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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of

MAXIMILIANO S. GARCIA,

Member No. 153387,

A Member of the State Bar.

Case No. 03-J-01425-PEM

DECISION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

I. INTRODUCTION

Respondent MAXIMILIANO S. GARCIA was disbarred by order of the Supreme Court of the State of Arizona for his misconduct involving eight clients and his failure to obey a court order. As a result, the State Bar of California initiated this proceeding under Business and Professions Code section 6049.1 and rules 620 through 625 of the Rules of Procedure of the State Bar of California.

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Arizona proceedings would not warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in Arizona; and (3) whether the Arizona proceedings lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1(b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined in Arizona would not warrant the imposition of discipline in California and/or that the Arizona proceedings lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1(b).) Since Respondent has defaulted and did not participate in this proceeding, the court focuses on the degree

1 of discipline to be imposed in California.

2 In view of Respondent's serious misconduct and the evidence in aggravation, the court
3 recommends that Respondent be disbarred in California.

4 **II. PERTINENT PROCEDURAL HISTORY**

5 On December 12, 2003, the Office of the Chief Trial Counsel of the State Bar of California
6 (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent at his
7 official membership records address. (Rules Proc. of State Bar, rule 60.) The NDC was returned
8 as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule
9 103.)

10 On motion of the State Bar, Respondent's default was entered on March 24, 2004.
11 Respondent was enrolled as an inactive member on March 27, 2004. (Bus. & Prof. Code, §
12 6007(e).)¹

13 Respondent did not participate in these disciplinary proceedings. Accordingly, the court took
14 this matter under submission on April 14, 2004, following the filing of the State Bar's brief on
15 culpability and discipline.

16 **III. JURISDICTION**

17 Respondent was admitted to the practice of law in California on June 12, 1991, and has since
18 been a member of the State Bar of California.

19 **IV. FINDINGS OF FACT**

20 Business and Professions Code section 6049.1(a) provides, in pertinent part, that a certified
21 copy of a final order by any court of record of any state of the United States, determining that a
22 member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive
23 evidence that the member is culpable of professional misconduct in this state.

24 The court admits into evidence the certified copy of the Arizona disciplinary proceedings
25 entitled *In the Matter of a Suspended Member of the State Bar of Arizona, Maximiliano S. Garcia*,
26

27 ¹References to section are to the California Business and Professions Code, unless
28 otherwise noted.

1 Bar No. 014435, Supreme Court No. SB-03-0009-D, Judgment and Order filed March 28, 2003;
2 Hearing Officer's Report and Recommendation filed September 20, 2002; and Second Amended
3 Complaint filed June 21, 2002, which were attached to the NDC as exhibit 1; and the applicable
4 rules of the Supreme Court of Arizona on the regulation of the practice of law, a copy of which was
5 attached to the NDC as exhibit 2.

6 The record of the Arizona disciplinary proceeding conclusively establishes the following
7 facts:

8 **A. Disbarment from the State of Arizona**

9 Respondent was admitted to practice law in the State of Arizona on February 2, 1993.

10 On March 28, 2003, the Supreme Court of Arizona issued a Judgment and Order in Supreme
11 Court No. SB-03-0009-D, disbarring Respondent for conduct in violation of his duties and
12 obligations as a lawyer, effective on the same day. The Arizona Supreme Court also ordered
13 Respondent to pay restitution to seven clients in the total amount of \$49,500 and costs of the
14 disciplinary proceedings.

15 The Arizona Supreme Court order was based upon the December 10, 2002 Report of the
16 Disciplinary Commission of the Supreme Court of Arizona, which adopted the Hearing Officer's
17 Report and Recommendation.

18 A hearing was held on September 9, 2002, at the Supreme Court of Arizona. The State Bar
19 of Arizona appeared, but Respondent was not present either in person or through counsel.
20 Consequently, the facts set forth in the State Bar's complaint were deemed admitted by way of
21 Respondent's default and Respondent was found to have violated many of the Arizona's Rules of
22 Professional Conduct in the nine matters set forth below. Under section 6049.1(a), his misconduct
23 in Arizona is conclusive evidence that he is culpable of professional misconduct in California.

24 **B. Misconduct in Arizona**

25 **1. Count One – The Vega Matter**

26 In April 1998, Respondent was retained to represent Luis A. Vega in a criminal matter
27 for \$3,000. Respondent appeared in court on behalf of Vega on at least four occasions from April
28 to July 1998.

