THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

PUBLIC MATTER

In the Matter of **ANTHONY J. ALLEGRINO II,** **Member No. 200905,** A Member of the State Bar.	**Case No. 02-O-13815; 02-O-13919; 03-O-00065 (Cons.) - RMT** **AMENDED DECISION**

INTRODUCTION

This matter came before the Court for hearing on April 21-23, 26 and May 17, 2004. Following briefing by the parties, this matter was submitted for decision on August 18, 2004. The Court issued a Decision on November 16, 2004. However, after granting post-trial motions filed by the Office of the Chief Trial Counsel of the State Bar of California ("State Bar"), the Court issues this Amended Decision.

The State Bar was represented at trial in this matter by Deputy Trial Counsel Timothy Byer ("DTC Byer").[1] Respondent Anthony J. Allegrino II, ("Respondent") appeared in propria persona.

In light of Respondent's culpability in this matter, and after considering any and all mitigating and aggravating circumstances, the Court recommends that Respondent be suspended from the practice of law for a period of two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability

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[1]The State Bar had earlier been represented in this matter by Deputy Trial Counsel Erin Joyce and Deputy Trial Counsel Gordon Grenier.

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 five years on conditions including, inter alia, that he be actually suspended from the practice of law for one year.

PERTINENT PROCEDURAL HISTORY

On July 9, 2003, the State Bar filed a Notice of Disciplinary Charges in Case No. 02-O-13815.

On July 31, 2003, Respondent filed an answer to the NDC filed in Case No. 02-O-13815.

On October 9, 2003, the State Bar filed a NDC in Case No. 02-O-13919.

On November 4, 2003, Respondent filed an answer to the NDC filed in Case No. 02-O-13919.

On February 6, 2004, the Court issued a Status Conference Order granting the State Bar's motion to consolidate Case No. 02-O-13815 and Case No. 02-O-13919.

On February 9, 2004, the State Bar filed a NDC in Case No. 03–O-00065.

On February 24, 2004, Respondent filed an answer to the NDC filed in Case No. 03-O-00065.

All three cases were thereafter consolidated.

On April 21, 2004, the parties filed a Partial Stipulation of Facts.

Trial was held on April 21-23, 26 and May 17, 2004. Following briefing by the parties, this matter was submitted for decision on August 18, 2004.

On November 16, 2004, the Court issued its Decision in this matter.

On December 9, 2004, the State Bar filed a Motion to Reopen the Trial Record to include in the trial record Exhibits 1 (Findings and Award of the Presiding Arbitrator in Arbitration No. 252150) and 2 (Mot - Minutes/Order of the Court, dated December 3, 2004, in *Allegrino II v. Mather* [sic], *et al.*, Case No. GIC809043, Superior Court of California, County of San Diego) attached to said motion. Respondent did not file a response to said motion. The Court granted said motion in January 2005 and ordered the State Bar Court Case Administrator assigned to this

matter to include said exhibits in the trial record of this proceeding and mark said exhibits as State Bar Exhibits 40 and 41, respectively.

On December 9, 2004, the State Bar also filed a Motion for Reconsideration of the Court's November 16, 2004, Decision in light of an arbitration award issued between the closure of the trial record in this matter and the issuance of this Court's November 16, 2004, Decision, as well as a December 3, 2004, ruling by a San Diego County Superior Court judge finding said arbitration award to be binding. Respondent did not file a response to said motion, and said motion was granted by the Court in January 2005.

FINDINGS OF FACT/CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 1, 1999, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

General Facts Applicable to Case Nos. 02-O-13815, 02-O-13919; 03–O-00065

Respondent was a sole practitioner in San Diego, California. In 2002, he was advertising extensively in the telephone book and spending a considerable amount of money on these advertisements. He therefore decided to explore client solicitation via the Internet. Respondent's website was created, and Respondent advertised over the Internet his ability to assist in obtaining fiancée visas. Respondent utilized the Internet website for approximately one and one-half years, from the Fall of 2000 to 2002. Respondent discontinued the use of the Internet as a result of Mahesh Mathur's complaint to the State Bar.

Complaining witnesses Mark Bode, Mahesh Mathur and Daniel Talcott did not know each other or the nature of their complaints. Each of the complaining witnesses are from disparate parts of the country, and they did not have contact with one another prior to filing their respective complaints, during the investigative process or while appearing in Court.[2]

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[2]The Court found Mark Bode, Mahesh Mathur and Daniel Talcott to all be credible witnesses.

Case No. 02-O-13815 - The Bode Matter

In December 2001, Mark Bode ("Bode"),[3] a Florida resident, called Respondent after locating his advertisement on the Internet and employed Respondent to obtain an INS visa for his fiancée and her son. Bode was led to believe that Respondent would travel to Kiev, Ukraine to meet Bode's fiancée as well as other clients. Mr. Bode believed that Respondent would prepare his fiancée for a future interview and would review the paperwork that needed to be submitted. Bode was very anxious about the whole process and was very "vulnerable."[4]

Bode was sent a retainer agreement via facsimile transmission. Bode believed that Respondent's services were to be rendered for a flat fee of $1,250. A review of Respondent's fee agreement set forth a $995 legal fee for regular processing,[5] a $200 child supplemental legal fee, a $95 INS processing fee, and three different fees for various Fedex or similar services. However, the retainer agreement was a multiple page document which contained many exceptions to the basic legal fee which would result in additional fees and was confusing and vague in part[6] and not drafted in a manner to be readily understandable. The Court notes that pursuant to paragraph 5 of the agreement, "CLIENT IS BEING BILLED AT FLAT RATE AND NORMAL OR REGULAR

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[3]The Court found Bode to be a credible witness. Respondent attempted to impeach Bode by demonstrating that he gave differing descriptions of his employment status in certain documents. In various documents, Bode claimed he was permanently disabled, retired, not employed, a senior managing partner, or a financial planner. Respondent also pointed out that in additional documents, Bode claimed that he did not have a bank account; yet he was able to live in a home appraised at 1.45 million dollars and by annuities for $50,000 and $100,000. Nevertheless, the Court gives no weight to any of these discrepancies. The nature of the disparities is not significant to the Court. These discrepancies do not diminish from the credible testimony Bode gave before this Court with respect to his relationship with Respondent. Furthermore, these discrepancies do not bear on the significant issue of Bode's knowledge of the terms of the contract with Respondent.

