FILED MAY 8, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **EUGENE PAOLINO**, **Member No. 123208**, A Member of the State Bar.	**Case No. 03-O-02697-RAP [04-O-10815]** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this contested matter, respondent **EUGENE PAOLINO** is charged with nine counts of misconduct. The court finds by clear and convincing evidence that respondent is culpable of eight counts of misconduct for violations of: Rule 2-100(A), Rules of Professional Conduct[1]; rule 5-100(A); Bus. & Prof. Code, section 6106[2]; rule 1-300(A); rule 1-320(A); rule 4-200(A); and section 6105. In addition, the court found uncharged misconduct which violated rule 3-110(A).

The State Bar urges that respondent be disbarred from the practice of law. Respondent argues that the court should find no culpability on any count. The court concludes and recommends that respondent be disbarred.

II. Pertinent Procedural History

[1]Future references to rule are to this source.

[2]Future references to section are to the this source.

The notice of disciplinary charges (NDC) was filed on February 2, 2006. The response was filed on March 14, 2006.

On July 27, 2007, the court issued an order that respondent was precluded from calling any witnesses at trial or admitting into evidence any documents for his failure to file a pretrial conference statement pursuant to rule 211(f), Rules of Procedure of the State Bar of California. Respondent was permitted to, and did, testify at trial.

Trial on culpability was held on August 2 and 3, and 9, 2007, September 12, 2007, and October 15, 2000. The State Bar was represented in this proceeding by Deputy Trial Counsel Gordon Greiner and Monique Miller. Respondent represented himself in the matter. Five witnesses testified at trial: respondent, John C. Edwards, Esq., Magid Naeeni, Vahid Mojarad Hamzei, and Ali Azizmohammadi. At the end of trial, the court rendered a tentative decision, finding respondent culpable in six of the charged nine counts of misconduct.[3] A briefing schedule on culpability was established. The matter was submitted for decision on February 11, 2008.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 10, 1986, and has been a member of the State Bar since that time.

B. Findings of Fact

Case No. 03-O-02697

Respondent represented Dirk Summers in a civil lawsuit filed in the San Diego Superior Court against Rue McClanahan (Summers I).[4] McClanahan was represented by attorney John C. Edwards. The matter involved a project to build a health resort, the Elan Vital Spa. At some point, McClanahan pulled out of the project and subsequently,

[3]The court granted the State Bar's April 11, 2007, motion to dismiss Count Two from State Bar Court case no. 03-O-02697.

[4]*Dirk Summers v. Rue McClanahan*, San Diego Superior Court Case No. 724966.

Summers initiated litigation. McClanahan filed a cross-complaint against Summers, alleging that Summers improperly took $200,000 of her money that was to be maintained in escrow. In short, the litigation was contentious and acrimonious. In April 2003, the court dismissed Summers' complaint and granted judgment for McClanahan against Summers for $263,157.93.

Summers appealed the award. Edwards continued to represent McClanahan. Sometime after Summers filed the appeal, respondent substituted in as attorney of record. Eventually, the Court of Appeal affirmed the lower court ruling.

Respondent also represented Summers in a lawsuit for slander and defamation filed against Edwards in February 2003 (Summers II). The basis of the matter concerned Edwards' comments to someone in the news media regarding Summers' lawsuit against McClanahan. The matter was eventually dismissed. Edwards believes the lawsuit was filed against him in order to have him conflicted out of Summers' lawsuit against McClanahan.

On June 6, 2003, respondent filed a civil complaint on behalf of Summers against McClanahan for defamation, slander, and libel (Summers III).[5] Respondent served the complaint on McClanahan's personal manager, Barbara Lawrence, rather than Edwards, who was still representing McClanahan in Summers I. Lawrence notified Edwards and forwarded the documents to him. Included in the documents served on Lawrence was a 22-page letter written to McClanahan, a deposition notice for Lawrence, a complaint for slander, libel, and the intentional infliction of emotional distress, and about 100 pages of attachments. The attached pages included approximately 43 pages about Martha Stewart, her broker, and the grand jury indictment against them. The attachment also included 20 pages listing currency crimes statutes and summaries of tax fraud cases in a number of states. Respondent did not serve Edwards with the complaint or provide him with a

[5]Los Angeles Superior Court, case no. BC297039.

courtesy copy, although, in his letter, he acknowledged that Edwards represented McClanahan in litigation with Summers.

