

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 04-O-11671-RAP
)	
TERRANCE JAMES SHANNON,)	
)	DECISION & ORDER OF
Member No. 94750,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. INTRODUCTION

In this contested, original disciplinary proceeding, respondent **TERRANCE JAMES SHANNON** is charged with six counts of misconduct in one client matter. The court finds, by clear and convincing evidence, that respondent is culpable on the three counts charging (1) failure to competently perform legal services, (2) failure to promptly refund unearned fees, and (3) failure to cooperate with a State Bar disciplinary investigation. The court dismisses the remaining three counts with prejudice.

For the reasons stated below, it is recommended that respondent be **DISBARRED**.

II. PROCEDURAL HISTORY

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on March 3, 2005. On April 13, 2005, respondent filed a response to the NDC. The State Bar was represented by Deputy Trial Counsel Eric Hsu. Respondent was represented by Attorney Edward O. Lear.

The parties filed a partial stipulation as to facts and admission of documents on November 10, 2005. (See exhibit 36 for the complete stipulation.) And trial was held on January 19 and 20, 2006. Following posttrial briefing by the parties, the court took this case under submission for decision on April 19, 2006.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 16, 1980, and since that time has been a member of the State Bar of California.

B. Credibility Determinations

Only respondent and respondent's former client David Tran, the complaining witness, testified in this proceeding. With respect to the credibility of those two witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest and lack of personal interest, as the case may be;¹ and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g., Evid. Code, § 780 [lists factors to consider in determining credibility].)

The court finds that Tran's testimony is extremely credible and candid even though, at times, it was not always clear on certain specifics or details. In stark contrast, the court finds that respondent's testimony not only lacks credibility in general, but as discussed *post*, lacks candor (i.e., is deliberately false) in at least one instance. (See *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 227 [trial court should declare how it weighed the evidence and determined the credibility of the parties and witnesses]; see also *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282 [holding that, even though there is a

¹Respondent has a strong personal interest in the outcome of this proceeding. Tran, however, has very little, if any, personal interest in the outcome of the proceeding because he has recovered all the money that respondent owes him except for \$52 in costs.

clear distinction between credibility and candor, the review department must still give great weight to the hearing judge's findings on candor].)

C. Tran Client Matter

On October 9, 2003, David Tran hired respondent to transfer ownership of a beer-and-wine license and to apply for a new liquor license for his restaurant -- Bat Dat Seafood Restaurant in Westminster, California. At that time, respondent and Tran both also signed an attorney-client retainer agreement, which describes respondent's duties only as "Transfer of B&W License to corp/Bat Dat Seafood Restaurant Inc. & apply for new liquor license for corporation."² The retainer agreement provides for respondent to be paid a flat fee of \$5,000 for performing those two duties,³ which Tran paid to respondent in cash at that time.

At least in 2003 and 2004, respondent operated a satellite law office in a commercial complex above Tran's restaurant. Johnny Nguyen, a nonattorney, shared that space with respondent. Tran mistakenly believed that Nguyen worked for respondent because Nguyen referred Tran to respondent.

Shortly after Tran hired respondent, respondent met with Tran in Tran's restaurant and obtained some of the information he needed to prepare the application to transfer the beer-and-

²Respondent testified that Tran retained him to perform other legal services. However, the court rejects respondent's testimony and accepts Tran's clear testimony that the only legal services he retained respondent to perform were those set forth in the October 9, 2003, retainer agreement. Of course, even if Tran had employed respondent to perform such additional services, it would not justify or excuse respondent's failure to perform the services recited in the October 9, 2003, retainer agreement or respondent's failure to promptly refund the \$5,000 flat fee when he repeatedly and intentionally failed to perform those services competently.

³According to paragraph 7 of the agreement, the \$5,000 fee "is non-refundable and is earned upon receipt." Of course, denominating the \$5,000 fee as "non-refundable" and "earned upon receipt" does not make it so. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923.) Under rule 3-700(D)(2) of the Rules of Professional Conduct, an attorney's fee is never nonrefundable until it is actually earned unless it is a true retainer fee, which is a fee paid solely for the purpose of ensuring an attorney's availability and without regard to whether the attorney actually performs any service. (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 787-788.) Without question, the \$5,000 was a refundable, flat fee paid in advance (and not a true retainer fee). (*In the Matter of Lais, supra*, 3 Cal. State Bar Ct. Rptr. at p. 923.)

wine license and the application for a new liquor license. Tran filled out the blanks in the application the best he could and returned the application to respondent. Even though Tran gave respondent all the information respondent requested, respondent left the meeting without all the information that he needed. According to Tran's credible testimony, respondent stated that he would be back for some other paperwork. But, after that meeting, respondent never asked Tran for any additional information. In fact, after that meeting, respondent performed very little, if any, work on behalf of Tran or Tran's corporation. Moreover, Tran testified that he never saw the typed Department of Alcoholic Beverage Control Application Questionnaire (ABC application questionnaire) that respondent introduced as exhibit N, but that he did see the ABC application, when he filled out the blanks.

