

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	Case No. 04-O-10684-PEM
	)	
<b>GAROLD LEE NEELY,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 189557,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default disciplinary matter, respondent **Garold Lee Neely** is found culpable, by clear and convincing evidence, of engaging in unauthorized practice of law and committing an act of moral turpitude.

In light of respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding respondent's misconduct, the court recommends, among others, that respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that respondent be actually suspended from the practice of law for 60 days and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

**II. Pertinent Procedural History**

On October 4, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, at his official membership records

address (official address)<sup>1</sup> under Business and Professions Code section 6002.1, subdivision (a).<sup>2</sup> The NDC was not returned as undeliverable.

The State Bar also sent a courtesy copy of the NDC to respondent by regular mail at 3630 West Lane, Stockton, California 95204. It was not returned as undeliverable.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

In October and November 2005, the State Bar attempted to contact respondent by telephone on several occasions. The State Bar left a message each time, requesting that respondent return the call. In the November calls, the phone was answered each time, but Deputy Trial Counsel Robert A. Henderson was told that respondent was not there and that he would return soon. But respondent did not return any of the calls.

On the State Bar's motion, respondent's default was entered on November 22, 2005, and respondent was enrolled as an inactive member on November 25, 2005, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official address by certified mail. The court received a return receipt dated November 28, 2005.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on December 12, 2005, following the filing of the State Bar's brief on culpability and discipline.

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on July 2, 1997, and has since been a member of the State Bar of California.

#### **B. Unauthorized Practice of Law**

Beginning September 3, 2002, through December 2, 2003, respondent was not entitled to practice law and was placed on inactive status due to his failure to comply with Minimum

---

<sup>1</sup>Respondent's official address was recently changed to 65 E Arcade, Stockton, California 95204, on July 5, 2005.

<sup>2</sup>References to section are to the California Business and Professions Code, unless otherwise noted.

Continuing Legal Education (MCLE) requirements.

During the entire period of his inactive enrollment, respondent knew or reasonably should have known that he was not entitled to practice law.

On November 25, 2002, respondent appeared in court on behalf of his clients, Margaret Mendiola and Jesus Mendiola, in *Margaret Mendiola and Jesus Mendiola v. Jesus Cano Gonzales*, San Joaquin County Superior Court, case No. SV239048, and argued a motion. He also gave legal advice to his clients.

A few months later, on March 27, 2003, respondent appeared as counsel on behalf of Brenda Bafford at a hearing in a family law matter entitled *James Bafford v. Brenda Bafford*, San Joaquin County Superior Court, case No. FL328944. He also provided legal advice to Brenda Bafford.

Respondent was suspended from the practice of law for non-payment of State Bar membership fees between September 16 and December 2, 2003. He knew or reasonably should have known that he was not entitled to practice law during this period.

On September 24, 2003, respondent was arrested with his client, Brenda, for allegedly attempting to retrieve her belongings from James Bafford's residence. At or near the time of the arrest, respondent stated to a Stockton police officer that (1) he was licensed to practice law in California and (2) he was acting as Brenda's attorney. A few moments later, under further questioning by the officer, respondent admitted that he was not currently a licensed attorney. On September 24, 2003, before the arrest, respondent advised Brenda that she was legally entitled to retrieve her belongings from James Bafford's house, despite a court order giving him possession of the house.

***Count 1 – Unauthorized Practice of Law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125, and 6126)***

Section 6068, subdivision(a), provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125 and 6126. While he was on suspension for failing to comply with the MCLE requirements

and for failing to pay State Bar membership dues, respondent knew or should have known that he was not entitled to practice law effective between September 3, 2002, and December 2, 2003. Yet, he held himself out as entitled to practice law and practiced law by appearing before the San Joaquin County Superior Court on November 25, 2002, and March 27, 2003, and by giving legal advice to his clients during his suspension.