1 In September Respondent filed a motion to withdraw as counsel but the court denied
2 his motion. The trial set for October was then continued to January 1999. But Respondent failed
3 to appear at trial. The court issued an order to show cause as to why Respondent should not be held
4 in contempt. On the hearing day, the court learned that Respondent had closed his office and left the
5 Phoenix area. The trial was then vacated and the matter was reset for status conference in February
6 1999.

7 Respondent appeared at the status conference. The court allowed Respondent to
8 withdraw as counsel. Respondent represented to the court that he would refund the retainer to Vega.

9 On March 23, 1999, the court ordered Respondent to refund \$3,000 to Vega by April
10 9, 1999. Respondent did not return the unearned fees. In response to the Arizona State Bar's
11 inquiry, Respondent initially did not advise the State Bar that he had failed to appear at the January
12 trial. He then indicated that there were no fees tendered for Vega's matter because "it was done pro
13 bono," and that the fees paid by Vega were only for his failure to appear and not on the underlying
14 criminal matter.

15 **2. Count Two – The Sundstrom Matter**

16 In March 1999, Respondent was paid \$10,000 by Einar Sundstrom to file an appeal
17 in Illinois State Court by April 28, 1999. Respondent had represented Sundstrom on the underlying
18 tax evasion case.

19 On April 26, because Respondent failed to return the client's numerous phone calls,
20 Sundstrom had to file a motion for an extension of time, which the appellate court extended until
21 June 29.

22 On June 24, Respondent notified Sundstrom that he would mail the brief for the client
23 to file. Two days later, Respondent informed Sundstrom that he was completing the brief and that
24 the client would receive it no later than June 29. But on June 28, Respondent advised the client to
25 seek another extension of time and to indicate that this request was due to Respondent's
26 malfunctioned computer, that some files were lost and that he would send the brief three days later.

27 The court granted Sundstrom a second extension until September 3. Thereafter,
28 Sundstrom called, emailed and paged Respondent but to no avail.

1 Although Respondent was retained in March 1999, he did not file a notice of
2 appearance, notice of filing and motion to file docketing statement until July 27, 1999.

3 On August 27, Sundstrom informed the Arizona State Bar that he could not reach
4 Respondent. On August 30, Respondent told the State Bar that he would have the brief filed on
5 time.

6 On September 3, the deadline, the client filed a third request for an extension of time
7 because he did not know if Respondent would file the brief. The extension was granted until
8 October 26. Respondent did not file the brief on September 3. On September 16, Respondent asked
9 Sundstrom for a certified transcript of the underlying trial, which the client complied.

10 Throughout October, Sundstrom attempted to reach Respondent and was told that he
11 no longer worked there. The client also tried to contact him at home and by page but was
12 unsuccessful.

13 On October 26, when the brief was due, Sundstrom filed a fourth request for
14 extension of time. As of January 5, 2000, Respondent had not yet filed the appeal.

15 Respondent told the State Bar on February 14, 2000, that he had not received notice
16 from the court allowing him to file the brief. A year after the appeal was originally due, the brief was
17 finally filed in May 2000. But because the brief was ineffective and was a complete waste of time,
18 Respondent was ordered to pay \$10,000 in restitution to Sundstrom.

19 **3. Count Three – The Juarez Matter**

20 Respondent represented Manual Juarez in two matters – a probation revocation
21 proceeding and misdemeanor criminal charges (being in a park after closing, contributing to the
22 delinquency of a minor, and false reporting to a police officer). Respondent charged his client
23 \$10,000 but the client had paid him \$7,500.

24 In the probation revocation matter, on June 17, 1998, Respondent negotiated a plea
25 for Juarez by having him admit to being in the United States illegally. On July 8, Juarez was
26 sentenced to five years imprisonment.

27 In the criminal charges matter, Respondent negotiated a plea that Juarez was in a park
28 after closing.

1 After Juarez and his father confronted Respondent about why he had Juarez admit
2 to being in the country illegally, Respondent filed a motion to withdraw indicating Juarez "has failed
3 to abide by the contractual agreement in reference to attorney's fees."

4 On March 1, 1999, in post-conviction proceedings, the court found that Juarez's
5 admission to being in the U.S. illegally was an erroneous admission. He was represented by new
6 counsel. Respondent had his client erroneously admit to being in the U.S. illegally.

7 Respondent prematurely withdrew from representing Juarez and did not give him
8 reasonable warning that he would withdraw from representation.

9 Respondent's fee of \$7,500 was excessive in light of the time spent on the two
10 matters. Respondent did not engage in any in-depth work or research, file any complicated motions,
11 or use any particular criminal expertise in these matters other than that was required for very routine
12 criminal matters.