Respondent's letter to McClanahan made numerous references to the Elan Vital Spa project in connection with Summers I. He alleged that McClanahan had committed perjury in a lawsuit against Rancho Santa Fe Bank. Approximately 22 times in his letter, respondent accused McClanahan of being in violation of various criminal statutes, including smuggling currency, tax fraud, filing a false insurance claim, numerous acts perjury, conspiracy to commit burglary, and tampering with evidence in a criminal case. The letter continued on for 13 pages describing McClanahan's acts, which respondent stated would be introduced into evidence at trial. It also contained a disclaimer stating that neither respondent nor his client were going to approach the criminal authorities in order to convince her to settle the case, but that respondent was quite certain that once the media were aware of her fraudulent and criminal conduct, there would be tremendous pressure on the criminal authorities, including the Office of the San Diego District Attorney and the Office of the California Attorney General, to file criminal charges against McClanahan. Respondent's letter also stated that he and Summers were prepared to proceed with the case all the way through trial and would be compelled to reveal all of McClanahan's past misrepresentations and perjurious testimony in depositions and on the witness stand. Later in the letter, respondent stated that trial in the matter would create a three-ring circus atmosphere and that it would not be the kind of publicity that would improve McClanahan's career and standing with the public.[6] Further, respondent implied that the revelations could actually destroy her career, and that settlement would be more in her interest than in Summers' interest.

[6]McClanahan is an actress.

Respondent demanded a settlement of $5,000,000. In addition to delivering this letter to McClanahan, respondent sent versions of it to McClanahan's sister, accountant, and nephew.

McClanahan has never been charged by any law enforcement agency with any of the misconduct as stated by respondent in his letter.

Respondent testified that he sent this letter at the direction of his client; that he wanted to convey the information to McClanahan before it would spin out of control; and that Summers believed that McClanahan did not understand the gravity of the circumstances and Edwards was not going to inform her, and that Summers wanted to mention Martha Stewart in the letter.

Respondent acknowledges that at the time he sent the letter, he did not know if any of his allegations were true. Summers wanted to shoot for the moon, according to respondent and the $5,000,000 offer was an offer to talk.

Respondent sent a letter to McClanahan's sister, listing several criminal acts allegedly perpetrated by McClanahan. Respondent testified that it was his way of telling the sister that he was going to depose her and ask her questions about McClanahan's past.

Respondent blames Edwards for doing nothing after receiving a copy of the complaint. Respondent obtained a $3.75 million default judgment, which he believes was wrongly overturned on appeal. Respondent blames Summers for respondent ultimately being sanctioned by the court in the amount of $35,000.

The court finds that respondent's testimony lacked candor. It was, at times, rambling and totally unbelievable, as he continued to berate McClanahan and Edwards, totally ignoring his conduct in all of the Summers litigation matters, always blaming others for his actions.

Testimony of John Edwards, Esq.

John Edwards has been a practicing lawyer in California for about 30 years. He represented McClanahan in the Summers I and Summers III matters and was involved in the Summers II matter.

On June 6, 2003, Edwards received a telephone call from Lawrence, who was upset. She told him that she had received a large packet of papers. He had her send the package to him. Upon receipt, Edwards reviewed the package, which contained the papers previously described. Edwards was astounded and thought it was an attempt to extort money from McClanahan. In Edwards' opinion, the June 6 letter should have been sent to him since many of the allegations dealt with issues involved in matters in which he represented McClanahan.

Edwards sent a letter to respondent informing him that he could not sue McClanahan for slander and defamation since it had been already determined judicially that Summers owed money to McClanahan. Respondent did not respond to the letter.

Edwards believed that respondent had not properly served McClanahan because there was no proof of service or summons attached. He decided to monitor the case without making an appearance. He was in court when Summers III was dismissed with prejudice due to respondent's failure to file proof of service on McClanahan and for respondent's failure to appear. Edwards was unaware that the case had been re-opened and that respondent eventually secured a $3.5 million judgment against McClanahan, which was later overturned on appeal. Summers III was later dismissed and the court issued an order to sanction respondent in the amount of $35,000.

According to Edwards, respondent has not paid the sanction. Edwards does not dispute that respondent could serve McClanahan in Summers III, but respondent should have addressed the attached correspondence to him and not McClanahan because the letter contained information concerning the allegations in Summers I, in which he was the attorney of record for McClanahan.

The court finds the Edwards testimony was credible.

C. Conclusions of Law .

Count 1: Communication with a Represented Party (Rule 2-100(A))

Rule 2-100(A) provides that, while representing a client, an attorney shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.