[4]Testimony of Mark Bode.

[5]Fees were also listed for optional regular expedited processing or premium expedited processing. The rate for regular expedited processing was $215. The rate for optional premium expedited services was $150 per hour.

[6]For example, the agreement provided that the $995 legal fee did not include "OTHER RELATED EXPENSES SUCH AS FILING FEES, ECT [sic]."

PROCESSING ANTICIPATED IN THIS PROCESS."

Paragraph 11 of the agreement provided that in the event of a fee dispute of any nature under the agreement, the client's recourse was limited to binding arbitration in San Diego County under the rules of the San Diego County Bar Association, and that the costs of the arbitration would be paid for by the client.

Bode received and signed the retainer agreement. There was no discussion or explanation with respect to the terms of the retainer agreement. It was never explained to Bode that the fee would be increased based upon an hourly rate.

Bode also signed an authorization to allow Respondent to charge his credit card. The Credit Card authorization states, in pertinent part, "I, MARK BODE, HEREBY AUTHORIZE THE LAW OFFICES OF ANTHONY J ALLEGRINO II TO CHARGE MY CREDIT CARD FOR ANY SERVICES RENDERED AS REFERENCED ON PAGES 1 THROUGH 3 OF THE FEE AGREEMENT." A picture of the credit card was also provided to Respondent.

Except for the initial flat fee, Bode was never advised or informed that his credit card would be charged without prior notice to him. Nevertheless, in addition to the initial flat fee which Bode knew would be charged to his credit card, Bode discovered that an additional $429.71 was charged to his credit card and paid by his credit card company on February 5, 2002. These charges were for such items as telephone calls, file review, copies, INS filing fee and a Fedex charge. Bode never received any invoice or billing statement from Respondent with respect to these additional charges. Although Bode thought the additional charge was professionally inappropriate, he did not object to it as he did not want to jeopardize the relationship with Respondent. However, in order to avoid future charges being placed on his credit card, he kept the balance of the credit card at the upper limit of his credit line, so no future charges could be made to that particular card. However, unbeknownst to Bode, his credit card company paid an additional $304.24 to Respondent's office on March 20, 2002.

Furthermore, shortly after Bode's fiancée received notice of her exit interview, Bode received a call from Respondent. In the telephone call, the first thing Respondent asked was whether or not Bode was happy with their relationship. Upon hearing the answer, Respondent

asked whether or not Bode was standing or sitting. Bode replied that he was standing. Respondent suggested that he might sit down at this point in time. When asked why, Respondent informed Bode that he owed Respondent an additional $4,800. Bode was shocked, angered and scared. Bode never received any invoice or billing statement from Respondent with respect to these additional charges.[7] Respondent made it appear that he had received this information from his "billing department," and that is was necessary for Bode to remit this amount immediately or Respondent would have to stop working on Bode's matter. Respondent also advised Bode that he could not put this amount through on Bode's credit card, and that was why he was making this personal call to him. Respondent suggested that since Bode lived in an expensive house he could afford this amount so he should pay Respondent. Bode then agreed to send Respondent $1,000. Respondent agreed to accept this amount, and Bode sent Respondent a check for $1,000. It was also suggested that there would be further discussion about the rest of the fee once Bode's fiancée and her son got to the United States. In another discussion regarding further charges, Respondent stated to Bode, "I'll do the rest of the case pro bono."

After Bode's fiancée and her son arrived in the United States, another charge in the amount of $450 appeared on his credit card. The charge was paid by Bode's credit card company on May 21, 2002. When Bode discovered this charge, he e-mailed Respondent or called him (or both) and complained about the latest charge for $450, reminding Respondent of his statement that he was to perform future work "pro bono." Respondent replied by e-mail stating, in pertinent part, "I will alow [sic] you to deduct the 450 USD from your currently outstanding account ballance [sic] to me of approximately $3,850.00, if payment in full is received within 10 business days from June 17, 2002 . . . ."[8]

Bode never met Respondent in person. All communications were done either over the

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[7]Although there was testimony that invoices dated January 22, February 21, March 23, April 16, and May 21, 2002, were produced and sent to Bode by Respondent's part-time secretary/assistant, and copies of said invoices were produced and admitted into evidence, the Court finds more credible the testimony of Bode that he did not receive any such statements.

[8]American Express reversed the $450 charge to Bode's credit card account.

Internet through e-mail, by regular mail or by telephone. At no time did Respondent inform Bode that additional services necessitating additional fees were necessary, so that Bode could judge whether or not he wanted the services performed.

In addition, in an attempt to collect the money Respondent felt he had earned, Respondent, in a not too subtle manner, suggested to Bode that Respondent might have to make disclosures as to illegal activities in which Bode was allegedly involved.

Respondent, however, did provide the legal services which he agreed to provide. Bode's fiancée received a visa and came to the United States. The additional charges were the result of other work which Respondent performed in order to obtain the visas for Bode's fiancée and her son.

Count One - Rule 4-200(A) of the Rules of Professional Conduct[9]

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 4-200(A). Rule 4-200(A) provides that "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee." By repeatedly charging fees to Bode's credit card account without Bode's knowledge and consent to the specific charges, thereby engaging in overreaching, and by collecting said fees from Bode's credit card company, Respondent charged and collected unconscionable fees in wilful violation of rule 4-200(A).

Count Two - Rule 4-100(B)(3)

The State Bar failed to prove by clear and convincing evidence that Respondent wilfully violated rule 4-100(B)(3). Rule 4-100(B)(3) requires, in pertinent part, that a member "[m]aintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them . . . ." While the Court finds credible Bode's testimony that he did not receive any invoices or billing statements, there was also credible testimony from Respondent's part-time secretary/assistant and credible evidence presented that invoices dated January 22, February 21,

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

March 23, April 16, and May 21, 2002, were prepared and sent to Bode. As such, the Court finds that the State Bar failed to prove by clear and convincing evidence that Respondent failed to render appropriate accounts to Bode in wilful violation of rule 4-100(B)(3). The Court therefore dismisses Count Two with prejudice.

