

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 03-O-04674-DFM ; 04-O-10591;
)	05-O-02649 (Cons.)
GREGORY PATRICK BRIGHT,)	
)	
Member No. 151856,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
)	

INTRODUCTION

In this default disciplinary matter, respondent **Gregory Patrick Bright** is charged with 21 counts¹ of professional misconduct in three client matters, including: (1) failing to avoid the representation of adverse interests; (2) committing multiple acts of moral turpitude; (3) failing to return client files; (4) failing to return unearned fees; (5) failing to keep a client informed of significant developments; (6) failing to perform services competently; (7) failing to maintain client funds in a trust account; (8) failing to promptly pay client funds; (9) charging an unconscionable fee; and (10) failing to provide an accounting.

In view of the serious misconduct in this proceeding, the aggravating circumstances surrounding respondent's misconduct, and respondent's apparent decision to discontinue

¹ Originally, respondent was charged with 22 counts of misconduct. But, in its July 29, 2009 Pretrial Conference Order, the court dismissed count one in case No. 04-O-10591 with prejudice.

participating in the disciplinary process, the court recommends that respondent be disbarred from the practice of law and, as set forth below, be ordered to make restitution to two clients.

PERTINENT PROCEDURAL HISTORY

A. First Notice of Disciplinary Charges (Case No. 03-O-04674)

On December 20, 2004, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges; respondent's response was filed on January 13, 2005. On August 4, 2005, the State Bar filed and properly served on respondent a Motion to Amend the First Amended Notice of Disciplinary Charges (NDC). On August 8, 2005, the court granted the motion to amend, and the First Amended Notice of Disciplinary Charges (NDC) was filed on that same date. Respondent filed his answer to the NDC on October 17, 2005.

B. Second Notice of Disciplinary Charges (Case No. 04-O-10591)

On July 1, 2005, the State Bar filed and properly served on respondent a second NDC. On July 22, 2005, respondent's response to the second NDC was filed.

On August 8, 2005, case Nos. 03-O-04674 and 04-O-10591 were consolidated.

C. Third Notice of Disciplinary Charges (Case No. 05-O-02649)

On August 31, 2006, the State Bar filed and properly served on respondent a third NDC. On September 14, 2006, respondent's response to the third NDC was filed.

On September 5, 2006, case No. 05-O-02649 was consolidated with case Nos. 03-O-04674 and 04-O-10591.

On October 18, 2007, respondent's attorney of record filed a motion to be relieved as counsel in the consolidated matters. The motion was properly served on respondent via U.S. mail at his official membership record address and was also sent to respondent's e-mail address, which is listed with his official membership records.

In an order signed on November 7, the court granted the motion to be relieved as counsel in the consolidated matter. On November 14, 2007, the order was properly filed and served on respondent.

On November 25, 2008, a Notice of Telephonic Status Conference was properly filed and served on respondent.² The Notice stated, among other things, that on January 15, 2009, at 9:45 a.m., a telephonic status conference would be held and that the call would be placed to respondent's telephone number as listed with his State Bar official membership records, unless respondent notified the court of a different number.

At the January 15, 2009 Status Conference, the deputy trial counsel appeared for the State Bar. Respondent made no appearance. Based on the discussion at the status conference, the court ordered, among other things, that a pretrial conference would be held in-person on July 29, 2009, at 1:30 p.m. and that the trial in this consolidated matter would commence on August 3, 2009, at 9:30 a.m. On January 26, 2009, a Trial Date and Order Pursuant to Status Conference, reflecting the court's January 15, 2009 orders, was properly filed and served on respondent by first class mail at his official membership records address and at a second address used by respondent. The mailing that was sent to the second address was returned to the State Bar Court on February 5, 2009, with the hand-written letters, "RTS" and a label, bearing the words, "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

On July 29, 2009, the pretrial conference previously set by the court was held. Deputy Trial Counsel Larry Desha appeared for the State Bar; respondent made no appearance at the

² The Notice was sent via first class mail to respondent's official membership records address, as well as to a second address used by respondent. The mailing to the second address was returned to the State Bar Court on December 3, 2008, with the hand-written word, "refused" on the envelope and a label, bearing the words, "RETURN TO SENDER REFUSED UNABLE TO FORWARD."

pre-trial conference. A minute order reflecting the court's pretrial conference rulings³ was properly filed and served via first-class mail on respondent at his official membership records address and his second address on July 29, 2009. Neither mailing was returned to the State Bar Court.

On August 3, 2009, respondent failed to appear for trial. On that same date, given respondent's failure to appear at trial and given that the requirements of rule 201 of the Rules of Procedure of the State Bar of California (Rules of Procedure) were met, the court filed an Order of Entry of Default (Rule 201—Failure to Appear) and Order Of Involuntary Inactive Enrollment. A copy of said order was properly served on respondent on August 3, 2009, by certified mail, return receipt requested, addressed to respondent at his official address.⁴ A courtesy copy was sent via first-class mail to respondent's second address.

The matter was submitted for decision on August 28, 2009, following the filing of State Bar's brief on culpability and discipline. On October 5, 2009, the matter was re-assigned to the undersigned for decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

All factual allegations of the NDC are deemed admitted on entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Jurisdiction

Respondent was admitted to the practice of law in California on January 14, 1991, and has since been a member of the State Bar of California.

³ As previously noted, an order was included in the July 29, 2009 rulings dismissing count one in case No. 04-O-10591 with prejudice.

⁴ Pursuant to Business and Professions Code section 6007, subdivision (e), respondent's involuntary inactive enrollment was effective August 6, 2009, three days after the service of the Order of Involuntary Inactive Enrollment by mail.

Case No. 03-O-04674 (The RAM/Monstein Case)

On or about May 14, 1999, the law firm of Spolin & Silverman, LLP (Spolin & Silverman) filed a complaint on behalf of Tri-Star Electronics (Tri-Star), titled *Tri-Star Electronics, Inc. v. RAM Enterprises and Richard Monstein*, United States District Court, Central District, case No. 99-05079 (the *Tri-Star* matter). Respondent, then an associate with Spolin & Silverman, was principal counsel for Tri-Star in the *Tri-Star* matter.

In its complaint, Tri-Star alleged that RAM and its owner, Richard Monstein (Monstein), violated the Lanham Act by counterfeiting Tri-Star's parts, by using Tri-Star's trademark without authorization, and by intentionally misrepresenting counterfeit parts as genuine Tri-Star goods.

As part of his representation of Tri-Star, respondent took the depositions of Monstein and other RAM employees; obtained a court order to search RAM's premises; repeatedly questioned the veracity of RAM personnel, including Monstein; and acted as the authorized custodian of seized evidence.