13 **4. Count Four – The Fischer Matter**

14 On January 18, 2002, Marianne Fischer retained Respondent to represent her in a
15 custody matter and paid him \$5,000 in a cashier's check. Thereafter, he did not represent Fischer
16 or inform the opposing counsel that he was Fischer's counsel. He never attended the appointments
17 with Fischer, returned phone calls or respond to documents from the opposing counsel. He had
18 basically abandoned Fischer.

19 A month later, in February, Fischer asked Respondent to return the \$5,000 since she
20 received no service from him other than three weeks of dishonest conduct. She terminated his
21 employment.

22 Respondent advised Fischer that he no longer had the money but that he would "use
23 his best efforts to refund the Fischer's [sic] \$5,000 retainer fee within three weeks."

24 Respondent never returned the \$5,000 fees. He did not respond to the two letters
25 from the Arizona State Bar regarding the Fischer matter.

26 **5. Count Five – The Altig Matter**

27 Respondent was retained by Barbara Altig in an immigration matter.

28 He did not communicate with Altig or provide her with copies of documents he had

1 allegedly filed with the Immigration and Naturalization Services (INS). She eventually learned that
2 his phone had been disconnected.

3 The Arizona State Bar sent two letters to Respondent regarding the Altig matter but
4 Respondent did not respond.

5 **6. Count Six – The Landeros Matter**

6 On August 30, 2001, Marcilina Landeros retained Respondent to provide legal
7 services for her husband and paid him \$10,000. On January 7, 2002, she also gave Respondent a car,
8 2000 Ford Focus, which constituted an additional \$10,000 requested by Respondent. The total
9 amount of fees paid to Respondent was valued at \$20,000.

10 After receiving payment, Respondent did not provide any legal services for Landeros'
11 husband. She would telephone him, leaving him messages, and go to Respondent's office, in
12 attempts to set up meetings with Respondent. She was unsuccessful. She later learned that he had
13 abandoned his office.

14 Respondent did not appear in court on behalf of Landeros' husband and did not
15 communicate with Landeros or her husband.

16 In mid-February Respondent contacted Landeros and told her he was withdrawing
17 from the case, would return her money and would meet with her. But Respondent did not attend the
18 meeting or refund any portion of the \$20,000 to Landeros.

19 The Arizona State Bar requested an immediate response to its inquiry regarding the
20 Landeros matter. Respondent did not respond to the State Bar's April 4, 2002, letter.

21 **7. Count Seven – The Murillo Matter**

22 On April 13, 2001, Maria Murillo hired Respondent to represent her husband in an
23 immigration deportation matter. She provided him with copies of all their papers and certain original
24 documents. She paid him \$1,000 on June 4, 2001.

25 Murillo's husband had a court date on June 11, 2001. Before and after that date,
26 Murillo repeatedly tried to contact Respondent but to no avail. When she finally reached
27 Respondent's office, she was told that Respondent had changed the court date to October 2001 and
28 that some original papers would be returned to her.

1 Murillo received no further contact from Respondent. Although she continued to call
2 him through January 2002, Respondent did not respond to her telephone calls.

3 Finally, Murillo received a deportation letter for her husband. When she took the
4 letter to Respondent's office, she found out that Respondent had abandoned his office and had not
5 paid his rent.

6 Respondent had completely abandoned Murillo's husband immigration matter and
7 performed none of the promised legal services.

8 The Arizona State Bar sent two letters to Respondent requesting that he comply with
9 the Supreme Court rules and respond to the Murillo's complaint. Respondent did not respond.

10 **8. Count Eight – The Wood Matter**

11 In November 2000, Victor Wood hired Respondent to represent him in an
12 immigration matter and paid Respondent \$3,000. Wood completed certain legal forms and timely
13 executed and returned them to Respondent's office so that Respondent could commence on his case.

14 Wood had no contact with Respondent until a year later in November 2001.
15 Respondent finally answered Wood's phone calls regarding his representation and other non-
16 attorneys who were allegedly representing Wood in his naturalization papers. Respondent informed
17 Wood that he no longer had any employees, but that he would personally file the necessary
18 immigration documents on Wood's behalf.

19 Thereafter, nothing happened. Wood again attempted to telephone Respondent on
20 numerous occasions. Eventually, these efforts resulted in Wood finding out that Respondent's voice
21 mail was full. He tried contacting Respondent many times, but always received the same answer
22 from the answering machine. Finally, he went to Respondent's office only to find that the office was
23 locked and abandoned.