Count Three - Business and Professions Code Section 6106[10]

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 moral turpitude, dishonesty, or corruption by failing to inform Bode either orally or in writing that he was incurring substantial additional charges over the flat fees originally charged by Respondent in order to complete the legal services for which he was employed and by engaging in overreaching by repeatedly charging fees to Bode's credit card account without Bode's knowledge and consent to the specific charges, and by collecting said fees from Bode's credit card company.

Case No. 02-O-13919 - The Mathur Matter

On July 24, 2001, Mahesh Mathur ("Mathur"), a Georgia resident and a group lead engineer systems analyst at Gulf Stream Corporation, wanted to obtain a "fiancee visa" for his future son-in-law. After seeing Respondent's Internet advertisement which had the lowest price, Mathur telephoned Respondent. During their telephone conversation, Respondent quoted Mathur a fee of $1,000. The telephone call was terminated without any agreement that Mathur would employ Respondent. Mathur thereafter talked the matter over with his wife, and it was decided that they would call back and see if Respondent would perform the work for less than $1,000, as Mathur and his wife were trying to determine whether it was worth it to employ someone to do the work or to do the work themselves. Finally, after a series of telephone conversations,[11] it was agreed that Respondent would do the work for $600 plus $135 for expedited processing. There

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

[11]Mathur's wife participated in at least two of these telephone conversations.

was no mention of any hourly fees or hourly rates. Mathur was to fill out the necessary documents and Respondent was to review them to ensure that they were complete and to pursue an expedited resolution of the visa issues of Mathur's future son-in law. It was important to Mathur that the visa be obtained in an expeditious manner.

Mathur received and signed a retainer agreement. The retainer agreement provided for legal fees totaling $735.[12] However, the retainer agreement was a multiple page document which contained many exceptions to the basic legal fee which would result in additional fees and was vague in part[13] and not drafted in a manner to be readily understandable. Respondent never explained the retainer agreement to Mathur. According to the terms of the representation, "ANY OTHER LEGAL FEES CHARGED WILL BE SEPARATELY NEGOTIATED WITH CLIENT SHOULD THE NEED FOR ADDITIONAL LEGAL SERVICES ARISE WHICH ARE NOT INCLUDED IN THE ABOVE FLAT FEES AND BILLED AT NO LESS THAN $150 PER HOUR."

Mathur also signed an authorization to allow Respondent to charge his credit card which stated, in pertinent part, "I, MAHESH MATHUR, HEREBY AUTHORIZE THE LAW OFFICES OF ANTHONY J ALLEGRINO II TO CHARGE MY CREDIT CARD FOR ANY SERVICES RENDERED AS REFERENCED ABOVE ON PAGE 1 IN THE AMOUNT SHOWN BELOW: [¶] AMOUNT OF CHARGE: (As Incurred Per Fee Schedule)." A picture of the credit card was also provided to Respondent. Both Mathur and his wife believed that Respondent's services were to be rendered for a flat fee. Respondent did not inform the Mathurs that he would charge their credit card without first talking to them about the amount and the work performed.

Mathur never met Respondent in person. All communications were done either over the Internet through e-mail, by regular mail or by telephone. Between July 24, 2001, the date Mathur signed the retainer agreement, and November 2001, there was constant communication between

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[12]State Bar Exhibit 8 is the retainer agreement.

[13]For example, the agreement provided that the $600 legal fee did not include "OTHER RELATED EXPENSES."

Respondent and Mathur on various issues. Respondent and Mathur had multiple telephone conversations and e-mail correspondence regarding a deadline. However, at no time was there any discussion on the telephone or by e-mail as to any change in the flat rate fee. In fact, as Respondent's rate was a flat fee, Mathur did not expect any invoice from Respondent for future legal services as any new legal services and any cost to him was to be negotiated between himself and Respondent pursuant to the terms of the retainer agreement.[14]

However, on November 15, 2001, when he was reviewing his Visa card bill, Mathur observed a charge from Respondent in the amount of $501. Mathur was "shocked"[15] by this charge and believed that it was a mistake. Mathur had not received any invoices or billing statements from Respondent.[16] At this point, Mathur started to call and send e-mails to Respondent who did not respond.

On November 22, 2001, Mathur again e-mailed Respondent stating, in pertinent part, "I have not heard from you regarding the earlier E-mail I sent you on the Visa charge that should be credited." Mathur also telephoned Respondent on or about November 22, 2001. On November 22, 2001, additional charges in the amount of $2,550, $3,000, $3,350 and $2,400 were made to Mathur's credit card by Respondent's law office.

On November 23, 2001, Mathur telephoned the credit card company to see if he had been credited for the $501. Much to his shock, Mathur was advised that another $450 was charged to his

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[14]Although Respondent produced a letter (Respondent's Exhibit V23) allegedly sent to Mathur dated August 21, 2001, which confirms that Respondent will be billing Mathur at the $150 per hour rate as they had discussed in an August 16, 2001, telephone conversation, the Court gives more credibility to Mathur's testimony that he never received any such letter and that at no time was there any discussion on the telephone or by e-mail as to any change in the flat rate fee. The Court notes that Respondent did not refer to this letter in subsequent correspondence with Mathur (see State Bar Exhibit 9, p. 100, a November 27, 2001, e-mail from Respondent to Mathur; State Bar Exhibit 15, letter from Respondent to Mathur dated December 5, 2001.)

[15]Testimony of Mahesh Mathur.

[16]Although Respondent produced invoices allegedly sent to Mathur dated August 22, September 22, and October 23, 2001, the Court finds credible the testimony of Mathur that he did not receive any invoices or billing statements.

credit card. Upon learning this, Mathur cancelled his credit card.

Mathur again e-mailed Respondent on November 23, 2001. In his e-mail, Mathur wrote, "another unauthorized charge appeared on my credit card on 11/18/01 for $450.00[.] . . . I am sure this is a mistake, please credit my account immediately for $501 charged on 10/26/01 and for $450 charged on 10/26/01."[17] Mathur also restated his understanding of the flat fee contract that he had entered into with Respondent.