On or about August 20, 1999, Special Agent Michael Koslow (Koslow) from the Defense Criminal Investigation Service and Don McMullen (McMullen) of the Federal Aviation Administration interviewed respondent regarding the conduct alleged in the *Tri-Star* matter.

On or about January 18, 2000, Tri-Star and RAM entered into a settlement agreement in the *Tri-Star* matter.

On or about November 22, 2000, respondent left the firm of Spolin & Silverman and established his own practice, Bright Lawyers.

On or about August 1, 2002, the Office of the United States Attorney (OUSA) filed a criminal indictment against RAM, Monstein and RAM's quality assurance manager (Gordon), titled *United States of America v. RAM Enterprises, Inc., et al.*, case No. 02 CR-809 (the criminal

matter). The charges in the criminal matter involved the same conduct alleged in the *Tri-Star* matter.

In or about July 2002, respondent approached Monstein and Ken Nathanson, Esq. (Nathanson) about managing RAM's defense in the criminal matter. In light of respondent's prior representation of Tri-Star, Monstein raised the issue of a potential conflict of interest. Respondent told Monstein that he had the right to be represented by any attorney of his choosing and assured Monstein there was no conflict. When Nathanson pressed respondent regarding the potential conflict, respondent told Monstein and Nathanson that Tri-Star and Spolin & Silverman had consented to his representation of RAM and/or Monstein in the criminal matter and that the consent by Tri-Star and Spolin & Silverman included, but was not limited to, a waiver of any conflict of interest caused by his representation of RAM and/or Monstein in the criminal matter.

Based in part on respondent's representation that Tri-Star and Spolin & Silverman consented to respondent's representation of RAM and the consent included, but was not limited to a waiver of any conflict of interest caused by the representation, Monstein agreed in or about July 2002, to retain respondent to represent RAM and/or Monstein in the criminal matter. On or about August 5, 2002, the parties entered into a written retainer agreement.

Between on or about July 30, 2002, through on or about February 14, 2003, RAM paid respondent's law firm approximately \$105,000 in legal fees to represent RAM and/or Monstein through the conclusion of the criminal matter. Altogether, RAM and/or Monstein paid respondent's law firm approximately \$207,500 in legal fees and costs for various legal matters.

At or about the time that Monstein agreed to retain respondent to represent RAM and/or Monstein in the criminal matter, respondent contacted Donald Bruce Marks, Esq. (Marks). Respondent asked Marks if he would be interested in representing Monstein in the criminal matter. During their discussions about the facts and circumstances concerning the criminal

matter, Marks asked respondent if Tri-Star consented to respondent's representation of RAM and had waived any conflict of interest caused by respondent's representation. Respondent assured Marks that Tri-Star and Spolin & Silverman had consented to respondent's representation of RAM and that the consent included a waiver of any conflict of interest caused by respondent's representation.

Based in part on respondent's representations that Tri-Star and Spolin & Silverman consented to respondent's representation of RAM, and that said consent included a waiver of any conflict of interest caused by respondent's representation, Marks agreed, in or about July 2002, to represent Monstein in the criminal matter.

Respondent continued after July 2002 to assert that Tri-Star and Spolin & Silverman had consented to respondent's representation of RAM, and that the consent included a waiver of any conflict of interest caused by his representation, when that issue was periodically raised during conversations and meetings with Monstein, Nathanson, and Marks.

In fact, at no time had respondent ever obtained Tri-Star's or Spolin & Silverman's consent, or a waiver of any conflict of interest, for respondent to represent RAM. Indeed, respondent had not even contacted Tri-Star or Spolin & Silverman to determine if they would consent to his representation of RAM and waive any conflict of interest caused by that representation.

In or about September 2002, Assistant United States Attorney Lawrence S. Middleton (AUSA Middleton) met with respondent and informed respondent that, in light of respondent's representation of Tri-Star and his participation in the underlying criminal investigation, respondent's representation of RAM created a conflict of interest.

On or about October 2, 2002, Scott Spolin of Spolin & Silverman sent a letter to respondent regarding respondent's representation of RAM. In his October 2, 2002 letter, Spolin

told respondent that Tri-Star considered respondent's representation of RAM to be inappropriate. Spolin requested that respondent withdraw as counsel for RAM. Respondent received the October 2, 2002 letter, but did not withdraw as counsel for RAM.

From the date that he was hired until on or about October 3, 2002, respondent did not tell Monstein, Nathanson or Marks that any potential conflict of interest existed that would prevent him from representing RAM. On or about October 3, 2002, however, respondent forwarded Spolin's letter to Monstein, as well as a memo. In respondent's memo, he told Monstein that, "Tri-Star does not like your choice in lawyers."

Based in part on respondent's attitude towards Tri-Star's request, RAM and Monstein permitted respondent to continue representing RAM and/or Monstein in the criminal matter.

On or about October 24, 2002, respondent sent a letter to Spolin stating, inter alia, that respondent's "responsibility to avoid a potentially adverse relationship terminated upon the (long ended) conclusion of [his] representation of Tri-Star," and that his representation of RAM would not require him to "utilize confidences (to the extent any existed) learned from [his] prior Tri-Star representation." Respondent refused to withdraw from representing RAM.

In or about November 2002, AUSA Middleton met with respondent and once again told respondent that it was a conflict of interest for him to represent RAM. Respondent unequivocally stated that he would withdraw from the criminal matter without the need of a motion by the OUSA. Respondent did not tell Monstein, Nathanson or Marks that AUSA Middleton asked him to cease representing RAM, or that he had agreed to withdraw.

During the week of January 6, 2003, AUSA Middleton called respondent numerous times and left several messages in an attempt to determine whether respondent had indeed withdrawn as counsel for RAM. Respondent did not notify AUSA Middleton that he was still counsel for

RAM. Respondent also did not tell Monstein, Nathanson or Marks that AUSA Middleton had called him during the week of January 6, 2003, to determine if he had ceased representing RAM.

When some of the defendants were arraigned on or about January 27, 2003, AUSA Middleton learned that respondent was still counsel of record for RAM. On or about February 5, 2003, the OUSA filed a motion to disqualify respondent as counsel for RAM. In its motion, the OUSA pointed out that respondent was involved in the criminal investigation against RAM and Monstein and that respondent was a potential witness. The OUSA contended that respondent's advocating for RAM's acquittal was contrary to the interest of his former client, Tri-Star. Furthermore, the OUSA noted that the evidence used against RAM in the criminal matter was evidence provided to the government by respondent in the Tri-Star matter; the OUSA further noted that respondent's attacking the evidence in the criminal matter meant respondent was attacking the evidence he had provided on behalf of his client in the Tri-Star matter.