24 In April the Arizona State Bar sent a letter to Respondent requesting his immediate
25 response to the Wood matter. Respondent did not reply.

26 **9. Count Nine – Maricopa County Superior Court Order**

27 As a result of the recent and continued abandonment of numerous clients and client
28 files by Respondent, the Arizona State Bar petitioned the Maricopa County Superior Court for an

1 order appointing a conservator over Respondent's abandoned practice.

2 Respondent was personally served with a copy of the petition and an order to show
3 cause why a conservatorship should not be appointed. The court specifically requested Respondent's
4 appearance at the order to show cause hearing why the conservatorship should not go forward.
5 Respondent did not appear at the hearing.

6 V. CONCLUSIONS OF LAW

7 A. Violations of Arizona Supreme Court Rules

8 The Arizona Supreme Court found that Respondent had violated Supreme Court Rule 42
9 (Arizona Rules of Professional Conduct) and Supreme Court Rule 51 (Grounds for Discipline), based
10 on the findings of facts and recommendations by the Arizona Disciplinary Commission:

11 1. *Ethical Rule 1.1² Competence*

12 *(Providing competent representation to a client)*

13 Respondent violated ER 1.1 in counts 2, 3, 6 and 7 by failing to timely file an
14 appellate brief (count 2), erroneously having his client to admit being in the U.S. illegally (count 3),
15 failing to provide any legal services (count 6), and failing to appear in court (count 7).

16 2. *ER 1.2 Scope of Representation*

17 *(Abiding by the client's decision concerning the objectives of representation and*
18 *consulting with the client as to the means by which they are to be pursued)*

19 Respondent violated ER 1.2 in counts 1 and 4 – 8 by failing to adequately
20 communicate the scope of his representation with his client (count 1), failing to contact the opposing
21 counsel that he was representing his client (count 4), failing to contact his client regarding his
22 representation (count 5), failing to appear in court or provide clients with information (count 6),
23 failing to provide information regarding the change of court date and failing to provide any legal
24 services (count 7), and abandoning the representation of his client (count 8).

25 //

26
27 ²The Arizona Rules of Professional Conduct appear as Supreme Court Rule 42, and the
28 individual rules within Supreme Court Rule 42 are referred to as "ER's" (Ethical Rules).

1 **3. ER 1.3 Diligence**

2 *(Acting with reasonable diligence and promptness in representing a client)*

3 Respondent violated ER 1.3 in counts 1– 8 by abandoning his clients and failing to
4 act diligently on behalf of his clients.

5 **4. ER 1.4 Communication**

6 *(Keeping a client reasonably informed and promptly comply with reasonable*
7 *requests for information)*

8 Respondent violated ER 1.4 in counts 1– 6 and 8 by failing to communicate with his
9 clients regarding the status of their cases and failing to return their numerous telephone calls.

10 **5. ER 1.5 Fees**

11 *(Reasonable attorney fee and proportional to the services performed by the attorney)*

12 Respondent violated ER 1.5 in counts 1 and 3 – 7 by charging excessive fees for
13 either minimal or no services at all.

14 **6. ER 1.15 Safekeeping Property**

15 *(Keeping the attorney's property separate from that of the client)*

16 Respondent violated ER 1.15 in counts 4, 5 and 8 by failing to return unearned fees
17 and clients' documents, despite promises to do so.

18 **7. ER 1.16 Declining or Terminating Representation**

19 *(Taking reasonable steps to protect the client's interests upon termination of*
20 *representation)*

21 Respondent violated ER 1.16 in counts 3, 4, 6, 7 and 8 by failing to take reasonable
22 steps to protect his clients' interests upon his termination and/or withdrawal from representation and
23 by failing to notify his clients of his withdrawal.

24 **8. ER 3.2 Expediting Litigation**

25 *(Making reasonable efforts to expedite litigation)*

26 Respondent violated ER 3.2 in count 2 by failing to timely file a brief, by failing to
27 file his notice of appearance, and by not obtaining the court transcripts until after several filing
28 deadlines had passed.

1 **9. ER 3.3 Candor Toward the Tribunal**

2 *(Must not knowingly making a false statement of material fact or law to a tribunal)*

3 Respondent violated ER 3.3 in count 1 by failing to be truthful when he represented
4 to the court that he would refund the retainer to his client but did not do so.