On November 23, 2001, Respondent replied to Mathur's e-mail, but failed to address the issue of the two additional charges to Mathur's credit card. On that same date, Respondent again e-mailed Mathur; however, he still failed to address the charges to Mathur's credit card.

Finally, on November 26, 2001, Respondent replied to Mathur's concerns about the additional charges to his credit card. Respondent informed Mathur that a complete statement of all charges had been sent to him by mail. However, Mathur had not received an invoice or billing statement. Respondent, however, also sent a copy of that invoice as part of his e-mail. In addition to the $600 fee for legal services which Mathur had originally agreed to, the invoice dated November 22, 2001, reflects additional charges to Mathur's credit card totaling $12,414.[18] All the charges were paid by the credit card company as Mathur did not cancel his credit card until November 23, 2001.

On November 27, 2001, Mathur replied to Respondent's e-mail stating, in part, "We never AUTHORIZED you to spend a dime beyond what was agreed on and we are not going to pay you a dime beyond what was agreed on the contract."

On December 3, 2001, Mathur contacted Respondent by e-mail and informed him that he had reported the unauthorized charges to his Visa card company and other agencies.

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[17]State Bar Exhibit 9, page 96. It appears that the $450 additional amount was charged on November 18, 2001, rather than October 26, 2001.

[18]Although Mathur originally agreed to pay Respondent $600 plus $135 for expedited processing for a total of $735, the invoice dated November 22, 2001, does not reflect any $135 charge for expedited processing. Nevertheless, Mathur authorized only $735 to be charged to his credit card and did not authorize the additional charges totaling $12,279 which were ultimately charged to his account.

In a letter to Mathur dated December 5, 2001, Respondent stated, in pertinent part, ". . . I am effectively withdrawing as your attorney effective immediately. [¶] The reason for my decision to withdraw my representation in your legal matter is because of your refusal to meet your financial obligations under your Agreement."

Although Respondent performed services for Mathur, he did not obtain the visa for Mathur's future son-in-law on an expedited basis.

In April 2002, Thomas M. Ramee ("Ramee"), a Georgia attorney working for Mathur's employer, Gulfstream Aerospace Corporation, assisted Mathur in reference to the unauthorized charges made by Respondent on Mathur's credit card.

Mathur thereafter initiated a complaint with the State Bar. He also requested fee arbitration which cost him $1,500 to commence. Respondent initially refused to participate in fee arbitration. However, on February 9, 2003, Respondent signed an Arbitration Agreement under the auspices of the San Diego County Bar Association, in Arbitration No. 252150. Respondent did not mention any plans to file a lawsuit against Mathur.

On April 14, 2003, Respondent filed a lawsuit in the San Diego County Superior Court, entitled *Law Offices of Anthony J. Allegrino II, PC v. Mahesh B. Mather* (sic), *Gulfstream Aerospace Corporation, Thomas M. Remee, General Dynamics Corporation*, in Case No. GIC809043 (the "Allegrino Action").

The complaint filed by Respondent alleged causes of action for negligence, negligent infliction of emotional distress, breach of contract, intentional infliction of emotional distress, breach of the implied covenant of good faith, slander per se against Mathur, his employers, Gulf Stream Aerospace Corporation and General Dynamics Corporation and his employer's in-house lawyer, Thomas Ramee. The complaint sought compensatory damages of $26,201, general damages for the breach of the covenant of good faith and fair dealing of $50,000, general damages for libel of $15,000,000, general damages for negligence of $15,000,000, general damages for emotional distress and mental suffering of $15,000,000, punitive damages of $25,000,000, as well as his attorney's fees and costs of suit against all defendants. Respondent filed this lawsuit even though he did not bill Mathur after November 22, 2001, and he was paid for all the time he billed

Mathur. Respondent filed the lawsuit because he was upset that Ramee, an attorney for Mathur's employer, had become involved in the matter. There was no basis for the lawsuit, and it was filed for the purpose of harassing Mathur, Ramee, and Mathur's employers.

On May 16, 2003, Respondent signed and filed a Certificate of Service under penalty of perjury representing that all defendants had been properly served with the summons and complaint in the Allegrino Action. Respondent had previously found a process server on the Internet whom he paid $350 to effect service and was sent a confirmation by the process server that service had been effected. However, proper service had actually not been effected. However, Respondent was not aware that proper service had not been effected at the time he signed and filed the Certificate of Service.

On June 13, 2003, the defendants filed a special motion to quash service of the summons and complaint based on defective service and the court's resulting lack of jurisdiction over all defendants, as Respondent failed to effectuate any type of personal service on any individual or any authorized person in violation of California Code of Civil Procedure sections 415.10 and 415.20; to the extent Respondent attempted to effect service by mail pursuant under either California Code of Civil Procedure sections 415.30 or 415.50, he failed to include the required acknowledgment of service or return receipt with a copy of the pleadings; Respondent did not effect service on the Georgia individuals in accordance with any method prescribed by the laws of Georgia as provided by California Code of Civil Procedure section 413.10(b); and Respondent failed to provide the required notice on whose behalf the pleadings were allegedly served in violation of California Code of Civil Procedure section 412.30. A hearing on the defendants' motion was set for July 11, 2003. The case was dismissed for lack of proper service.

On August 5, 2004, in the arbitration matter before the Arbitration Committee of the San Diego County Bar Association, the Presiding Arbitrator issued a Findings and Award in Arbitration No. 252150, awarding Mathur $12,414.00 plus 7% interest from November 22, 2001, plus $612.55 in filing fees for a total award of $15,359.51.

On December 3, 2004, in *Allegrino v. Mather* [sic], *et al.*, Case No. GIC809043, the Hon. Joan M. Lewis of the Superior Court of California, County of San Diego, found that the arbitration

award was binding because Respondent failed to participate in the arbitration.