As of on or about February 20, 2003, respondent had not informed Monstein or any other agent of RAM that, while employed by Tri-Star in the *Tri-Star* Matter, he had actively participated in the government's criminal investigation of RAM and Monstein.

On or about February 20, 2003, the government turned over documents to attorney Marks in the criminal matter. Included in the documents was information regarding respondent's participation in the criminal investigation of RAM, including a witness statement regarding the government's August 20, 1999 interview with respondent in which respondent laid out for the government the evidence Tri-Star had accumulated against RAM and Monstein. Respondent's August 20, 1999 interview with the government helped to initiate the criminal investigation against RAM and its agents.

Throughout his representation of RAM, respondent never informed RAM, its agents, Monstein, or Marks that he had helped to initiate the criminal investigation against RAM. Nor

did he inform any of them of the extent to which he had aided the government in that investigation by, among other things, providing the names of witnesses to be used against RAM and Monstein.

Respondent never informed RAM or Monstein that the OUSA had repeatedly told respondent that his representation of RAM was a conflict of interest and requested his withdrawal. Nor did respondent inform RAM or Monstein that he had agreed to withdraw.

Special Agent Koslow (Koslow) provided a declaration in support of the government's February 5, 2003 motion to disqualify respondent. In his declaration, Koslow stated that he had repeated contact with respondent during the criminal investigation and that respondent was instrumental in providing evidence, as well as steering Koslow to witnesses against Monstein and RAM.

On or about March 2, 2003, respondent prepared a declaration in support of his opposition to the government's motion to disqualify him as counsel in the criminal matter. In his declaration, respondent declared: "RAM has been fully informed of the potential for conflict (including being informed of the claims made by the Government in their moving papers" and "Subsequent to a detailed discussion and analysis of these potential conflicts, RAM executed a written waiver of the same." Respondent also declared that, "if asked to do so, [he would] provide the [waiver] for inspection in camera by [the] court."

At no time did respondent provide RAM or its agents with a "detailed discussion and analysis" of the actual or potential conflicts of representing RAM in the criminal matter. At no time did RAM or its agents execute a "written waiver" regarding respondent's representation of RAM in the criminal matter.

On or about March 3, 2003, respondent filed his opposition to the government's motion to disqualify him as counsel for RAM. In his opposition, respondent stated that he would not

rely on any confidential information obtained during his representation of Tri-Star in his defense of RAM and, therefore, he should not be disqualified from representing RAM.

On or about March 5, 2003, Spolin provided a declaration in support of the government's response to respondent's opposition. In his declaration, Spolin declared that Tri- Star strenuously objected to respondent's representation of RAM or Monstein. He further stated that respondent had previously received confidential information from Tri-Star while representing it in the *Tri-Star* matter.

On or about March 17, 2003, the court granted the government's motion to disqualify respondent as counsel for RAM. The court found that there was successive representation, that there was a substantial relationship between the *Tri-Star* matter and the criminal matter, and that respondent was disqualified from representing RAM. The court also found that respondent's own actions were the cause of the government's delay in filing the motion to disqualify respondent.

Between in or about July 30, 2002, and in or about February 14, 2003, RAM, Monstein and/or Taleh Manufacturing, Inc, a company associated with Monstein, paid respondent's law firm approximately \$207,500 in legal fees and costs for various legal matters. On or about August 20, 2002, pursuant to respondent's request, RAM issued a check for \$5,000 to respondent, purportedly for investigation costs. In or about August 2002, Monstein asked respondent for proof of the investigation costs incurred in the criminal matter. Respondent did not provide the requested documentation.

On or about September 12, 2002, pursuant to respondent's request, RAM issued another check to respondent for an additional \$5,000, again purportedly for investigation costs. In or about September 2002, Monstein asked respondent for proof of the investigation costs incurred in the criminal matter. Respondent did not respond to Monstein's request.

On or about September 27, 2002, Taleh Manufacturing, Inc. gave Bright Lawyers a check in the amount of \$7,500. On or about October 2, 2002, Taleh Manufacturing gave Bright Lawyers an additional check in the amount of \$10,000. The total sum of \$17,500 was given to Bright Lawyers for representing Taleh Manufacturing in suspension process proceedings.

On or about November 4, 2002, RAM paid respondent a \$20,000 retainer fee to initiate an action against Lockheed Martin. However, respondent failed to file the action against Lockheed Martin. At no time did respondent earn the \$20,000 paid by RAM to file the action against Lockheed Martin.

On or about February 3, 2003, RAM paid respondent an additional \$25,000 retainer fee to file a “pocket lawsuit” against Tri-Star. Respondent did not file the action against Tri-Star. At no time did respondent earn the \$25,000 paid by RAM to file the action against Tri-Star.

On or about May 19, 2003, Paul Volchok (Volchok), attorney for Monstein and RAM, wrote respondent regarding respondent’s conflict of interest in the criminal matter and the various civil matters. In his letter, Volchok specifically asked respondent to refund the following fees:

- a. The \$105,000 paid to respondent’s firm for respondent’s representation of RAM in the criminal matter;
- b. The \$20,000 paid to respondent to initiate an action against Lockheed Martin;
- c. The \$25,000 paid to Respondent to file a lawsuit against Tri-Star;
- d. The \$17,500 paid to respondent by Taleh Manufacturing, a company also associated with Monstein;
- e. The \$5,000 paid to respondent for investigation costs.

In his May 19, 2003 letter, Volchok asked respondent to refund \$172,500 in attorney fees and costs. On or about June 16, 2003, respondent responded to Volchok’s May 19, 2003 letter.

In his letter, respondent refused to refund any funds, and he countered that, if RAM filed a claim against respondent's law firm, respondent's firm would file a counterclaim for uncharged services. Respondent informed Volchok that the government had asked respondent to cooperate in its criminal investigation of RAM and Monstein, and he warned Volchok that, unless the dispute between RAM and respondent were resolved through the execution of appropriate releases, the ongoing dispute between the parties would abolish the attorney-privilege that prevented respondent from cooperating with the government.

On or about March 18, 2004, after respondent was disqualified as counsel for RAM, Monstein asked respondent to turn over the client file in the criminal matter. Monstein specifically asked respondent to turn over any documents evidencing work done by respondent. Respondent did not turn over any documents. To date, respondent has not provided RAM with any evidence of work performed on behalf of RAM in the criminal matter or in any other legal matter.