5 **10. ER 3.4(c) Fairness to Opposing Party and Counsel**

6 *(Must not knowingly disobeying a court order)*

7 Respondent violated ER 3.4(c) in count 9 by failing to appear, pursuant to a court
8 order, at an order to show cause hearing regarding why the conservatorship over his practice should
9 not go forward.

10 **11. ER 4.1 Truthfulness in Statements to Others**

11 *(Must not knowingly making a false statement of material fact or law to a third*
12 *person in the course of representing a client)*

13 Respondent violated ER 4.1 in count 1 by not being forthright with the State Bar
14 concerning his representation.

15 **12. ER 8.1 Disciplinary Matters**

16 *(Must not knowingly failing to respond to a lawful demand for information from a*
17 *disciplinary authority)*

18 Respondent violated ER 8.1 in counts 1 and 4 – 8 by failing to respond to the State
19 Bar's letters regarding the clients' complaints.

20 **13. ER 8.4 Misconduct**

21 *(Professional misconduct for an attorney to violate the rules of professional conduct*
22 *or engage in conduct involving dishonesty, fraud, deceit or misrepresentation (ER*
23 *8.4(c)) or that is prejudicial to the administration of justice (ER 8.4(d))*

24 Respondent violated ER 8.4 in counts 1 – 8 by repeatedly engaging in dishonest
25 conduct and misrepresented to his clients and to the court that he would meet his clients, that he
26 would repay their fees and that he would perform the services for which he was hired. Respondent
27 also violated ERs 8.4(c) and (d) in count 9 by his abandonment of numerous clients and client files.
28 His failure to appear at the order to show cause hearing regarding conservatorship over his practice

1 was prejudicial to the administration of justice.

2 **14. Supreme Court Rule 51 Grounds for Discipline**

3 *(Rule 51(e) – Wilful disobedience of a court order requiring the attorney to do or*
4 *forbear to do an act connected with or in the course of the attorney's profession;*

5 *(Rule 51(h) – Failure to furnish information to the State Bar regarding complaints*
6 *under investigation concerning conduct of an attorney;*

7 *(Rule 51(i) – Evading service or any other refusal to cooperate with the State Bar;*

8 *(Rule 51(k) – Wilful violation of a court order)*

9 Respondent violated Rule 51 in counts 1 and 4 – 9 by disobeying a court order to
10 return the retainer to his client (count 1: Rules 51(e) and (k)); by failing to cooperate with the State
11 Bar's investigation (counts 4 – 8: Rules 51(h) and (i)); and by failing to comply with a court order
12 to appear at an order to show cause hearing (count 9: Rules 51(e) and (k)).

13 **B. Legal Conclusions**

14 **1. Counts 1-8: Rule 3-110(A) of the Rules of Professional Conduct³ (Failure to**
15 **Perform)**

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

18 In counts 1 – 8, Respondent recklessly failed to perform legal services with
19 competence in wilful violation of rule 3-110(A), as follows:

- 20 a. By failing to appear at trial and to diligently represent Vega in his criminal
21 matter;
- 22 b. By failing to timely file a notice of appearance, notice of filing and motion
23 to file docketing statement and by failing to timely file an appellate brief on
24 behalf of Sundstrom until a year after the due date and until after at least four
25 extensions of time;

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

- c. By having his client erroneously admit to being in the U.S. illegally and failing to engage in any in-depth work or research or use any particular criminal expertise in the Juarez matter;
- d. By failing to respond to documents from the opposing counsel and perform any services on behalf of Fischer;
- e. By failing to perform any services on behalf of Altig;
- f. By failing to appear in court or perform any services on behalf of Landeros' husband;
- g. By failing to perform any services on behalf of Murillo's husband in his immigration matter; and
- h. By failing to perform any services on behalf of Wood.

2. Count 6: Rule 3-300 (Avoiding Interests Adverse to a Client)

Rule 3-300 provides that an attorney shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory security, or other pecuniary interest adverse to a client unless the transaction or acquisition is fair and reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition.

In count 6, Respondent clearly and convincingly violated rule 3-300 by failing to comply with its prophylactic terms. He acquired an ownership, possessory, security or other pecuniary interest adverse to Landeros by receiving a 2000 Ford Focus from Landeros as partial payment for his legal services. He did not advise her to seek independent counsel's advice, provide her with an opportunity to do so, or obtain written consent from her.

3. Count 5: Rule 3-500 (Failure to Communicate)

Rule 3-500 requires an attorney to respond promptly to reasonable requests for information from clients and to keep clients reasonably informed of significant developments in their matters.