The court finds by clear and convincing evidence that respondent wilfully violated rule 2-100(A), by directly communicating with McClanahan via the June 6 letter without Edwards' consent although respondent was aware that Edwards already represented her in litigation with Summers.[7] In his June 6 letter to McClanahan, respondent made numerous references to the issues in Summers I and alleged that McClanahan has committed perjury in that matter. Respondent stated that the issues in Summers I would be relitigated in Summers III. Respondent was required to send the June 6 letter to Edwards, since Edwards was McClanahan's attorney of record in Summers I and respondent was aware of Edward's representation. However, as he admitted, respondent intentionally did not inform Edwards of the June 6 letter and communicated directly with McClanahan because he wanted to alert her to the seriousness of the allegations and he did not believe Edwards would inform her.

Count 3: Threatening Charges to Gain Advantage in a Civil Suit (Rule 5-100(A))

Rule 5-100(A) provides that an attorney shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.

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[7]At the conclusion of trial in this matter, the court tentatively found that respondent's misconduct was not in violation of rule 2-100(A). After having now thoroughly reviewed the record, the court finds that respondent's misconduct involved a violation of rule 2-100(A). (See generally, *In the Matter of Aguiluz* (Review Dept. 1992) Cal. State Bar Ct. Rptr. 32, 42 [trial court's written decision controls over its prior statements]; *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Ct. Rptr. 752, 763.)

The court finds by clear and convincing evidence that respondent wilfully violated rule 5-100(A) by sending the June 6 letter to McClanahan which contained at least 26 accusations that she had committed criminal acts that might lead to incarceration and offering to dismiss Summers III in exchange for $5,000,000. Respondent accused McClanahan of committing perjury; knowingly and intentionally presenting false testimony; knowingly filing a false police report; conspiracy to commit burglary; tampering with evidence in a criminal matter; tax fraud and currency smuggling; obtaining money by false pretenses; perjury in a civil matter; filing a false insurance claim; and insurance fraud. Also, attached to the letter were 43 pages detailing the criminal charges against Martha Stewart and her broker, and 20 additional pages listing currency criminal statues of various states. The letter also included a disclaimer that respondent and his client were not going to inform criminal authorities of McClanahan alleged misconduct. The court rejects respondent's assertion that the letter was not sent to threaten criminal disclosure to gain an advantage in a civil dispute as the disclaimer asserts. A careful reading of the letter can lead to no other conclusion that respondent was threatening disclosure of his accusations against McClanahan to law enforcement authorities if the civil case did not settle. Respondent's assertions that it was Summers who wanted to add documents concerning Martha Stewart is of no importance. Respondent's testimony lacked candor, and, even if true, respondent was the attorney and cannot commit an act of misconduct to please a client.

Count 4: Moral Turpitude (Section 6106)

Section 6106 provides that an attorney may not commit an act of moral turpitude, dishonesty or corruption.

The court finds by clear and convincing evidence that respondent wilfully violated section 6106 by committing an act of moral turpitude when he sent the June 6, 2000, letter to McClanahan. As previously described, the letter was a reprehensible attempt by respondent to place McClanahan in fear of possible criminal investigation,

arrest, trial, and imprisonment, with the only way to avoid such a future was to settle the matter, with a demand for $5,00,000. In addition to fear of criminal intervention, the letter also was meant to place McClanahan in fear of disclosure of respondent's allegations to the public at large with possible ramifications to McClanahan's career. The fact that he sent the June 6 letter to McClanahan directly, bypassing her attorney, Edwards, only enforces the conclusion that respondent sent the letter to instill fear into McClanahan of possible criminal intervention by legal authorities and the loss of good will with the public. Respondent's wilful sending of the June 6 letter was a vile, base attempt to place McClanahan in fear of criminal prosecution and loss of stature with the public and is an act of moral turpitude.

D. Findings of Fact

Case No. 04-O-10815

In 1990, respondent opened the Law Office of Eugene Paolino, located at 2049 Century Park East in Los Angeles.[8] Shortly after opening his office, respondent met Jay Araghi, who was employed by attorney Daniel F. Boyle. Boyle had an office suite in the same complex as respondent. According to respondent, Boyle was licensed to practice law in Colorado. Respondent described Araghi as being a law school graduate who was doing immigration asylum cases under the supervision of Boyle. Respondent did not delve deeply into the Boyle/Araghi relationship but became friendly with Araghi.