***Count 1: Representation Adverse to Former Client [Rules Prof. Conduct, Rule 3-310(E)]*⁵**

Rule 3-310(E) provides that an attorney must not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

The intent of the rule is clearly prophylactic. The Supreme Court articulated the policy which underlies the proscription against representation of adverse interests found in rule 3-310: "By virtue of this rule an attorney is precluded from assuming any relation which would prevent him from devoting his entire energies to his client's interests. Nor does it matter that the intention and motives of the attorney are honest. The rule is designed not alone to prevent the

⁵ References to rules are to the current Rules of Professional Conduct.

dishonest practitioner from fraudulent conduct, but as well to preclude the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties, or be led to an attempt to reconcile conflicting interests, rather than to enforce to their full extent the rights of the interest which he should alone represent.” (*Anderson v. Eaton* (1930) 211 Cal. 113, 116; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 593.)

“It is . . . an attorney’s duty to protect his client in every possible way, and it is a violation of that duty for him to assume a position adverse or antagonistic to his client without the latter’s free and intelligent consent given after full knowledge of all the facts and circumstances.” (*Anderson v. Eaton, supra*, 211 Cal. 113, 116; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 350-351.)

Respondent accepted employment with RAM in the criminal matter without having obtained the informed written consent of his former client, Tri-Star, and he continued to represent RAM after receiving a written objection from Tri-Star to that representation. Moreover, by reason of his prior representation of Tri-Star, respondent had previously obtained confidential information material to the new employment. By his actions, respondent accepted employment adverse to a former client, in willful violation of rule 3-310(E).

Count 2: Avoiding Representation of Adverse Interests [Rules Prof. Conduct, Rule 3-110(E)]

By reason of his involvement in the criminal investigation against RAM and Monstein, when he was employed by Tri-Star, respondent obtained confidential information material to his employment as RAM’s counsel in the criminal matter, including information which, as the OUSA stated in its motion in the criminal matter, made him a potential witness in the criminal matter. Thus, by failing to obtain the informed written consent from his client, RAM and/or Monstein, RAM’s owner, prior to taking on representation of RAM and by continuing to represent RAM and/or Monstein after he received the written objection from his former client,

Tri-Star, respondent clearly and convincingly failed to avoid the representation of interests adverse to his new client, in willful violation of rule 3-310 (E).

Because of the overlapping nature of Counts One and Two, the court elects to treat them as duplicative for purposes of determining the appropriate discipline to recommend. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

Count 3: Moral Turpitude [Bus. & Prof. Code, § 6106]⁶

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

Respondent intentionally misrepresented to Monstein, Nathanson, and Marks that Tri-Star and Spolin & Silverman had consented to his representation of RAM and that the consent included, but was not limited to, a waiver of any conflict of interest caused by him. By making those misrepresentations, respondent committed acts of moral turpitude, in willful violation of section 6106.

Count 4: Moral Turpitude [§ 6106]

In this count, the State Bar charges and has proved that respondent used false pretenses to obtain attorney fees in excess of \$100,000 from RAM and/or Monstein by agreeing to represent RAM when he knew that he could not perform the services for which he was retained. Such actions by respondent were acts of moral turpitude, in willful violation of section 6106.

However, because of the overlapping nature of Counts Three and Four, the court elects to treat them as duplicative for purposes of determining the appropriate discipline to recommend.

⁶ References to sections are to the provisions of the Business and Professions Code.

Count 5: Moral Turpitude [§ 6106]

On or about March 2, 2003, respondent prepared a declaration in support of his opposition to the government's motion to disqualify him as counsel in the criminal matter. In his declaration, respondent falsely declared: "RAM has been fully informed of the potential for conflict (including being informed of the claims made by the Government in their moving papers, ..." and "Subsequent to a detailed discussion and analysis of these potential conflicts, RAM executed a written waiver of the same."

By making false statements under penalty of perjury and submitting them to the court in the criminal matter, respondent committed an act of moral turpitude, in willful violation of section 6106.

Count 6: Failure to Return Client File [Rule 3-700(D)(1)]

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

By not returning the RAM file to Monstein, despite Monstein's request for return of that file after respondent's disqualification as counsel for RAM, respondent willfully failed to promptly release, upon termination of employment, to his client, all the client's papers and property, in willful violation of rule 3-700(D)(1).

Count 7: Failure to Return Unearned Fees [Rule 3-700(D)(2)]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

By not refunding any part of the \$172, 5000 unearned fees to RAM, upon being removed as counsel for RAM, respondent willfully failed to promptly return fees that had not been earned, in willful violation of rule 3-700(D)(2).

Count 8: Moral Turpitude [§ 6106]

The statements made by respondent in his June 16, 2003 letter, effectively threatening to betray the attorney-client privilege and turn over confidential client information to the government in conjunction with a criminal investigation unless the fee dispute between respondent and RAM were resolved, constituted an act of moral turpitude, in willful violation of section 6106. (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93,101.)

Count 9: Failure to Communicate [§ 6068, Subd. (m)]

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to inform RAM or Monstein of his level of participation in the criminal investigation against RAM and Monstein, by failing to inform RAM or Monstein that he provided the government with evidence to use against RAM and Monstein in its criminal investigation, by failing to inform RAM or its agents that the government had been telling respondent for months that he needed to withdraw as counsel due to the conflict of interest, and by failing to inform RAM or its agents that he had agreed to withdraw, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Case No. 04-O-10591 (The Vrebalovich Case)

At all times relevant herein, respondent maintained a checking account at National Bank of California, designated account No. 002-420759 (general account).

In or about June 2001, Dr. Thomas Vrebalovich (Vrebalovich) employed respondent to pursue an action against the Marina City Club (MCC), Vrebalovich's condominium

homeowners' association. On or about June 14, 2001, Vrebalovich, a senior citizen, advanced respondent \$5,000 in legal fees.

On or about August 16, 2001, respondent advised Vrebalovich that a bond would likely be ordered in any action against MCC, but that the bond amount would likely be the statutory minimum of \$10,000.

On or about August 23, 2001, respondent filed a complaint on behalf of Vrebalovich entitled, *Dr. Thomas Vrebalovich v. Marina City Club Condo.etc.*, Los Angeles Superior Court, case No. BC256702 (the Vrebalovich matter).

As of September 2001, Vrebalovich had paid respondent \$19,500 in legal fees.

On or about September 21, 2001, MCC filed a motion requiring Vrebalovich to post a bond in the Vrebalovich matter (the bond motion). In the bond motion, MCC requested the maximum bond of \$50,000 on the grounds that MCC had already obtained \$4,300 in sanctions against respondent following respondent's failure to comply with discovery in a prior lawsuit against MCC. In its bond motion, MCC noted that it was forced to file motions to obtain "every piece" of written discovery from respondent in the earlier lawsuit and concluded that the costs in the Vrebalovich matter could easily exceed \$50,000. Respondent did not tell Vrebalovich that the reason MCC was seeking the maximum bond in the Vrebalovich matter was because of respondent's conduct in handling a prior lawsuit.