Count One - 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 fail to perform legal services with competence." By not obtaining the fiancée visa on behalf of Mathur's future son-in-law in an expedited manner, and failing to promptly respond to his client's inquiries for an explanation of the unauthorized charges, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

Count Two - Rule 4-200(A)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 4-200(A). By charging a substantial amount of money over and above the flat fee originally agreed upon and by collecting said funds without Mathur's consent by making several unauthorized charges on Mathur's credit card, thereby engaging in overreaching, Respondent charged and collected an unconscionable fee in wilful violation of rule 4-200(A) of the Rules of Professional Conduct.

Count Three - Section 6068(c)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6068(c). Section 6068(c) provides that it is the duty of an attorney "[t]o counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense." By filing a frivolous complaint against Mathur, Ramee and Mathur's employers for the purpose of harassment, the Court finds that Respondent filed and maintained an action that was not and did not appear to Respondent legal or just in wilful violation of Business and Professions Code section 6068(c).

Count Five[19] - Section 6068(d)

The State Bar failed to prove by clear and convincing evidence that Respondent wilfully

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[19]There was no Count Four alleged in Case No. 02-O-13919.

violated section 6068(d). Section 6068(d) provides that it is the duty of an attorney "[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. Respondent was sent a confirmation by the process server he hired that service had been effected; thus, Respondent was not aware that proper service had not been effected at the time he signed and filed the Certificate of Service on May 16, 2003, representing that all defendants had been properly served with the summons and complaint in the Allegrino Action. Thus, the Court finds that the State Bar failed to prove by clear and convincing evidence that Respondent wilfully sought to mislead the court by an artifice or false statement of fact in violation of Business and Professions Code section 6068(d) by falsely stating that all defendants had been properly served with the summons and complaint in the Allegrino Action. Count Five is therefore dismissed with prejudice.

Count Six - Section 6106

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6106. Respondent wilfully violated section 6106 by: (1) making unauthorized charges to Mathur's credit card; (2) over billing Mathur substantially over the original agreed upon flat fee; (3) collecting substantial additional monies through Mathur's credit card without Mathur's knowledge or consent; and (4) by filing a frivolous lawsuit against Mathur, his employers, and his employers' in-house counsel for an improper purpose, Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

Case No. 03-O-00065 - The Talcott Matter

On March 7, 2002, Daniel Talcott ("Talcott"),[20] a resident of the State of Washington, employed Respondent after discovering Respondent's Internet advertisement. Respondent agreed to expedite a "fiancée visa" through the INS to bring Talcott's fiancée to the United States from Odessa, Ukraine.

Talcott first spoke with Respondent by telephone. Talcott advised Respondent that he had

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[20]Daniel Talcott is of no relation to the Hearing Judge assigned to this matter.

already completed the fiancée visa application and filed it with the INS in Nebraska; however, there was an issue with respect to his fiancée's prior marriages. Talcott contacted Respondent in an effort to "speed up the process"[21] as a result of the effects of the September 11, 2001, terrorist attacks on the immigration process. Respondent told Talcott he had contacts in Washington to "speed the process up;"[22] that he was going to Odessa very soon; and that if he was retained he would meet with Talcott's fiancée, Victoria, personally. It was important to Talcott that Respondent was going to go to Odessa, Ukraine, so he would be able to speak to Talcott's fiancée directly and correct any problems that might be discovered.

Respondent indicated that the initial consultation was free. The initial consultation lasted for approximately one and one-half hours. Later that day, Talcott received and signed a retainer agreement and an authorization to allow Respondent to charge his credit card. Pursuant to the Credit Card Authorization signed by Talcott, he authorized Respondent's law office, "TO CHARGE [HIS] CREDIT CARD FOR ANY SERVICES RENDERED AS REFERENCED ON PAGES 1 THROUGH 3 OF THE FEE AGREEMENT[.]" A picture of Talcott's credit card was also provided to Respondent. The retainer agreement reflects a flat $150 per hour fee, as much of the work had already been completed. Because Talcott had earlier filled out the documentation required to bring his fiancée to the United States, he merely wished to have Respondent review the documents to make sure that they were properly filled out and to expedite the process through the INS.

The retainer agreement indicates that Respondent is to: (1) handle the I129F Petition already filed by Talcott with the Nebraska Service Center and remedy any deficiencies in the Petition; (2) expedite the consulate interview in Warsaw; and (3) do "anything else necessary for visa issuance required by Warsaw or INS."[23] The retainer agreement provides that fees will be billed to the credit card account on file with Respondent's office, and that "Client expressly waives the signature

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[21]Testimony of Daniel Talcott.

[22]Testimony of Daniel Talcott.

[23]See State Bar Exhibit 20.

requirement and agrees to pay all charges associated with this Agreement." The retainer agreement also states, in pertinent part:

> It is further understood and agreed that CLIENT SHALL PAY IN ADDITION TO THE ABOVE REFERENCED FEES ANY AND ALL EXPENSES OF ATTORNEY INCURRED AS A DIRECT RESULT OF PURSUING CLIENT'S CASE. These expenses shall include but not necessarily be limited to all out-of-pocket expenses associated with the defense of Client's case such as court costs, expert witnesses, transcripts, private investigators, travel expenses, long distance telephone calls, and other litigation costs. These costs are the sole responsibility of Client and Client understands he or she will be billed for these costs.

The retainer agreement also contains a paragraph relating to binding arbitration in the event of a dispute.

Talcott never met Respondent in person. All communications were done either over the Internet through e-mail, by regular mail or by telephone. Respondent never explained the retainer agreement to Talcott.

On April 6 or 7, 2002, Respondent telephoned Talcott and asked Talcott if he "was sitting down."[24] Respondent indicated that he had tried to run Talcott's credit card and it was rejected. Specifically, Respondent indicated that his accountant had tried to run the card and discovered that there was not enough credit on the card to cover a $3,300 bill that had been generated by Respondent. Talcott was shocked when he learned that in such a short period of time (30 days) such a large bill had been run up. Knowing the amount of work that had to be done, Talcott found the bill excessive. No invoice had been provided to Talcott up to this point in time. Talcott was never told that his credit card would be billed without him being informed of the nature of the work performed or the fees that were generated. In response to Talcott's reaction, Respondent indicated that he also thought the bill was pretty high and suggested that his accountant had made an error.