After that meeting, Tran repeatedly called respondent's satellite office for updates on his application. Tran testified that he grew frustrated by the responses he received to the effect that the application was being prepared or that the application was submitted and that he needed to wait for the application to be processed. Even though Tran's testimony is credible, it is unclear with respect to whether he spoke to respondent or to Nguyen when he was calling respondent's satellite office.

Finally, in early 2004, Tran called the California Department of Alcoholic Beverage Control and was informed that no application had been filed on his behalf. And respondent admits that he never filed an application to transfer the beer-and-wine license or an application for a liquor license for Tran or Tran's corporation, but claims that he could not do so because Tran refused to provide him with all the necessary information. In that regard, respondent testified (1) that he repeatedly asked Tran for the additional information he needed to completed and (2) that, on November 15, 2003; on December 11, 2003; on January 7, 2004; on February 11, 2004, and again on March 14, 2004, he mailed a letter to Tran requesting the additional

information he needed to complete the applications (see exhibits B, C, D, E & F). The court does not find respondent's testimony credible.⁴ Instead, the court finds credible Tran's clear testimony that respondent never asked him for any additional information after the meeting in the Tran's restaurant that is noted *ante* and that he (i.e., Tran) never received any of the five letters respondent purportedly sent him.⁵

After learning that respondent had never filed any application with the Alcoholic Beverage Control Department on his behalf, Tran filed a complaint against respondent with the State Bar. And, in late March 2004, Tran filed a small claims action against respondent in the Orange County Superior Court. In that action, Tran sought to recover the \$5,000 flat fee he paid respondent on October 9, 2003, plus court costs. During the litigation of the small claims court matter, respondent sought and obtained four continuances of trial as follows.

Tran's small claims action was originally set for trial on May 3, 2004, but it was continued until May 17, 2004, on respondent's motion. Then, on May 17, 2004, while at court on the small claims action, Tran agreed to continue the trial to June 21, 2004, so that respondent could complete the work on the beer-and-wine license and the liquor license. Respondent regrettably did not do so. Nonetheless, on June 21, 2004, Tran again agreed to continue the

⁴Moreover, this testimony is implausible because, if Tran failed to respond to these five letters as respondent claims, respondent could have easily walked downstairs and asked Tran for the information in person or asked Tran why he had not provided the requested information, but respondent never did so. The court's rejection of respondent's testimony is supported by the facts that respondent never produced any of these letters to the OCTC as he promised a State Bar's investigator on May 20, 2004, and as he later promised a DTC on February 18, 2005, and February 25, 2005, as discussed *post*. The court's rejection of respondent's testimony and respondent's repeated failures to produce these documents as promised are also strong circumstantial evidence that respondent fabricated the letters for use as defensive evidence in the present proceeding.

⁵Tran also credibly testified that he never received the letter respondent purportedly sent him on October 28, 2003, (see exhibit A) regarding a disagreement Tran was having with a company named Jetters Only in Temecula.

small claims trial until July 19, 2004, to give respondent even more time to complete the work on the licenses. Again, respondent regrettably did not complete the work.

Respondent failed to appear at trial on July 19, 2004, and the small claims action was continued for a fourth time -- until September 9, 2004. However, respondent failed to appear yet again on September 9, 2004. Accordingly, on that date, the court entered judgment for Tran and against respondent in the amount of \$5,000 plus \$52.00 in costs. Thereafter, respondent timely filed a notice of appeal on October 8, 2004, and a trial de novo on Tran's claim was set on November 5, 2004, in the Orange County Superior Court. However, on November 5, 2005, respondent finally paid Tran \$5,000, and the court superior court dismissed respondent's appeal with prejudice (per a stipulation) on Tran's request. Respondent did not, however, pay Tran the \$52 costs.

Respondent testified that he does not owe Tran the \$52 in costs because, on November 5, 2005, Tran signed a release and settlement agreement at the courthouse. Specifically, respondent testified that Tran put the release on respondent's back and signed it. Tran credibly testified that he did not sign the release and that the signature on the release (exhibit 16) is not his, but a forgery. In light of Tran's clear and extremely credible testimony on this specific issue, the court finds, by clear and convincing evidence, that respondent's testimony that Tran signed the release lacks candor (i.e., is deliberately false) and that he proffered the release into evidence in this proceeding knowing that Tran never signed in an attempt to obtain an advantage in this proceeding. (E.g., *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. At p. 278 [finding that the respondent attorney knew that a telephone log entry did not reflect the truth and that the respondent proffered the log into evidence with knowledge of its falsity].)⁶

⁶When a hearing judge's finding is based on the testimony of a witness that is contradicted by the testimony of another witness, and there is no evidence that the testimony of the witness upon which the hearing judge's finding is based is impeachable or untruthful, the

Respondent testified that he paid Tran the \$5,000 because he was not worth the pain in dealing with him. Again, the court finds that respondent's testimony is not credible. It is clear that respondent paid Tran \$5,000 because he had not earned any significant portion of it and had no defense to Tran's small claims action seeking to recover the full \$5,000. This finding is supported by, inter alia, the fact that respondent paid Tran the full \$5,000 instead of proceeding with the trial de novo on November 5, 2004, and at least attempting to prove that he earned a portion of the \$5,000 fee.