In or about September 2001, respondent told Vrebalovich that he would file an opposition to the bond motion. But, respondent failed to file any opposition to the bond motion. Respondent did not tell Vrebalovich that he failed to file the opposition to MCC's bond motion.

The court in the Vrebalovich matter scheduled the bond motion hearing for October 23, 2001. Respondent was properly served with notice of the hearing. Thereafter, on or about October 5, 2001, respondent informed Vrebalovich that the court had scheduled a hearing in the

Vrebalovich matter for October 23, 2001. Respondent, however, failed to appear at the October 23, 2001 hearing regarding the bond motion. But, he did not tell Vrebalovich that he had not appeared at the hearing.

On or about October 23, 2001, the court granted MCC's request for a bond of \$50,000 in the Vrebalovich matter. The court ordered the \$50,000 posted within twenty days of the court's order.

On or about November 19, 2001, Sydnee R. Singer (Singer), counsel for MCC, wrote respondent regarding the Vrebalovich matter. In the November 19, 2001 letter, Singer reminded respondent that the court had ordered the bond posted within twenty days of the court's order; but, that as of November 19, 2001, there was no record of a bond having been posted. In her letter, Singer also told respondent that if the bond were not posted, MCC would have no choice but to seek an ex parte order dismissing the action. Respondent received the November 19, 2001 letter.

On or about November 27, 2001, respondent's office obtained a civil bond application from California Civil & Judicial Bonding and Insurance Agency. However, as of November 28, 2001, the bond in the Vrebalovich matter had not been paid. Therefore, on or about November 28, 2001, MCC filed an ex-parte motion to dismiss the complaint in the Vrebalovich matter, citing Vrebalovich's failure to post the bond. Respondent, who was served with the motion to dismiss, did not inform Vrebalovich that MCC had filed a motion to dismiss the Vrebalovich matter.

On or about November 28, 2001, respondent filed a response to MCC's motion to dismiss. In his declaration, respondent stated that he had miscalendered the deadline for posting the bond. On or about November 28, 2001, the court continued MCC's ex-parte motion to

dismiss the Vrebalovich matter to December 7, 2001. The court stated that if the \$50,000 bond were posted by December 6, 2001, the ex-parte hearing would go off calendar.

On or about November 30, 2001, respondent contacted Vrebalovich via email and informed him that the bond obligation due date had been continued to December 6, 2001. Vrebalovich, however, was not able to obtain \$50,000 by December 6, 2001.

On or about December 5, 2001, respondent filed a Request for Dismissal in the Vrebalovich matter. On that same date, the court dismissed the Vrebalovich matter without prejudice. Respondent informed Vrebalovich that the Vrebalovich matter had been dismissed; respondent also told Vrebalovich that he could still pursue an action against MCC.

On or about January 16, 2002, MCC filed and properly served on respondent a memorandum of costs in the Vrebalovich matter. Respondent received the memorandum of costs, but failed to file any opposition. Respondent did not inform Vrebalovich that MCC was seeking costs in the Vrebalovich matter.

On or about January 11, 2002, respondent filed a second complaint against MCC on Vrebalovich's behalf entitled, *Dr. Thomas Vrebalovich v. Marina City Club Condo, etc.*, Los Angeles Superior Court, case No. BC266225 (the second Vrebalovich action). Thereafter, respondent failed to file any documents with the court in the second Vrebalovich action.

On or about March 12, 2002, respondent contacted Vrebalovich via email and told him that the court clerk had informed respondent that the judge recommended that Vrebalovich hire an ethics expert to provide guidance in the second Vrebalovich action. In the March 12, 2002 email, respondent told Vrebalovich that he had contacted his usual expert, and the expert had agreed to reduce his retainer. Respondent asked Vrebalovich for \$6,500 to hire the ethicist. In addition, respondent instructed Vrebalovich not to discuss the "judge's interest" in the ethics issues with any of the other MCC homeowners. At the time respondent made these

representations to Vrebalovich, he knew that the court clerk had not contacted him regarding an ethics expert, and he knew that the judge in the second Vrebalovich action had not recommended that Vrebalovich obtain an expert. Rather, respondent made these representations to Vrebalovich, knowing they were false, for the purpose of inducing Vrebalovich to give respondent \$6,500.

On or about March 12, 2002, based on the representations made by respondent, Vrebalovich issued a check to respondent for \$5,000 to hire an ethicist. On or about March 15, 2002, respondent deposited \$4,000 of the \$5,000 in funds advanced by Vrebalovich into his general account. Respondent did not deposit the remaining \$1,000 into his general account or any other account. Rather, respondent had the remaining \$1,000 in advanced costs disbursed to himself as cash. Respondent did not obtain Vrebalovich's consent or that of any representative of Vrebalovich to disburse \$1,000 of the \$5,000 in advanced costs to respondent.

On or about June 26, 2002, the court dismissed the second Vrebalovich action. At the time the second Vrebalovich action was dismissed, Vrebalovich believed that respondent had hired an expert, that the expert had prepared a report, and that the expert's report had been submitted to the court, but, that the judge had not been persuaded by the report.

On or about August 22, 2002, respondent wrote Vrebalovich via email regarding the possibility of further actions against MCC. In the August 22, 2002 email, respondent told Vrebalovich that if he wanted respondent to initiate another action against MCC, respondent would require an additional \$10,000 in attorney's fees immediately.

On or about October 18, 2002, Vrebalovich contacted respondent via email. In the October 18, 2002 email, Vrebalovich asked respondent for a copy of the materials prepared by the expert in the second Vrebalovich action. Respondent received the October 18, 2002 email, but failed to respond. On or about January 30, 2003, and on or about February 14, 2003,

Vrebalovich again asked respondent, via email, for copies of the report that respondent claimed had been prepared by the ethics expert and submitted to the court. Respondent received the requests but failed to respond. On or about February 20, 2003, Vrebalovich yet again asked respondent for a copy of the ethicist's report. In his February 20, 2003 email to respondent, Vrebalovich reminded respondent that he had been patiently waiting for respondent to provide the report and wanted a timely response or he would hire an attorney to obtain the report from respondent.

On or about February 25, 2003, respondent told Vrebalovich that the ethics report was in storage, and respondent would need a few weeks to obtain the report from his files. At the time, respondent made this representation to Vrebalovich, respondent knew that an expert had not been hired in the second Vrebalovich action, knew that he had not paid an expert, and knew that an ethics report had not been prepared.

On or about March 23, 2003, Vrebalovich once again asked respondent for a copy of the ethics report. On or about March 25, 2003, respondent told Vrebalovich that he would forward the report to Vrebalovich as soon as he found it. At the time respondent made this representation to Vrebalovich, he knew that an expert had not been hired on Vrebalovich's behalf, knew that he had not paid an expert, and knew that an ethics report had not been prepared. At no time did respondent provide Vrebalovich with a report prepared by an expert, because no such report existed.