Sometime later, approximately in 1995, Araghi approached respondent concerning his relationship with Boyle and asked respondent to replace Boyle as his supervisor. Respondent testified that Araghi had graduated from Taft Law School. Araghi needed respondent's help to save aliens in asylum cases from certain death and torture upon return to Iran. Respondent was impressed with Araghi and noticed

[8]Respondent's office was located with a large number of other attorneys in suites on the 18th floor.

numerous certificates on the wall in Araghi's office. Respondent believed Araghi's work to be superior to that of many licensed attorneys and he agreed to supervise Araghi.[9]

Respondent decided that it was necessary to expand the name of Law Offices of Eugene Paolino to Law Offices of Paolino and Associates to encompass his relationship with Araghi.

Respondent did nothing to determine if Araghi had, in fact, graduated from Taft Law School or was presently a law school student. The evidence at trial shows that Araghi had at one time attended law school but was not a law school graduate nor was he a law student. Accordingly, Araghi's alleged representative status did not come under the clear language of the federal law and he should not have appeared in immigration court as a representative for aliens. More importantly to this court, respondent should have not have agreed to supervise Araghi or later supervise Araghi as a representative in

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[9] At this time, the federal immigration court system allowed representatives who were not licensed attorneys to represent aliens in proceedings under certain conditions and without remuneration. 8 C.F.R. section 292.1, provides, in relevant part:

> A person entitled to representation may be represented by any of the following:
> [¶] . . . [¶] (2) Law students and law graduates not yet admitted to the bar. . . . provided that:
> [¶] . . . [¶] (ii) In the case of a law student, he or she has filed a statement that he or she is participating under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;
> (iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and
> (iv) the law student's or law graduate's appearance is permitted by the official before whom he or she wished to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative. . . .

immigration court without first determining whether Araghi met the requirements. At minimum, respondent's failure to do any investigation into whether Araghi was qualified to act as a representative was conduct amounting to gross negligence. Because respondent failed to determine whether Araghi was qualified to act as a representative, Araghi made an untold number of appearances in immigration court to represent aliens when he should not have, thereby misleading the court and clients.

This was not the only act committed by Araghi and respondent that misled the immigration courts or his clients. As the evidence produced at trial shows, Araghi led many of the clients to believe that he was a licensed attorney. The evidence also shows that Araghi and respondent played fast and loose with the rules in immigration procedures regarding the filing of the initial Notice of Entry of Appearance as Attorney or Representative Before Immigration Judge form (EOIR-28 or EOIR form). On numerous occasions, the EOIR form was filed indicating that Araghi entered his appearance as an attorney with the Law Offices of Eugene Paolino. Also, on numerous pleadings filed in the immigration court, Araghi would sign the pleadings as "attorney," all the while being supposedly supervised by Paolino, who rarely appeared with Araghi in court. Paolino could not have reviewed the documents prior to filing or he would have surely noticed Araghi's signature on pleadings as "attorney." According to respondent, any pleading that Araghi filed listing Araghi as "attorney" was just an error.

During his testimony, respondent still maintained that Araghi was qualified under federal law to act as a legal representative under his supervision, stubbornly hanging on to the unreasonable belief that Araghi was a law school graduate, even when faced with Araghi's law school transcript, which clearly showed that he never graduated from Taft.

In approximately 1999, the lease on 2049 Century Park East expired and respondent moved his office to 2040 Avenue of the Stars in Century City. A few years later, respondent moved his office to his home in Los Angeles.

In 2002, respondent was hired as legal counsel for a company located in Moorpark, California, where he had an office and worked three to four days a week. Respondent did not need an office for corporate clients, but in 2002, he and Araghi moved the Law Offices of Paolino and Associates to 1925 Century Park East, for clients that wanted to see an attorney dressed up. The lease for this office space was in Araghi's name. The office was actually similar to a mail drop and the office had the ability to book a conference room to meet with clients.

Between 1997 and 2004, respondent and Araghi were listed as representing about 20 clients before the immigration court.[10] Additionally, respondent estimates that his office and Araghi represented about 120 immigration cases over a 10-year period. Respondent admitted that Araghi represented approximately 17 clients before the immigration court, all the while Araghi allegedly was being supervised by respondent. Court records indicate respondent appeared in one matter. Respondent testified that the immigration court judge in one matter incorrectly removed respondent and Araghi from a case because Araghi checked the wrong box on the EOIR-28 form. According to respondent, Araghi always made sure to include respondent's name and State Bar number on the EOIR forms so that all could see that Paolino was Araghi's supervisor.