In count 5, Respondent wilfully violated rule 3-500 by failing to respond to Altig's

1 reasonable requests for information regarding her immigration matter. She later found out that
2 Respondent's phone had been disconnected.

3 **4. Count 3: Rule 3-700(A)(2) (Improper Withdrawal from Employment)**

4 Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until
5 she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

6 In count 3, Respondent wilfully violated rule 3-700(A)(2) by prematurely
7 withdrawing from representing Juarez, did not give the client reasonable warning that he would
8 withdraw from employment, and did not take reasonable steps to avoid foreseeable prejudice to the
9 rights of Juarez. Juarez finally had to hire another attorney.

10 **5. Count 5: Rule 3-700(D)(1) (Failure to Promptly Return Client File)**

11 Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly
12 release to the client, at the request of the client, all the client papers and property.

13 In count 5, upon Respondent's termination of employment, Respondent failed to
14 return Altig's case file as requested by his client in wilful violation of rule 3-700(D)(1).

15 **6. Counts 1, 4, 6, 7 and 8: Rule 3-700(D)(2) (Failure to Return Unearned Fees)**

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

18 In counts 1, 4, 6, 7 and 8, Respondent wilfully violated rule 3-700(D)(2) as follows:

- 19 a. By failing to return any portion of the \$3,000 advanced fees paid by Vega
20 even though he told the court that he would refund the retainer;
- 21 b. By failing to return the \$5,000 fee to Fischer although he promised to refund
22 her within three weeks;
- 23 c. By failing to return the \$10,000 fee and the car valued at \$10,000 to
24 Landeros, despite his promise to do so;
- 25 d. By failing to return the \$1,000 fee to Murillo since he had performed no
26 services on her husband's behalf; and
- 27 e. By failing to return the \$3,000 fee to Wood since he had performed no
28 services on his behalf.

1 7. ***Counts 3 and 8: Rule 4-200 (Unconscionable Fee)***

2 Rule 4-200(A) prohibits an attorney from entering into an illegal or unconscionable
3 fee agreement or collecting an unconscionable fee.

4 "[I]n general, the negotiation of a fee agreement is an arm's-length transaction."
5 (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 913.) However, the right to practice law "is not
6 a license to mulct the unfortunate." (*Recht v. State Bar* (1933) 218 Cal. 352, 355.) "The test is
7 whether the fee is 'so exorbitant and wholly disproportionate to the services performed as to shock
8 the conscience.'" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

9 In counts 3 and 8, Respondent wilfully violated rule 4-200(A) as follows:

- 10 a. Respondent collected \$7,500 for handling Juarez's two matters without any
11 in-depth work or research, filing any complicated motions, or using any
12 particular criminal expertise other than that was required for very routine
13 criminal matters. Such a fee was clearly exorbitant and disproportionate and
14 is unconscionable; and
- 15 b. By collecting excessive fees of \$3,000 in the Wood matter.⁴

16 8. ***Count 2: Business and Professions Code Section 6068(b) (Failure to Maintain***
17 ***Respect)***

18 Section 6068(b) provides that it is the duty of an attorney to maintain the respect due
19 to the courts of justice and judicial officers.

20 In count 2, Respondent wilfully violated §6068(b) by repeatedly failing to file the
21 appeal on behalf of Sundstrom, which was prejudicial to the administration of justice.

22 9. ***Count 1: § 6068(d) (Misleading the Court)***

23 Section 6068(d) provides that an attorney shall never seek to mislead the judge by an
24 artifice or false statement of fact or law. "Actual deception is not necessary to prove wilful
25 deception of a court; it is sufficient that the attorney knowingly presents a false statement which
26

27 ⁴Under § 6049.1(a), Arizona's finding that Respondent charged excessive fees in the
28 Wood matter is conclusive evidence that he is culpable of that misconduct in this state.

1 tends to mislead the court. [Citation.]" (*Davis v. State Bar* (1983) 33 Cal.3d 231, 240.)

2 In count 1, Respondent wilfully violated §6068(d) by representing to the court at a
3 status conference that he would refund the \$3,000 fee to Vega but failed to do so.

4 **10. Counts 1 and 4-8: § 6068(i) (Failure to Cooperate with the State Bar)**

5 Section 6068(i) provides that an attorney must cooperate and participate in any
6 disciplinary investigation or proceeding pending against the attorney.