On or about April 11, 2003, Vrebalovich emailed respondent and reminded respondent that he still wanted the report by the ethicist.

In or about August 2003, Vrebalovich employed new counsel, Jamie Schloss (Schloss), in order to resolve his dispute with respondent. On or about August 25, 2003, Schloss wrote to respondent on behalf of Vrebalovich. In his August 25, 2003 letter, Schloss demanded that

respondent return all the funds paid by Vrebalovich, including the \$5,000 paid by Vrebalovich to hire an expert. Respondent's office received Schloss's August 25, 2003 letter. Respondent, however, failed to timely return the funds.

On or about October 20, 2003, Schloss filed a complaint against respondent on Vrebalovich's behalf entitled, *Thomas Vrebalovich v. Gregory Bright et. al.*, Los Angeles Superior Court, case No. SC079388 (the Bright action).

In or about March 2004, respondent and Vrebalovich agreed to settle the Bright action. Thus, respondent and Vrebalovich settled their dispute in or about March 2004, and, as part of the settlement, respondent agreed to refund \$22,500 to Vrebalovich.

Count 2: Moral Turpitude [§ 6106]

The court finds, by clear and convincing evidence, that respondent committed acts involving moral turpitude and dishonesty, in willful violation of section 6106, by misrepresenting to his client, Vrebalovich, that: (1) the judge in the second Vrebalovich action had advised Vrebalovich to hire an expert when respondent knew that the judge in the case had made no such recommendation; (2) respondent had retained an ethics expert when he had not done so; and (3) an ethics report had been received from an ethicist when no such report had been received or even existed.

Count 3: Failure to Inform a Client of Significant Developments [§ 6068, Subd. (m)]

Respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m), by failing to inform Vrebalovich that: (1) respondent had not filed any opposition to the bond motion in the Vrebalovich matter; (2) the reason that MCC was seeking the maximum bond amount in the Vrebalovich matter was because of respondent's conduct in handling a prior lawsuit; (3) respondent had not appeared at the October 23, 2001 bond hearing

in the Vrebalovich matter; (4) MCC had filed a motion to dismiss the complaint in the Vrebalovich matter; and (5) MCC was seeking costs in the Vrebalovich matter.

Count 4: Moral Turpitude [§ 6106]

Respondent had a fiduciary duty not to misuse client funds. “Thus the funds in [the attorney’s] possession are impressed with a trust and his conversion of such funds is a breach of the trust.” (*Johnstone v. State Bar* (1966) 64 Cal.2d 153, 155-156.)

In the second Vrebalovich action, Vrebalovich issued a check to respondent for \$5,000 to hire an ethics expert. Respondent had \$1,000 of the \$5,000 disbursed to himself as cash without obtaining Vrebalovich’s consent or that of any representative of Vrebalovich. By so doing, respondent misappropriated \$1,000 from Vrebalovich, an act of moral turpitude, in willful violation of section 6106.

Count 5: Failure to Deposit and Maintain Client Funds in Trust Account [Rule 4-100(A)]

Rule 4-100(A) provides that all funds received for the benefit of a client, including advances of costs and expenses must be deposited in a client trust account and that funds belonging to the attorney must not be deposited therein or otherwise commingled therewith.

Respondent deposited into a general account, \$4,000 of the \$5,000 in costs advanced to him by Vrebalovich for the purpose of hiring an expert; respondent misappropriated the remaining \$1,000 of the \$5,000 for himself. By failing to deposit the \$5,000 that he received from Vrebalovich into a client trust account and thereafter maintain those funds in a client trust account, respondent willfully violated rule 4-100(A).

Count 6: Failure to Promptly Pay Client Funds [Rule 4-100(B)(4)]

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds or properties in the possession of the attorney which the client is entitled to receive.

On or about March 12, 2002, Vrebalovich paid \$5,000 to respondent for the purpose of hiring an ethics expert. In August 2003, Vrebalovich hired attorney Schloss to resolve Vrebalovich's disputes with respondent. In his August 25, 2003 letter to respondent, Schloss requested that respondent return all funds paid by Vrebalovich, including the \$5,000 that Vrebalovich had paid to respondent for the purpose of hiring an expert. It was not until in or about March 2004, after Vrebalovich brought suit against respondent and a settlement was reached that respondent agreed to refund \$22,500 as part of the settlement.

By not promptly paying the \$5,000, as requested by Schloss on behalf of Vrebalovich, respondent willfully failed to promptly pay client funds as requested by his client in willful violation of rule 4-100(B)(4).

Case No. 05-O-02649 (The Taub Case)

Steven Taub (Taub) is the owner of Steve Taub, Inc., which had operated a Porsche dealership in Santa Monica until Taub entered into a Settlement Agreement with Porsche Car of North America, Inc. (PCNA) on or about February 8, 2002, which terminated his dealership agreement with PCNA.

On October 31, 2003, Taub hired respondent to investigate Taub's belief that he had been illegally coerced into signing the February 8, 2002 settlement agreement with PCNA. Respondent agreed to review all files in connection with the matter, investigate the facts and circumstances surrounding the settlement agreement, and analyze whether Taub could successfully proceed against PCNA to reclaim his Porsche dealership. Taub paid respondent a flat fee of \$35,000 for his services.

On or about January 26, 2004, respondent reported to Taub that Taub had viable claims against PCNA and that Taub would prevail against PCNA. As a result of these assurances, on or about January 26, 2004, Taub hired respondent to pursue reclamation of the Porsche dealership.

On January 26, 2004, Taub, pursuant to a written agreement with respondent for services, issued a check for advanced fees in the amount of \$425,000 payable to respondent.

Respondent's services were to be charged at an hourly rate of "...\$125.00 to \$495.00 per hour, depending upon the particular person performing a particular service."

On January 28, 2004, Taub cancelled the \$425,000 check and issued a replacement check in the amount of \$500,000 payable to respondent for advanced fees. Taub understood that the payment of \$500,000 was a modification of the previously agreed upon advanced fee of \$425,000. Taub agreed to the modification based upon his belief that the \$500,000 was still subject to the written agreement's hourly rate clause, but was the maximum respondent would bill Taub for respondent's services in the Porsche matter.

Between January 26, 2004 and May 27, 2004, respondent misrepresented the status of Taub's case, stating that he had: (1) participated in several meetings with Marjorie Lewis (Lewis), a partner with Gibson, Dunn & Crutcher LLP, which represented PCNA in the Taub matter, (2) sent letters to Lewis, dated February 4, February 5, February 17, February 20, February 23, and February 27, 2004; (3) received an offer from Porsche to enter into "baseball arbitration;" (4) received multi-million dollar settlement offers from Porsche; and (5) learned that Porsche was willing to return the dealership to Taub.