Talcott was leaving in a few days to meet his fiancée in Odessa, Ukraine, and he did not want to upset his fiancée by changing lawyers. He therefore agreed to pay the $3,300 and negotiated a credit for future work to be performed. In negotiating this credit, Talcott suggested to

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[24]Testimony of Daniel Talcott.

Respondent that if Respondent was willing to give him credit for 50%, Talcott should just pay Respondent 50% at this time. Respondent, however, insisted that he receive the full amount. Talcott also requested an invoice from Respondent.

Talcott thereafter sent an e-mail to Respondent which stated that Respondent was authorized to use a certain Mastercharge card belonging to Talcott for the $3,300 plus fee; however, it was Talcott's understanding that he would receive a credit on that $3,300 of approximately $1,700 which was to be used in the future to obtain a green card once his fiancée was in the United States. In his e-mail, Talcott further stated, "Any other additional charges for the visa application must be discussed with me before being charged to my account."

Talcott thereafter received an invoice from Respondent's law offices dated April 8, 2002, which shows $3,362.53 in charges which were incurred from March 7 through April 8, 2002, and $3,362.53 being paid by Visa on April 8, 2002. The charges incurred were primarily for telephone calls, reviewing the file, and reviewing client e-mail. Although the invoice was dated April 8, 2002, Talcott did not receive it until April 14 or 15, 2002, well after the charges had been paid by Visa. When Talcott had a chance to review the invoice, he became even more upset, because he discovered for the first time that he was charged a $300 consultation fee for the first time that he spoke with Respondent. It was Talcott's understanding, however, that Respondent was not charging him for the initial consultation. He also observed on the invoice numerous calls to the Ukraine, but there was no explanation as to what purpose the calls were made or to whom the calls were made. According to Respondent, the additional charges were incurred as the result of additional work performed by Respondent.

Talcott received this invoice while he was in Odessa, Ukraine. After receiving the invoice, he sent an e-mail to Respondent that evening. Upon receipt of Talcott's e-mail, Respondent called Odessa, Ukraine and asked Talcott how he could make things better. Respondent offered Talcott an additional credit of $600 representing four hours of work.

In spite of Talcott's earlier direction to Respondent that he was not to bill any more services to Talcott's credit card without prior approval, between June 2 and July 2, 2002, Respondent billed over $1700 more for legal expenses without prior approval. These charges were

primarily for client e-mails, telephone calls and file review and were paid by Visa. Talcott did not receive any invoice from Respondent until after the charges had been billed and paid by Visa. Talcott set forth his frustration in an e-mail to Respondent dated August 30, 2002. Talcott also complained to his credit card company that these charges were unauthorized, and the credit card company reversed the full amount of these charges to Talcott.

Talcott terminated Respondent's services on August 30, 2002. Nevertheless, Respondent did perform the legal services he had agreed to provide.

On November 4, 2002, Respondent filed a Notice of Client's Right to Arbitration. On November 25, 2002, Talcott submitted an Application for Arbitration of a Fee Dispute to the San Diego County Bar Association. However, despite the pendency of the fee arbitration matter, on April 14, 2003, Respondent filed a complaint against Talcott alleging intentional infliction of emotional distress, breach of contract and breach of implied covenant of good faith and seeking, inter alia, compensatory damages of $22,645.50; general damages of $50,000 for breach of the implied covenant of fair dealing; general damages of $250,000 for emotional distress and mental suffering; and punitive damages of $250,000.[25] The complaint asserted frivolous causes of action and improper damages against Talcott which were not supported in law or in fact. Respondent filed the lawsuit to harass or annoy Talcott.

The arbitration hearing was held on May 15, 2003. Despite the fact that Respondent's fee agreement provided for binding arbitration, the arbitration was not binding on the parties because Respondent refused to submit to binding arbitration before the San Diego County Bar Association. The arbitrator found that only $2,581.25 in total fees and costs should have been charged to Talcott. The arbitrator found that Talcott had paid $5,087.53, but that he received a $1,700 credit from his credit card company; therefore, he paid a total of $3,387.53 to Respondent. The arbitration fee of $134.50 was allocated to Respondent, so the arbitrator ultimately awarded Talcott $940.78. Respondent, however, never paid this award.

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[25]In the original Notice of Right to Arbitrate, however, Respondent sought only $1,725 plus costs and collection fees.

Talcott spent $1,500 to hire an attorney to defend himself against Respondent's lawsuit. The lawsuit was ultimately dismissed when Respondent failed to appear in court.

Count One - Rule 4-200(A)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated rule 4-200(A). By charging additional legal fees against Talcott's credit card without his consent or approval, thereby engaging in overreaching, Respondent charged and collected an unconscionable fee in wilful violation of rule 4-200(A) of the Rules of Professional Conduct.

Count Two - 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. By failing to refund $940.78 in advance fees paid by Talcott, Respondent failed to refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

Count Three - Section 6068(c)

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6068(c). By: (1) filing a lawsuit against Talcott while the fee arbitration matter was still pending; (2) filing the lawsuit against Talcott when his retainer agreement specifically provided for binding arbitration; and (3) filing a complaint against Talcott which asserted frivolous causes of action and improper damages which were not supported in fact or in law, Respondent failed to maintain an action that appeared to him legal or just in wilful violation of Business and Professions Code section 6068(c).

Count Four - Section 6106

The State Bar proved by clear and convincing evidence that Respondent wilfully violated section 6106. By: (1) engaging in overreaching by charging Talcott's credit card without his knowledge or consent, after receiving express instructions not to charge his credit card without prior authorization and approval, and (2) limiting Talcott to binding arbitration but then filing a lawsuit against Talcott which asserted frivolous causes of action and improper damages which were not supported in fact or in law and for an improper purpose, Respondent committed acts involving

moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

MITIGATION/AGGRAVATION

In mitigation, Respondent contends that he acted in good faith, and that he completed his professional obligation to his clients. However, the Court does not find that Respondent is entitled to good faith mitigation. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(b)(ii).) "[A]n attorney is entitled to good faith mitigation . . . when his misconduct is the result of an erroneous belief that his actions are appropriate, which belief is honestly held and objectively reasonable." (*In the Matter of Silverton* (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 643, 660.) While Respondent did perform legal services for his clients, and the Court finds that Respondent had an honest and reasonable belief that he was entitled to the fees he claimed were due him under his retainer agreements, the Court does not find that Respondent's belief that he could charge and collect his fees from his clients' credit cards without his clients' specific knowledge or consent to the amount and purpose of the charges and without an opportunity to object to such charges before they were paid by the credit card company was neither honestly held or objectively reasonable. This is particularly the case in situations where Respondent continued to charge his client's credit card even after his client had objected to earlier charges of which the client was unaware. In addition, Respondent's suggestion to two of his clients that they sit down before he discussed his fees suggests that Respondent expected some objection to his fees by his clients. The Court therefore finds that Respondent is not entitled to good faith mitigation.