[10]These cases are: (1) *In the Matter of Hakim*, case no. A#70 965 569; (2) *In the Matter of Vajdiaziar*, case no. A#96 053 912; (3) *In the Matter of Usu*, case no. A#75 521 625; (4) *In the Matter of Saneei*, case no. A#75 473 304; (5) *In the Matter of Herrera Juarez*, case nos. A#75 526 664 and 76 715 272; (6) *In the Matter of Qahveh*, case no. A#75 664 434; (7) *In the Matter of Rahimi and Mohammadizadeh*, case nos. A#75 749 105 and 75 749 106; (8) *In the Matter of Sarrafi and Esfahanian*, case nos. A#79 523 979 and 79 523 980; (9) *In the Matter of Badr*, case no. A#70 930 286; (10) *In the Matter of Hamzei*, case no. A#95 177 701; (11) *In the Matter of Azizmohammadi*, case no. A#75 708 618; (12) *In the Matter of Naeeni and Naeeni*, case nos. A#78 019 156 and 78 019 157; (13) *In the Matter of Salamipour*, case no. A#95 302 013; (14) *In the Matter of Falahati*, case no. A# 97 809 447; (15) *In the Matter of Shemirani*, case no. A#97 817 445; and (6) *In the Matter of Khaled Abad*, case nos. A#97 348 326 and 97 348 327.

Respondent denies that Araghi ever received compensation for his work on immigration cases, as is forbidden by federal law. Respondent did compensate Araghi for his paralegal/legal assistant work. According to respondent, if Araghi accepted a check from a client, he would deposit it into his own account, then withdraw the money and give it to respondent, who would then pay Araghi for his work. Respondent believes that the clients preferred paying Araghi because he spoke their language. Respondent testified that clients were charged by their ability to pay.

Respondent testified that he always supervised Araghi in all cases and that Araghi is a law school graduate and, thus, was permitted to represent aliens before the immigration court.

As is discussed more fully below, the court did not find respondent's testimony credible, but, in fact, to be without candor. For nearly about eight years, he, essentially, sold his law license to Araghi for a cut of the fees made from unwitting immigrants who believed Araghi was a lawyer. Araghi met with clients; controlled their files; set and collected their fees; prepared clients' defenses and appeared on their behalf in immigration proceedings, all under the auspices of respondent's law license, but without direction or supervision from respondent.

Testimony of Vahid Mojarad Hamzei

Vahid Mojarad Hamzei illegally entered the United States from Iran in August 2001. He spoke little English. His aunt referred him to Araghi because she had heard that Araghi was an attorney who charged less than other attorneys.

Hamzei met Araghi in Araghi's Century City office. Araghi identified himself as an attorney. Hamzei believed Araghi to be an attorney and noticed many certificates hanging on the office walls. Araghi told Hamzei what he would do for him and how much it would cost. Hamzei paid Araghi a total of $5,120 between September 2001 and May 2002. All payments were by check. Araghi endorsed the checks and deposited them into his bank account. Hamzei never met or spoke with respondent.

Araghi filed two EOIR-28 notice of appearance forms with the immigration court in Hamzei's matter, identifying himself as either a law student or law graduate. That information was false. In 2002, Araghi appeared in immigration court with Hamzei on four occasions. Respondent was not present at any of these appearances. In December 2002, the immigration court served Araghi with an order denying Hamzei's asylum application. In January 2003, Araghi filed an appeal from the order on behalf of Hamzei.

Finally, Hamzei was informed that Araghi was not an attorney when Araghi referred him to attorney Shawn Sedaghat to handle the appeal. Hamzei would not have retained Araghi if he had known that Araghi was not an attorney.

Hamzei's testimony was credible.

Testimony of Majid Naeeni

Majid Naeeni entered the United States in 1995 on a visitor's visa from Iran, where he was an airline pilot. Thereafter, Naeeni remained in this country illegally. Naeeni applied for permanent United States residency in 2001. After the events of September 11, 2001, the Department of Homeland Security required that all aliens from various countries, including Iran, register with the Immigration and Naturalization Service (INS). Naeeni was briefly incarcerated for six days in December 2001.

In 2003, a friend of Naeeni referred him to Araghi. Araghi told Naeeni that he was an attorney and that he could help Naeeni and his son. Between April 2003 and March 2004, Naeeni met Araghi in Century City, usually at a hamburger shop because Araghi said he liked to smoke and could not at his office. Naeeni paid Araghi $5,000 by check in three installments. Araghi endorsed the checks and deposited them into his own account. In August 2005, Araghi filed an EOIR-28 notice of appearance form with the immigration court on behalf of Naeeni and his son. On the form, Araghi identified himself as a law student or law graduate. That information was false.

Sometime in 2004, Naeeni was contacted by an investigator from the State Bar of California, who informed Naeeni that Araghi was not an attorney. Naeeni telephoned

Araghi, informed Araghi that he knew that he was not an attorney, and then hung up the phone. Naeeni would never had retained Araghi if he knew that Araghi was not an attorney. Naeeni never met or spoke with respondent. Naeeni retained new counsel.