In or about May 2004, Taub hired Craigo to investigate the true status of the Porsche case, to secure an accounting of the \$500,000, and to secure the return of Taub's files. Craigo's investigation revealed the true facts were that respondent had sent only one letter to Lewis dated January 27, 2004, and had participated in only one meeting with Lewis on February 27, 2004. The investigation also revealed that Porsche had made no settlement offers and had admitted no wrongdoing on its part. Additionally, respondent's representation that he had learned that

Porsche was willing to return the dealership to Taub was untrue. Finally, respondent had not received an offer from Porsche to enter into “baseball arbitration.”

A second meeting was scheduled with Lewis for May 5, 2004. At the last moment, respondent tried to cancel the meeting, claiming a conflict prevented him from attending. Taub requested that attorney Richard Craigo (Craigo) attend the meeting on Taub’s behalf. At that meeting, Craigo discovered respondent’s misrepresentations and reported them to Taub.

On or about May 7, 2004, Craigo terminated respondent in the Porsche matter, requested an accounting of the \$500,000 advanced fee, and requested Taub’s file in the Porsche matter. On or about May 11, 2004, Craigo faxed a message to respondent, requesting an accounting, a refund of unearned fees, and the return of Taub’s file. On or about May 21, 2004, respondent offered to refund a portion of the advanced fees. On or about May 27, 2004, Craigo requested a refund of the unused portion of the retainer, and again requested discussion of an accounting.

On or about June 21, 2004, Craigo sent a letter to respondent again requesting an accounting, copies of all fee agreements, refund of the unearned fees, explanation of the six letters not received by Lewis, invoices documenting work performed by “Ecoanalysis,” and the return of the Taub files.

On or about July 7, 2004, respondent met with Taub and Craigo without resolution.

In or about July 2004, respondent presented a letter addressed to Taub, dated January 28, 2004, which purported to show that the \$500,000 advanced fee was non refundable. Taub had never received or seen the letter before. Further, the letter did not reflect Taub’s understanding of the fee agreement between himself and respondent. Respondent fabricated the January 28, 2004 letter to justify his assertion of a non-refundable fee, so that he would not have to refund the \$500,000 fee that Taub had advanced to him.

On or about July 12, 2004, respondent offered to refund \$200,000 in settlement of the fee dispute, acknowledged that he had not yet returned the client files, and had not yet accounted for the fees.

Although, between January 26, 2004 and May 27, 2004, respondent sent only one letter to Lewis and attended one meeting with her regarding the Porsche matter, he charged Taub \$500,000 for his services. Moreover, respondent did not demonstrate any value attached to the one letter he sent and one meeting he attended.

Respondent did not refund any portion of the unearned fees; nor did he provide an accounting to demonstrate services rendered on behalf of Taub.

Count 1: Failure to Perform Competently [Rule 3-110(A)]

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

The State Bar alleges that respondent violated rule 3-110(A) by failing to diligently pursue negotiations, file a lawsuit,⁷ communicate with Porsche's attorneys, and "properly" communicate with Taub.

Respondent was retained on January 26, 2004 to pursue his client's claim for return of a Porsche dealership. Respondent sent one letter, dated January 27, 2004, to Lewis, a partner at the law firm representing PCNA; and on February 27, 2004, respondent held one meeting with Lewis. A second meeting was scheduled with Lewis for May 5, 2004. At the last minute, respondent tried to cancel the meeting, stating a conflict prevented him from attending.

Respondent's employment was terminated on May 7, 2004. Thus, respondent acted as counsel for Taub for slightly more than three months. As stated, during those three months,

⁷ It is not until paragraph 11, the charging paragraph of count one in case No. 05-O-02649 (the Taub case), that it is mentioned that respondent failed to comply with rule 3-110(A), by failing to file a lawsuit. Nowhere, in the factual allegations of count one, is it set forth that respondent failed to file a lawsuit.

respondent wrote one letter to Lewis and attended one meeting with her. The State Bar alleges that respondent failed to diligently pursue negotiations with PCNA's counsel. However, because of the paucity of alleged facts, relating to negotiations, there is insufficient evidence to demonstrate, clearly and convincingly, that respondent failed to pursue negotiations diligently.

The State Bar also charges that respondent failed to communicate with Porsche's attorneys and meet with Porsche's attorneys. But, as found, *ante*, the facts show that respondent did send one letter and attend one meeting in the approximately three months that he was employed by Taub. Clearly, respondent communicated with and met with Porsche's attorney. The allegations in the NDC do not demonstrate, by clear and convincing evidence, that respondent failed to communicate and meet with counsel for Porsche.

Finally, the NDC alleges that respondent failed to "properly communicate with Taub." The term "properly," as used in reference to respondent's communications with Taub is unclear and ambiguous. As such it does not provide respondent with sufficient notice of the misconduct with which he is charged.

Therefore, the court concludes that the allegations of count one, as set forth, are insufficient to establish, by clear and convincing evidence, that respondent was culpable of intentionally, recklessly, and repeatedly failing to perform legal services with competence.

Accordingly, count one is dismissed with prejudice.

Count 2: Moral Turpitude [§ 6106]

Respondent willfully violated section 6106, by committing acts of moral turpitude, dishonesty or corruption when he misrepresented the status of Taub's case to his client by stating that he had: participated in several meetings with Lewis; sent letters to Lewis dated February 4, 2004, February 5, 2004, February 17, 2004, February 20, 2004, February 23, 2004, and February 27, 2004; received an offer from Porsche to enter into "baseball arbitration;" received multi-

million dollar settlement offers from Porsche; and learned that Porsche was willing to return the dealership to Taub.

Count 3: Unconscionable Fee [Rule 4-200(A)]

Rule 4-200(A) prohibits an attorney from entering into an agreement for, charge or collect an illegal or unconscionable fee. Under rule 4-200(B), unconscionability of a fee is determined on the basis of all the facts and circumstances existing *at the time the agreement is entered into* except where the parties contemplate that the fee will be affected by later events, not when it is sought to be enforced.

“[I]n general, the negotiation of a fee agreement is an arm’s-length transaction.” (*Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 913.) However, the right to practice law “is not a license to mulct the unfortunate.” (*Recht v. State Bar* (1933) 218 Cal. 352, 355.) Fees are not unethical or prohibited “simply because they are substantial in amount.” (*Baron v. Mare* (1975) 47 Cal.App.3d 304, 311.) “The test is whether the fee is ‘so exorbitant and wholly disproportionate to the services performed as to shock the conscience.’” (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.)