7 In counts 1 and 4 – 8, Respondent wilfully violated §6068(i) as follows:

- 8 a. By misrepresenting to the Arizona State Bar that there were no fees tendered
9 for the Vega matter and failing to initially inform the State Bar that he failed
10 to appear at the trial;
- 11 b. By failing to respond to State Bar's two letters regarding the Fischer matter;
- 12 c. By failing to respond to State Bar's two letters regarding the Altig matter;
- 13 d. By failing to respond to the State Bar's April 4, 2002, letter in the Landeros
14 matter;
- 15 e. By failing to respond to State Bar's two letters regarding the Murillo matter;
16 and
- 17 f. By failing to respond to State Bar's letter in the Wood matter.

18 **11. Counts 2, 4, 6, 7, and 8: § 6068(m) (Failure to Respond to Client's Inquiries)**

19 Section 6068(m) requires an attorney to respond promptly to reasonable status
20 inquiries of clients and to keep clients reasonably informed of significant developments in matters
21 with regard to which the attorney has agreed to provide legal services.

22 In counts 2, 4, 6, 7, and 8, Respondent wilfully violated §6068(m) as follows:

- 23 a. By failing to return Sundstrom's numerous phone calls, emails and page and
24 respond to the client's reasonable status inquiries, forcing the client to seek
25 an extension of time to file a brief on four separate occasions from April to
26 October 1999;
- 27 b. By failing to return Fischer's many telephone calls or attended the
28 appointments with the client;

- 1 c. By failing to return Landeros' numerous telephone calls and failing to attend
2 a meeting with the client;
3 d. By failing to return Murillo's numerous telephone calls regarding her
4 husband's matter; and
5 e. By failing to return Wood's numerous telephone calls concerning his
6 immigration matter until a year later and thereafter, again failing to respond
7 to Wood's status inquiries.

8 **12. Counts 1 and 9: § 6103 (Failure to Obey Court Order)**

9 Section 6103 requires attorneys to obey court orders and provides that the wilful
10 disobedience or violation of such orders constitutes cause for disbarment or suspension.

11 In counts 1 and 9, Respondent wilfully violated §6103 as follows:

- 12 a. By failing to comply with the court order of March 23, 1999 and to return the
13 \$3,000 fee to Vega; and
14 b. By failing to appear at the Maricopa County Superior Court's order to show
15 cause hearing regarding appointing a conservator over Respondent's
16 abandoned law practice.

17 **13. Counts 1 and 9: § 6106 (Moral Turpitude)**

18 Section 6106 prohibits an attorney from engaging in conduct involving moral
19 turpitude, dishonesty or corruption.

20 In count 1, Respondent wilfully violated §6106 by misrepresenting to the court at a
21 status conference that he would refund the \$3,000 fee to Vega.

22 In count 9, Respondent's failure to appear at the order to show hearing is not an act
23 involving moral turpitude, dishonesty or corruption. Therefore, Respondent did not violate §6106
24 in count 9.

25 **VI. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

26 **A. Mitigation**

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

28 //

1 for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁵

2 Although Respondent has no record of prior discipline in seven years of practice when the
3 misconduct began in 1998, his lack of record is not considered as mitigation because his present
4 misconduct is very serious. (Std. 1.2(e)(i).)

5 **B. Aggravation**

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

7 Respondent's misconduct in eight client matters demonstrates a pattern of wrongdoing over
8 a period of four years, including failing to perform services, failing to communicate with his clients,
9 failing to return unearned fees, failing to return client files, and failing to cooperate with the State
10 Bar. (Std. 1.2(b)(ii).)

11 Respondent's misconduct was surrounded by bad faith, dishonesty and concealment. (Std.
12 1.2(b)(iii).)

13 Respondent's client abandonment and failure to return unearned fees caused his clients
14 substantial harm. (Std. 1.2(b)(iv).) The Arizona Supreme Court also found that his submission of
15 false evidence, false statements and other deceptive practices during the disciplinary process in
16 Arizona constitutes harm to the administration of justice.

17 Respondent demonstrated indifference toward rectification of or atonement for the
18 consequences of his misconduct. (Std. 1.2(b)(v).) The Arizona Supreme Court ordered Respondent
19 to pay restitution to:

<u>Clients</u>	<u>Amount</u>
Luis A. Vega	\$ 3,000
Einar Sundstrom	\$10,000
Manual Juarez	\$ 7,500
Marianne Fischer	\$ 5,000
Marcilina Landeros	\$20,000
Maria Murillo	\$ 1,000
Victor Wood	<u>\$ 3,000</u>
Total	\$49,500

26 Respondent has not made restitution to his clients in a total amount of \$49,500.

28 ⁵All further references to standards are to this source.