Naeeni's testimony was credible.

Testimony of Ali Azizmohammadi

Ali Azizmohammadi illegally entered the United States from Iran in 2000. Upon arrival, he did not speak, write, or read English. Initially, Azizmohammadi hired a legal assistant, Gladys Bakhash, to aid in his immigration matter. Although she identified herself as a legal assistant, Azizmohammadi believed Bakhash was an attorney. Bakhash accompanied Azizmohammadi to Anaheim for an initial interview with the INS. After the interview, Bakhash referred Azizmohammadi to Araghi in September 2000.

At their first meeting on September 22, 2000, Araghi told Azizmohammadi that he was an attorney and gave him a business card which showed Araghi's name and the Law Offices of Eugene Paolino & Associates. Azizmohammadi retained Araghi and paid him $2,000 in cash at their meeting. Azizmohammadi paid Araghi a total of $5,000. Azizmohammadi asked for a receipt and Araghi said he would send one, but did not. No retainer contract was offered or signed.

Araghi filed an EOIR-28 notice of appearance before the immigration court in the Azizmohammadi matter in September 2000. Azizmohammadi appeared in court with Araghi about four times. Araghi would pick up Azizmohammadi at his home and drive him to court. In September 2003, the court served Araghi with an order of the immigration judge informing him that Azizmohammadi's application for asylum was denied.

Subsequently, in October 2003, Araghi filed a notice of appearance before the Board of Immigration Appeals on behalf of Azizmohammadi. Araghi then referred Azizmohammadi to attorney Ruben Sarkisian, who refused to take any money from Azizmohammadi and aided him in obtaining a work permit.

In 2004, Azizmohammadi received a letter from an investigator for the State Bar of California regarding Araghi. Azizmohammadi telephoned Araghi and told him of the letter. Araghi told Azizmohammadi that he would come by and pick up the letter and that Azizmohammadi should tell the investigator that he had never paid any money to Araghi. At this point in time, Azizmohammadi asked someone to translate the investigator's letter for him and learned for the first time that Araghi was not an attorney.

A few days later, Araghi met with Azizmohammadi and told him to tell the investigator that he never paid Araghi any money. Azizmohammadi did as instructed. A few days later, Azizmohammadi telephoned the investigator and told him what Araghi had told Azizmohammadi to do. Later, Araghi and respondent met with Azizmohammadi. Araghi introduced respondent to Azizmohammadi as the person who had been his attorney all along. Azizmohammadi had never met respondent before this meeting. Azizmohammadi testified that he would not have hired Araghi if he had known that he was not an attorney. Azizmohammadi believes that Araghi ruined his life because he did not handle his case properly, and that he was not a good "lawyer." Azizmohammadi retained new counsel.

Azizmohammadi's testimony was credible.

Respondent's testimony in the Araghi matters lacked candor, and was, at times, irrational and self-serving.

The evidence clearly establishes that respondent entered into a relationship with Araghi that permitted Araghi to represent clients in violation of federal law and with little or no supervision. Respondent permitted Araghi the use of respondent's name and State Bar number and allowed Araghi to falsely leave clients with the impression that Araghi was an attorney. To the clients, Araghi was the attorney. Acting as an attorney, Araghi initially met with clients; set the fee charged the clients; collected the fee and deposited the funds in his own bank account; prepared the pleadings in each case, many times identifying himself as an attorney; and made all court appearances. Lastly, Araghi met

with respondent and paid respondent his share of each client fee. The clients almost never met or spoke with respondent. Respondent did not supervise Araghi and never investigated to determine if Araghi was a law school graduate or law student.

In effect, respondent sold his law license to Araghi in return for a percentage of each client fee that Araghi could obtain. Respondent testified that his intentions were noble - trying to help aliens avoid returning to Iran to face torture or death. That testimony was nothing more than a self-serving statement. By allowing Araghi to operate virtually unchecked, respondent's conduct especially harmed unsophisticated clients trying to retain competent representation in an effort to forestall deportation. Respondent's and Araghi's conduct also misled the immigration court because Araghi appeared in court as a representative who was a law school graduate but he was not.

E. **Conclusions of Law**

Count Five: Scheme to Defraud/Moral Turpitude (Section 6106)

Section 6106 provides that an attorney shall not commit any act involving moral turpitude, dishonesty, or corruption.