Here, respondent entered into an agreement with Taub, whereby Taub advanced legal fees to respondent in the amount of \$500,000. In exchange, respondent was required to pursue the client’s claim against PCNA for return of a Porsche dealership. Given the potential for litigation against PCNA, a national corporation, the \$500,000 fee is not, clearly and convincingly, “exorbitant.” Nor does the fee appear so “wholly disproportionate” to the legal services that reasonably could have been anticipated at the time the fee agreement was entered, as to find that it “shock[s] the conscience.”

Respondent’s fundamental misconduct relating to the fee is not the amount that he initially charged or collected. Rather, the gravamen of respondent’s misconduct, involving the

fee, was his failure to return any portion of unearned fee that was advanced to him. (See count six, *infra*.)

Therefore, the evidence presented is not sufficient to demonstrate, clearly and convincingly, that respondent is culpable of charging or collecting an unconscionable fee in violation of rule 4-200(A).

Accordingly, count three is dismissed with prejudice.

Count 4: Moral Turpitude [§ 6106]

In or about July 2004, respondent presented a letter addressed to Taub, dated January 28, 2004, which purported to show that the \$500,000 advanced fee was non refundable. Respondent fabricated the January 28, 2004 letter to justify his assertion of a non-refundable fee, so that he would not have to refund the \$500,000 fee that Taub had advanced to him.

By fabricating the January 28, 2004 letter and setting forth terms of a purported fee agreement in an attempt to convert an hourly rate to a non-refundable fee without the knowledge or consent of his client, for the purpose of avoiding having to refund any portion of the \$500,000 fee advanced to him by his client, respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Count 5: Failure to Render Accounts of Client Funds [Rule 4-100(B)(3)]

Rule 4-100(B)(3) provides that an attorney must maintain records of all funds of a client in his possession and render appropriate accounts to the client. The obligation to render appropriate accounts to the client does not require as a predicate that the client demand such an accounting. (*In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 952.)

By failing to render appropriate accountings to Taub or Craig for the attorney fees that respondent charged and collected in the Porsche case, respondent failed to render appropriate

accounts to a client regarding all funds coming into respondent's possession in willful violation of rule 4-100(B)(3).

Count 6: Failure to Return Unearned Fees [Rule 3-700(D)(2)]

By failing to refund any part of the \$500,000 he had collected from Taub as an advance fee, respondent failed to promptly refund any part of a fee paid in advance that had not been earned, in willful violation of rule 3-700(D)(2).

Count 7: Failure to Return Client File [Rule 3-700(D)(1)]

On May 7, 2004, respondent was terminated as Taub's attorney in the Porsche matter. By failing to promptly return the Taub file to his client, despite attorney Craig's requests on and after May 7, 2004, for the return of the Taub file, respondent willfully violated rule 3-700(D)(1).

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).) The following are aggravating factors.

Multiple Acts of Misconduct

Respondent committed multiple acts of wrongdoing by failing to avoid the representation of adverse interests, committing multiple acts of moral turpitude, failing to return client files, failing to return unearned fees, failing to keep clients informed of significant developments, failing to maintain client funds in a trust account, failing to promptly pay client funds, and failing to provide an accounting. (Std. 1.2(b)(ii).)

Significant Harm

Respondent's misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) All three of his clients were deprived of their funds; two have not received any portion of the funds of which they were deprived. Respondent deprived RAM of at least \$172,500; and, he has deprived Taub

of \$500,000. Vrebalovich had to hire an attorney to resolve his disputes with respondent, relating to the purported ethics report and reimbursement of funds.

Indifference

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

Failure to Participate in Proceeding

Respondent initially appeared in these proceedings but stopped participating in them in or about November 2007. This is a serious aggravating factor.

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).)

No Prior Discipline

Here, although the respondent produced no evidence at trial, the record reveals that he had been admitted to the practice of law for 11½ years with no prior record before his misconduct started in 2001. The absence of any prior record of discipline over many years of practice, coupled with present misconduct that is not deemed serious, is a mitigating factor. (Std. 1.2(e)(i).) However, because respondent's misconduct here is of such a serious nature, his lack of a prior record cannot outweigh the seriousness of his misconduct or the surrounding aggravating circumstances. (*In the Matter of Kueker* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 583, 594.) (Std. 1.2(e).)

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.) Standards 2.2(a), 2.2(b), 2.3, 2.4(b), 2.6, and 2.10 apply in this matter.

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent's misconduct is found in standards 2.2, 2.3, and 2.6.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate.

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

The State Bar urges disbarment, citing *In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70 and *Lebbos v. State Bar* (1991) 53 Cal.3d 37. This court agrees.

Respondent has been found culpable of engaging in very serious misconduct including multiple acts of moral turpitude, dishonesty or corruption; misappropriating the funds of his clients; failing to refund substantial amounts of unearned fees, even after these disciplinary proceedings were initiated; failing to avoid the representation of adverse interests; failing to return client files; failing to keep clients informed of significant developments; and failing to provide an accounting. Substantial harm has resulted from his misconduct.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The complete lack of insight, recognition, or remorse for any of his wrongdoing is a most significant factor to consider in assessing whether an errant member should be allowed to continue to practice. (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) Here, instead of cooperating with the State Bar or rectifying his misconduct, respondent has apparently chosen to ignore the disciplinary process. In light of the history of significant misconduct, substantial harm, and apparent lack of remorse by respondent, the court concludes that his disbarment is necessary to protect both the public and the profession.

In determining the appropriate level of discipline, the court finds guidance in *Cannon v. State Bar* (1990) 51 Cal.3d 1103, in addition to the cases cited by the State Bar. In *Cannon* the Supreme Court found disbarment to be appropriate for multiple instances of misconduct involving moral turpitude and failing to maintain communication with clients although the attorney had no prior record of discipline. (See also, *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315 [disbarment recommended where, over a period of nearly four years, attorney committed 13 acts of misconduct involving five separate clients, and two separate non-clients as well as 10 different rule and code violations in a case with slight mitigation and serious, extensive aggravation].)

RECOMMENDATION

Disbarment

The court recommends that respondent **GREGORY PATRICK BRIGHT** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

Restitution

It also recommended that respondent make restitution to the following:

1. **RAM Enterprises, Inc. and Richard Monstein** in the amount of \$172,500 plus 10% interest per annum from July 30, 2002 (or to the Client Security Fund to the extent of any payment from the fund to RAM Enterprises, Inc. and Richard Monstein, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. **Steven Taub** in the amount of \$500,000 plus 10% interest per annum from January 28, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Steven Taub, plus interest and costs, in accordance with Business and Professions Code section 6140.5);

Respondent must furnish satisfactory proof of payment thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

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Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁸

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: December ____, 2009

DONALD F. MILES
Judge of the State Bar Court

⁸Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)