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 Respondent was admitted to practice law in California on June 1, 1999, and has no prior record of discipline. However, Respondent had practiced law for less than two years and one-half years at the time he committed his first act of misconduct. Thus, the Court finds that Respondent's lack of a prior record of discipline does not constitute a mitigating circumstance. (Standard 1.2(e)(i); see *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [four years of practice at time of misconduct not considered mitigating].)

In aggravation, Respondent's misconduct significantly harmed Bode, Mathur and Talcott. (standard 1.2(b)(iv).) Bode suffered the loss of funds. Mathur also suffered the loss of funds and was required to commence a fee arbitration proceeding against Respondent which cost Mathur $1,500. Talcott still has not received the unearned fees paid to Respondent and awarded to Talcott as a result of the fee arbitration. In addition, Talcott was required to spend $1,500 to defend himself against Respondent's lawsuit. Each client also suffered emotionally because they were in a precarious position to challenge or object to Respondent's fees as they were each in the midst of the process of bringing their prospective family members to the United States and desired Respondent's assistance in doing so but needed the process completed without any problems or delays. In addition, each client was also required to travel out-of-state to attend this State Bar Court proceeding.

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

Respondent demonstrated indifference toward atonement for or rectification of the consequences of his misconduct. (Standard 1.2(b)(v).) Respondent has shown no remorse or recognition of his wrongdoing. Respondent still maintains that he has not engaged in any acts of misconduct.

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. (Standards 2.3, 2.4(b), 2.7.) 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." Standard 2.7 provides that culpability of wilfully charging or collecting an unconscionable fee "shall result in at least a six-month actual suspension from the practice of law, irrespective of mitigating circumstances." Standard 2.3 provides that culpability for an act of moral turpitude "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."

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.)

Respondent has been found culpable in this matter of misconduct involving three clients. In each client matter, Respondent has been found culpable of charging and collecting an unconscionable fee and engaging in acts of moral turpitude, dishonesty or corruption. In two of these matters, Respondent was also found culpable of maintaining an unjust action, and in one matter, Respondent was found culpable of recklessly, repeatedly or intentionally failing to perform legal services with competence and failing to refund an unearned fee. In aggravation, Respondent's misconduct significantly harmed his clients; he engaged in multiple acts of misconduct; and demonstrated indifference toward atonement for or rectification of the consequences of his misconduct by showing no remorse or recognition of his wrongdoing. No mitigating circumstances were found by the Court.

It appears to this Court that Respondent was obviously doing something wrong in the Bode, Mathur and Talcott matters. Each of these clients from different parts of the country saw Respondent's advertisement on the Internet and employed him to obtain visas for their prospective family members. Each believed the fee for Respondent's services were flat or, based on the scope of the work to be performed, would be limited in nature. Each received a retainer agreement from

Respondent which was a multiple page document which contained many exceptions to the basic legal fee which would result in additional fees and which was confusing and vague in part and not drafted in a manner to be readily understandable. None of the clients ever personally met with Respondent, and Respondent failed to fully explain the retainer agreement to his clients. Each was also surprised and upset to find that after they employed Respondent additional fees over and above what they had anticipated were charged to their credit cards without their specific knowledge or consent, even after they had expressed earlier concern about such conduct. Such conduct amounted to "a practical appropriation of the client's funds under the guise of retaining them as fees." (*Herrscher v. State Bar* (1935) 4 Cal.2d 399, 403.) In addition, Respondent also filed unjust civil actions against his clients in two matters, despite the initiation of fee arbitration proceedings by his clients, and the Court found that Respondent's misconduct rose to the level of acts of moral turpitude, dishonesty or corruption.

Respondent on the other hand, contends that the clients misconstrued the terms of the retainer agreement, and that there was more work involved than was covered by the initial payment charged to the client. Respondent therefore believed in good faith that he was entitled to the fees charged, as he had performed the work required to obtain the visa for the client's prospective family member. However, retainer agreements "are strictly construed against the attorney" and "must be fair, reasonable and fully explained to the client." (*Alderman v. Hamilton* (1988) 205 Cal.App.3d 1033, 1037.) Respondent's retainer agreements, however, were not fully explained to the clients and were often confusing. In addition, "'in general, the negotiation of a fee agreement is an arm's-length transaction. . . ." (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 913, citations omitted; *Setzer v. Robinson* (1962) 57 Cal.2d 213, 217.) However, . . . the right to practice law is not a license to mulct the unfortunate.' (*Recht v. State Bar* (1933) 218 Cal. 352, 355, quoted with approval in *Bushman v. State Bar* (1974) 11 Cal.3d 558, 564.)" (*In the Matter of Silverton* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 252, 258.) However, the Court finds that Respondent's belief that he could charge and collect his fees from his clients' credit cards without his clients' specific knowledge or consent to the amount and purpose of the charges and without an opportunity to object to such charges before they were paid by the credit card company was neither honestly held

nor objectively reasonable and therefore such conduct was not done in good faith. This is particularly the case in situations where Respondent continued to charge his client's credit card even after his client had objected to earlier charges of which the client was unaware. In addition, Respondent's suggestion to two of his clients that they sit down before he discussed his fees suggests that Respondent expected some objection to his fees by his clients.