The court finds by clear and convincing evidence that respondent wilfully violated section 6106[11] by engaging in a scheme to defraud at least 20 clients by not meeting with the clients or reviewing their cases or obtaining the facts necessary to represent them at hearings and not appearing at proceedings for clients of his firm; and by allowing Araghi to set and collect fees; prepare and file pleadings on behalf of clients with little or no supervision; and to represent clients in immigration court in violation of federal law. Accordingly, respondent committed acts of moral turpitude, dishonesty or corruption.

[11]At the conclusion of trial, the court made a tentative finding of no culpability.

Count Six: Aiding the Unauthorized Practice of Law (Rule 1-300(A))

Rule 3-100(A) provides that a member shall not aid any person or entity in the unauthorized practice of law.

The court finds by clear and convincing evidence that respondent wilfully violated rule 1-300(A), by allowing Araghi to misrepresent his status to the immigration court and to clients such as Naeeni, Hamzei and Azizmohammadi. As previously noted, although not a law school graduate or law student, respondent permitted Araghi, in general, to identify himself as an attorney to clients and to the immigration court. Accordingly, respondent aided and abetted Araghi, a nonattorney, in the unlawful practice of law.

Count Seven: Sharing Legal Fees with a Nonlawyer (Rule 1-320(A))

Rule 1-320(A) provides that neither a member of law firm shall directly or indirectly share legal fees with a person who is not lawyer.

The court finds by clear and convincing evidence the respondent wilfully violated rule 1-320(A), by sharing legal fees with Araghi, a nonlawyer. Respondent permitted Araghi to set and collect legal fees in immigration cases and then deposit the fees in Araghi's bank account. Respondent's testimony that Araghi would withdraw the money and give it to respondent who would then pay Araghi lacks candor. Araghi collected the money and placed the funds in *his* bank account. The money was Araghi's and he paid respondent a share of the fees. Respondent was sharing legal fees with a nonlawyer.

Count Eight: Illegal Fee (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.

The court finds by clear and convincing evidence the respondent wilfully violated rule 4-200(A), by entering into an agreement for, charging and collecting an illegal fee. With respondent's permission, Araghi, a nonlawyer who, contrary to federal law, was not entitled to represent aliens for remuneration in immigration court, set and collect fees and

placed the fees in his personal bank account (not under respondent's control) while identifying himself as an associate with the Law Office of Paolino and Associates and representing clients without respondent's supervision.

Count Nine: Permitting Misuse of Name (Section 6105)

Section 6105 proscribes an attorney from lending his name to be used by another person who is not an attorney.

The court finds by clear and convincing evidence that respondent wilfully violated section 6105 by permitting a nonattorney, Araghi, to use respondent's name and that of the Law Offices of Paolino & Associates, to meet and interview clients in at least 20 cases; to set and collect fees; to prepare and file clients' cases without respondent's supervision; to represent clients before the immigration court when not qualified under federal law to do so; and to misrepresent his status before the immigration court.

Count Ten: Improper Solicitation of Prospective Client (Rule 1-400(D)(2))

Rule 1-400(D)(2) provides that a communication or solicitation shall not contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive, or mislead the public.

The court finds that there is not clear and convincing evidence that respondent wilfully violated rule 1-400(D)(2). There is no evidence that any of the clients were solicited by respondent or Araghi. Most of the clients were referred to Araghi. Araghi made false statements to at least some of the clients that he was an attorney. However, this conduct, although reprehensible, does not violate rule 1-400(D)(2) and the State Bar produced no case law to substantiate this allegation.

Uncharged Misconduct Found in Aggravation

Rule 3-110(A) provides that a member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The duties set forth in this rule includes the duty to supervise the work of subordinate attorneys and nonattorney employees or agents. (See, e.g. *Waysman v. State Bar* (1986) 41 Cal.3d 452).

Respondent wilfully violated rule 3-110(A), by failing to represent clients competently in 20 immigration matters. Respondent was the attorney of record in these matters and failed to ensure that his clients were competently represented, allowing a nonattorney, Araghi, to represent the clients.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent was admitted to the practice of law on June 10, 1986, and has no prior record of discipline for approximately 11 years until the misconduct herein commenced in about 1997. Case law permits a long record of practice without discipline to be treated as mitigation notwithstanding the seriousness of the present misconduct. (*In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.) (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e)(i).)[12]

There are no other mitigating factors.

B. Aggravation

There are many factors in aggravation. (Std. 1.2(b).).

