year probation, and no actual suspension.

Respondent has not attempted to assist this court with any citations to support his position that his misconduct merits at most a private reproval. The State Bar has directed this court to consider *In the Matter of Klein,* supra, 3 Cal. State Bar Ct. Rptr. 1, essentially involving a one client matter, in which the attorney was found culpable of failure to obey a court order. While the attorney violated a rule governing conflicts of interest in a separate bankruptcy matter, the court viewed the violation as relatively minor. (Id. at p.7.) The discipline imposed was a two-month stayed suspension with no actual suspension based on extensive mitigating circumstances. In *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592, the attorney was found culpable of failure to obey a court order. Mitigation was found in the attorney's good faith belief that the court order was invalid and in the attorney's 18 years of practice without any disciplinary proceedings. A private reproval was imposed. In *Lester v. State Bar* (1976) 17 Cal.3d 547, the attorney was found culpable of failing to perform competently in four matters, of failing to communicate, and of failing to refund advanced fees until intervention by the court. Based on his lack of candor in testifying and lack of insight into the wrongfulness of his actions, the discipline imposed was two years' suspension, stayed, and two years' probation on conditions, including six months' actual suspension.

We find similarity between *Nunez, Layton, Bach,* and the case-in-chief but also find that this case is more egregious than the others.. Notwithstanding respondent's assertion that he should receive at most a private reproval, we conclude that to protect the public, courts and the

legal profession, a period of actual suspension of sixty days is appropriate in this case, particularly in view of respondent's lack of insight into the wrongfulness of his actions and complete failure to acknowledge any wrongdoing whatsoever and lack of any expression of remorse for the problems and harm he caused his client.

RECOMMENDATION

For the foregoing reasons, we recommend that respondent, John William Findley, be suspended from the practice of law for a period of one year, that execution of that suspension be stayed, and that he be placed on probation for a period of two years on the condition that he be actually suspended for sixty days. All conditions specified by the hearing judge in her decision filed on January 12, 2004 are incorporated herein by reference. We further recommend that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners within one year from the effective date of the Supreme Court order in this matter and provide proof of such passage to the State Bar Probation Unit within said year.

COSTS

We recommend that the State Bar be awarded costs pursuant to section 6086.10 of the Business and Professions Code and that such costs be payable in accordance with Business and Professions Code section 6140.7.

WATAI, J.

We concur.

STOVITZ, P.J.

EPSTEIN, J.

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 June 15, 2005, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED JUNE 15, 2005

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:

JOHN W. FINDLEY
LAW OFC JOHN W FINDLEY
2815 MITCHELL DR STE 104
WALNUT CREEK, CA 94598 - 1622

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

ERICA L. M. DENNINGS, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 15, 2005**.

Rosalie Ruiz
Case Administrator
State Bar Court