1 Respondent's failure to participate in this disciplinary matter prior to the entry of his default
2 is a serious aggravating factor. (Std. 1.2(b)(vi).) Respondent defaulted in the disciplinary
3 proceedings in Arizona and in this proceeding. He also displayed a lack of candor and cooperation
4 to his clients and to the Arizona State Bar during disciplinary investigation.

5 VII. DISCUSSION

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

10 Respondent's misconduct involved eight client matters and failure to obey a court order. The
11 standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon
12 the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.3, 2.4(a), 2.6, 2.7, 2.8, and 2.10.)

13 Under standard 2.4(a), disbarment shall be the discipline for an attorney culpable of a pattern
14 of wilfully failing to perform services. Here, there is clear and convincing evidence that Respondent
15 had engaged in a pattern of abandoning his clients without performing the legal services for which
16 he was employed.

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

21 The State Bar urges disbarment, arguing that Respondent's habitual disregard of his clients'
22 interests is ground for disbarment and citing several cases in support of its recommendation,
23 including *Stanley v. State Bar* (1990) 50 Cal.3d 555, *Hawes v. State Bar* (1990) 51 Cal.3d 587,
24 *McMorris v. State Bar* (1983) 35 Cal.3d 77, and *Twohy v. State Bar* (1989) 48 Cal.3d 502.

25 The Supreme Court has often stated that habitual disregard of client interests is ground for
26 disbarment. "Even when such neglect is grossly negligent or careless, rather than wilful and
27 dishonest, it is an act of moral turpitude and professional misconduct justifying disbarment."
28 (*Stanley v. State Bar, supra*, 50 Cal.3d 555, 566.)

1 In *McMorris*, the attorney was disbarred for habitually disregarding his clients' interests. In
2 seven matters for five clients over a period of nine years, the attorney was found culpable of failing
3 to perform and to communicate, improperly withdrawing from representation and committing an act
4 of moral turpitude in violation of § 6106. Client harm was found in aggravation, including the entry
5 of a default judgment and the need for the client to retain other counsel to have it set aside. He did
6 not participate in the discipline hearing and had three prior instances of discipline.

7 In *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, the attorney was
8 disbarred for committing professional misconduct in 14 matters over a six-year period. He engaged
9 in a pattern of client abandonment and failed to refund over \$17,500 in unearned fees and costs in
10 nine matters.

11 Here, Respondent had abruptly abandoned eight clients in four years. He recklessly failed
12 to perform services, misled his clients, failed to communicate, overcharged clients, and failed to
13 reimburse \$49,500 in unearned fees to clients. The enormous harm to clients weighs heavily in
14 assessing the appropriate level of discipline.

15 In recommending discipline, the "paramount concern is protection of the public, the courts
16 and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) "It is clear
17 that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most
18 significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of
19 his wrongdoing." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.)
20 An attorney's failure to accept responsibility for actions which are wrong or to understand that
21 wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-
22 1101.) There is a great likelihood that Respondent will engage in misconduct in the future.

23 Respondent "is not entitled to be recommended to the public as a person worthy of trust, and
24 accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605,
25 615.) His failure to participate in this hearing leaves the court without information about the
26 underlying cause of Respondent's offense or of any mitigating circumstances surrounding his
27 misconduct. Instead of cooperating with the State Bar or rectifying his misconduct, Respondent
28 defaulted in this disciplinary proceeding. Therefore, based on the severity of the offense, the serious

1 aggravating circumstances and the lack of mitigating factors, the court recommends disbarment.

2 **VIII. RECOMMENDED DISCIPLINE**

3 This court recommends that Respondent **MAXIMILIANO S. GARCIA** be disbarred from
4 the practice of law in the State of California and that his name be stricken from the rolls of attorneys
5 in this State.

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

9 **IX. COSTS**

10 The court recommends that costs be awarded to the State Bar pursuant to Business and
11 Professions Code section 6086.10 and payable in accordance with Business and Professions Code
12 section 6140.7.

13 **X. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

14 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
15 to Business and Professions Code section 6007(c)(4) and rule 220(c) of the Rules of Procedure of
16 the State Bar. The inactive enrollment shall become effective three calendar days after service of
17 this order.

18
19
20
21 Dated: July 8, 2004

22 
23 **PAT McELROY**
24 Judge of the State Bar Court
25
26
27
28

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

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 8, 2004, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

MAXIMILIANO S GARCIA
4410 W UNION HILLS #7-216
GLENDALE AZ 85308

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

ERIC HSU, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **July 8, 2004**.


George Hue
Case Administrator
State Bar Court