Respondent engaged in a pattern of misconduct. (Std. 1.2(b)(ii).) He turned over his law license to Araghi to conduct an immigration practice, representing, by his own admission, about 120 clients over a 10-year period. In the present matter, he was charged with and found culpable of misconduct in about 20 immigration cases during approximately an eight-year time span. Respondent has engaged in a "serious pattern of misconduct involving recurring types of wrongdoing." (*Garlow v. State Bar* (1988) 44 Cal.3d 689, 711.) "[W]hen an attorney commits multiple acts of similar misconduct or recurring types of wrongdoing ... the gravity of each successive violation increases.

[12]Future references to standards or std. are to this source.

[Citation.]" (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 (dis. opn. of Obrien, J.).)

Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment or overreaching. (Std. 1.2(b)(iii).) As previously noted, the court found violations of rule 3-110(A) that were not charged in the NDC. Further, respondent's misconduct over about eight years (about 1997 to 2005) took advantage of vulnerable immigrants.

Respondent's misconduct harmed significantly at least 20 clients and the administration of justice by allowing a nonlawyer to appear before the immigration court (Std. 1.2(b)(iv).) Naeeni, Hamzei and Azizmohammadi had to obtain new counsel.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. Respondent continues to show contempt for McClanahan and Edwards and refuses to acknowledge his misconduct in his dealings with Araghi (Std. 1.2(b)(v).)

Respondent's testimony lacked candor. (Std. 1.2(b)(vi).)

V. Discussion

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

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the review department noted in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d

276, 291.) The court also looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Std. 1.7.)

Respondent has been found culpable of violating section 6106 and rules 2-100(A) and 5-100(A) in one client matter and of, essentially, selling his law license in violation of sections 6105 and 6106, as well as rules 1-300(A), 1-320(B) and 4-200(A). There are serious aggravating factors, more fully discussed above, including engaging in a pattern of misconduct, other instances of uncharged misconduct, harming clients and the administration of justice, demonstrating a lack of appreciation or understanding of his misconduct and a lack of candor.

Standards 2.3, 2.6(b), 2.7 and 2.10 apply in this matter as to the level of discipline. The most severe sanction is found at standard 2.7 which recommends a six-month actual suspension irrespective of mitigating circumstances for culpability of violating rule 4-200.

The State Bar seeks disbarment. Respondent seeks exoneration.

Respondent committed serious misconduct in the litigation between McClanahan and Summers and also sold his law license to Araghi for a percentage of the fees from immigration cases generated by Araghi. He did not protect the rights of his clients that were represented by Araghi.

The court found instructive *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498. In *Valinoti*, the attorney was suspended for five years, stayed, and placed on probation for five years with an actual suspension of three years for his

misconduct in nine immigration client matters. Even though he had no prior record, his misconduct was excessive and repeated during a period of more than two years, which included the failure to perform, client abandonments, acts of moral turpitude, aiding and abetting nonattorneys in the unauthorized practice of law, failure to properly manage his office, misrepresentations to the State Bar, and lack of remorse. The misconduct in the present case as to the immigration cases is more extensive and of longer duration. That, coupled with the despicable conduct in the Summers litigation merits greater discipline in the present case.

Cases involving a pattern of misconduct where the attorney has no prior record of discipline, generally result in the attorney's disbarment. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657 ["panoply" of misconduct affecting more than 20 clients over a 10-year period; disbarment]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not imposed for a pattern of misconduct, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar*, 49 Cal. 3d 753 (1989) 49. Cal.3d 753 [Although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his demonstrated remorse and determination to rehabilitate himself, and his concurrent family problems]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [Ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, attorney was experiencing severe financial and emotional problems during period of misconduct, and attorney thereafter

substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [Disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].) Other than a period of discipline-free practice, the present case is devoid of any compelling mitigation or indication of meaningful reform which could justify a discipline recommendation short of disbarment.

Respondent's lack of remorse for and recognition of his misconduct is particularly troublesome. If he does not understand that his behavior in the Summers litigation and in the immigration cases constituted serious misconduct, there is a greater likelihood that future misconduct will reoccur.

Respondent engaged in reprehensible conduct in the Summers litigation. For about eight years, if not more, he habitually placed his interests above those of his clients by allowing Araghi to represent them even though he was not qualified to do so. He abdicated his duties as an attorney and purposely allowed Araghi to engage in the unauthorized practice of law in exchange for a cut of the proceeds. Under the circumstances, the court sees no means other than disbarment to protect the public from any more wrongdoing by respondent. Accordingly, that is the recommendation of this court.

VI. Recommended Discipline

The court recommends that respondent **Eugene Paolino** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

VIII. Rule 9.20 & Costs

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment

IX. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: May 7, 2008.

RICHARD A. PLATEL
Judge of the State Bar Court