In determining the recommended discipline in this matter, the Court is guided by *In the Matter of Scapa & Brown* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 635. While the *Scapa & Brown* case is not factually analogous to this current disciplinary matter, it is still quite instructive. In *Scapa & Brown*, the attorneys, among other acts of misconduct (including violation of the solicitation rules), attempted to charge unconscionable fees through overreaching fee agreement provisions (entitlement to full contingent fee on all part of recovery - even medical pay and uninsured motorist coverage - even if client discharged attorneys - except for incapacity or misconduct; if full contingent fee not applicable, agreement provided for a minimum of three hours of attorney time as compensation). The Review Department recommended that the attorneys be suspended for thirty months; that the execution of said suspension be stayed; and that the attorneys be placed on probation for four years on conditions including that they be actually suspended for 18 months. The Review Department noted that, under comparable case law, the solicitation misconduct alone warranted a one-year actual suspension and that the remaining misconduct warranted an additional six months of actual suspension. The Review Department noted in *Scapa & Brown* that the standards provide for at least a six-month period of actual suspension just for the attorneys' unconscionable fee violation alone.

Therefore, after considering the nature of Respondent's misconduct, the aggravating circumstances found by the Court and the lack of any mitigating circumstances, the Court finds that the appropriate discipline to recommend in this matter is a lengthy period of stayed suspension, a significant period of probation with conditions designed to assist Respondent in complying with the professional obligations of attorneys, and a meaningful period of actual suspension to impress upon Respondent the seriousness of his misconduct and his duties to his clients.

DISCIPLINE RECOMMENDATION

Accordingly, it is hereby recommended that Respondent Anthony J. Allegrino II be suspended from the practice of law for a period of 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) 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 five years subject to the following conditions of probation:

1. That during the first one year of said period of probation, Respondent shall be actually suspended from the practice of law in California;
2. During the probation period, Respondent shall comply with the State Bar Act and the Rules of Professional Conduct;
3. Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the State Bar's Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;[26]
4. Respondent shall submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report shall be submitted on the next following quarter date, and

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[26]**Please Note: Any reports or other information required by these conditions to be sent to the Office of Probation shall be sent to: State Bar of California, Office of Probation, 1149 South Hill Street, Los Angeles, California, 90015.**

cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. During the period of actual suspension and probation, Respondent must cease the practice of charging and collecting legal fees through credit cards and certify under penalty of perjury that he has ceased such practice in the first quarterly report due under these conditions of probation.

6. Within one year of the effective date of the Supreme Court order imposing discipline in this matter, Respondent must submit his standard fee agreement to the State Bar's Office of Probation for approval and must use the approved standard fee agreement during the period of probation unless authorization and approval to use another standard fee agreement is obtained from the State Bar's Office of Probation.

7. Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly, and truthfully, any inquiries of the State Bar's Office of Probation which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein;

8. Within one (1) year of the effective date of the discipline herein, Respondent shall provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement ("MCLE"), and Respondent shall not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar);

9. Within one year of the effective date of the discipline herein, Respondent shall

submit to the Office of Probation satisfactory evidence of completion of no less than eight hours of MCLE approved courses in both law office management and attorney-client relations and no less than three hours of MCLE approved courses pertaining to fee agreements. This requirement is separate from any MCLE requirement, and Respondent shall not receive MCLE credit for taking these MCLE approved courses. (Rule 3201, Rules of Procedure of the State Bar);

10. Respondent shall pay restitution to Daniel Neil Talcott (or the Client Security Fund, if it has already paid) in the amount of $940.78, plus ten per cent (10%) interest per annum, accruing from June 9, 2003, and provide satisfactory proof thereof to the Office of Probation, within one year of the effective date of the discipline herein;

11. If Mark W. Bode pursues fee arbitration against Respondent (provided that said fee arbitration is not precluded due to time limitations or other requirements), Respondent must participate in the fee arbitration process, comply with the decision of the arbitrator, and provide proof of said compliance to the Office of Probation on or before the last day of his probation period;

12. Respondent shall pay restitution to Mahesh Mathur (or the Client Security Fund, if it has already paid) in the amount of $15,359.51, plus seven percent (7%) interest per annum, accruing from August 5, 2004, in the manner specified below, and provide satisfactory proof thereof to the Office of Probation within three years of the effective date of the discipline herein. Respondent shall make restitution to Mahesh Mathur in the following manner: Respondent shall pay no less than $5,200.00 in restitution to Mahesh Mathur during each of the first two years of the period of probation and shall pay all remaining amounts due to Mahesh Mathur no later than the last day of his third year of probation. With each quarterly report required to be filed herein, Respondent shall provide to the Office of Probation satisfactory proof of all restitution payments made by him during that reporting period;

13. The period of probation shall commence on the effective date of the order of the Supreme Court imposing discipline in this matter;

14. At the expiration of the period of this probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent 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) of the Rules of Procedure of the State Bar of California, Title IV, Standards for Attorney Sanctions for Professional Misconduct shall be satisfied and that suspension shall be terminated.

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year of the effective date of the discipline herein. **Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

It is further recommended that Respondent be ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within thirty (30) and forty (40) days, respectively, from the effective date of the Supreme Court order herein. **Wilful failure to comply with the provisions of rule 955 may result in revocation of probation; suspension; disbarment; denial of reinstatement; conviction of contempt; or criminal conviction.**[27]

COSTS

It is further recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and payable in accordance with Business and Professions Code

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[27]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.)

section 6140.7.

Dated: January 25th 2005

ROBERT M. TALCOTT
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 Los Angeles, on January 26, 2005, I deposited a true copy of the following document(s):

AMENDED DECISION, filed January 26, 2005

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

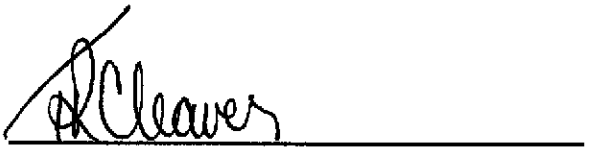
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

Anthony J. Allegrino II
PO Box 7347
Newburgh, NY 12550

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

TIMOTHY BYER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **January 26, 2005**.



Tammy R. Cleaver
Case Administrator
State Bar Court