***Count 2 – Dishonesty (Bus. & Prof. Code, § 6106)***

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

During his suspension between September 3, 2002, and December 2, 2003, respondent engaged in the unauthorized practice of law, held himself out as entitled to practice law in court, and provided legal advice to his clients. Such misconduct constituted acts of moral turpitude and dishonesty in wilful violation of section 6106.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>3</sup>

Respondent's five years of trouble-free law practice at the time of his misconduct in 2002 is far too short to constitute mitigation. Where an attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; Std. 1.2(e)(i).)

**B. Aggravation**

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

Respondent committed multiple acts of wrongdoing, including committing acts of dishonesty and engaging in unauthorized practice of law. (Std. 1.2(b)(ii).)

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

---

<sup>3</sup>All further references to standards are to this source.

## V. Discussion

The purpose of 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.)

The standards for respondent's misconduct provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.3, and 2.6.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar recommends a one-year stayed suspension and 90 days actual suspension, citing *Chasteen v. State Bar* (1985) 40 Cal.3d 586 and *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 in support of its recommendation.

In *Chasteen*, the attorney was found culpable of the unauthorized practice of law for over a year as well as deceit of clients, commingling and failure to return fees. The bulk of his misconduct was attributable to his long history of alcoholism. In light of his prior record of discipline and mitigation, the Supreme Court imposed a two-month actual suspension and until he made restitution. Here, respondent's misconduct did not involve any client funds and he had no prior record of discipline. At the same time, respondent did not have any mitigation.

In *Taylor*, the attorney had committed serious misconduct in three client matters, including repeatedly practicing law while suspended, deceiving a court and client by filing an unauthorized lawsuit and failing to comply with his criminal probation. He also had a prior record of discipline. The Review Department found that the attorney's disdain and contempt for the orderly process and rule of law demonstrated that the risk of future misconduct was great and that disbarment was necessary.

The court also finds guidance in these cases.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney who had no prior record of discipline in 12 years of practice was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed

to perform competently which caused his client to lose her case. He also improperly held himself out as entitled to practice law by misleading his client into believing he was still working on her case while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary proceedings as well. In this instant matter, respondent also misled his clients and the court that he was entitled to practice law while he was suspended.

In *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney abandoned two clients and engaged in the unauthorized practice of law while under actual suspension. The Supreme Court found that the attorney's actions "evidence a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes." (*Id.* at p. 612.) He also had a prior record of discipline for abandonment of clients' interests in four separate matters and lacked insight into the impropriety of his actions. As a result, he was actually suspended for six months with a stayed suspension of two years upon conditions of probation.

Here, respondent's misconduct is not as egregious as that of the attorney in *Farnham* or in *Taylor*. The gravamen of his misconduct is his unauthorized practice of law during his suspension and the concealment of his inactive status to the court and his clients. Moreover, while suspended, he gave legal advice to Brenda, which resulted in their arrest for allegedly attempting to retrieve her belongings from James Bafford's residence, despite a court order giving James Bafford possession of the house. He also told the police that he was Brenda's attorney when he knew that he was not entitled to practice law. Respondent's misconduct reflects a blatant disregard of professional and ethical responsibilities.

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.)

Failing to appear and participate in the hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar, supra*, 53 Cal.3d at pp. 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct. Thus,

balancing all relevant facts and circumstances to reach the appropriate recommendation of degree of discipline, the court finds that a 60-day actual suspension is appropriate to achieve the goals of attorney disciplinary probation. (See *Chasteen v. State Bar*, *supra*, 40 Cal.3d 586 and *In the Matter of Johnston*, *supra*, 3 Cal. State Bar Ct. Rptr. 585.)

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent **Garold Lee Neely** be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be actually suspended from the practice of law for 60 days and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205.)

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that if respondent is actually suspended for two years or more, he will remain actually suspended until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii).

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

If respondent is actually suspended for 90 days or more, he is further ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court's order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of

contempt, or criminal conviction.<sup>4</sup>

## **VII. Costs**

It is further recommended 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.

Dated: March 7, 2006

---

**PAT McELROY**  
Judge of the State Bar Court

---

<sup>4</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)