Shortly after respondent paid Tran the \$5,000, Tran was contacted by Nyugen concerning dropping Tran's State Bar complaint against respondent. However, there is not clear and convincing evidence that respondent directed or was even aware of Nyugen's actions.

Count 1 – Failure to Competently Perform Legal Services

Rule 3-11(A) of the Rules of Professional Conduct of the State Bar⁷ provides that a member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

The court finds, by clear and convincing evidence, that respondent willfully violated rule 3-110(A), by failing repeatedly and recklessly failing for more than a year to complete and file an application to transfer the beer-and-wine license and an application for a liquor license in accordance with the October 9, 2003, retainer agreement he entered into with Tran. Even after respondent indicated twice to Tran in the Summer of 2004 that he would prepare and file the applications if Tran continued the trial in his small claims action and even after Tran agreed and continued the trial in his small claims action twice in the Summer of 2004, respondent not only

hearing judge's finding is effectively not susceptible to review because it was dependent on the hearing judge's "evaluation 'of the demeanor of the witnesses and the character of their testimony.'" (*Marquette v. State Bar* (1988) 44 Cal.3d 253, 264, citing *Himmel v. State Bar* (1971) 4 Cal.3d 786, 794.)

⁷Unless otherwise stated, all further references to rules are to these Rules of Professional Conduct.

still failed to prepare and file the applications, but also still failed to even ask Tran for the additional information he claims he needed to prepare the applications. Respondent's failure to perform was not merely negligent as respondent contends, it was repeated and reckless, if not intentional.

Count 2: Failure to Respond to Client Inquiries

Business and Professions Code section 6068, subdivision (m),⁸ 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."

The court finds that the evidence fails to establish by clear and convincing evidence that respondent failed to respond promptly to reasonable status inquiries of a client. Tran testified that he called respondent's satellite office on numerous occasions, but his testimony was not clear as to whether he spoke to respondent or Nyugen. In sum, count 2 is dismissed with prejudice.

Count 3: Failure to Promptly Refund Unearned Fees

Rule 3-700(D)(2), provides that a member whose employment has terminated shall "Promptly refund any part of a fee paid in advance that has not been earned. This provision is not applicable to a true retainer fee which is paid solely for the purpose of ensuring the availability of the member for the matter."

The court finds, by clear and convincing evidence, that respondent willfully violated rule 3-700(D)(2), by failing to refund any portion of the \$5,000 fee Tran paid him once he failed to complete and file the applications by July 19, 2004, trial setting in Tran's small claims action after having obtained, at that time, three trial continuances in the action. Instead, of promptly

⁸Unless otherwise stated, all further statutory references are to this code.

refunding the unearned \$5,000 fee when he failed to complete and file the applications by the July 19, 2004, trial setting, respondent forced Tran to proceed to trial on his claim September 9, 2004, and to obtain a judgment against respondent on that same date. Thereafter, instead of promptly obeying the September 9, 2004, judgment to refund the \$5,000 to Tran, respondent filed a meritless (albeit legally permissible) notice of appeal on October 8, 2004, and thereby obtained a trial de novo in the small claims action when he knew he had no defense to Tran's claims. Even though not charged, the court notes that this recalcitrant and obstructive type conduct is clearly inconsistent with the duties of an attorney and the ethical standards of the profession. (Cf. *Sorensen v. State Bar* (1991) 52 Cal.3d 1036.)

Count 4: Seeking an Agreement to Withdraw a State Bar Complaint

Section 6090.5, subdivision (a)(2) prohibits an attorney from agreeing or seeking an agreement that a plaintiff withdraw a disciplinary complaint or that a plaintiff not cooperate with a State Bar disciplinary investigation or prosecution.

The court finds that the evidence fails to establish by clear and convincing evidence that respondent willfully violated section 6090.5, subdivision (a)(2). Tran testified that it was Nyugen who contacted him and asked that he drop his State Bar complaint against respondent. There is no evidence that respondent directed or was aware of Nyugen's actions. Thus, count 4 is dismissed with prejudice.

Count 5: Moral Turpitude - Misrepresentation to Client

Section 6106, prohibits attorneys from engaging in acts involving moral turpitude, dishonesty, or corruption.

The court finds that the evidence fails to establish by clear and convincing evidence that respondent willfully violated section 6106 by misrepresenting to Tran that respondent was working on Tran's case and had completed the required paperwork. Similar to the court's

finding under count 2, Tran's testimony is unclear as to whether Nyugen or respondent made these misrepresentations. Moreover, if it were Nyugen who made them, there is no clear and convincing evidence that he made them at respondent's direction or with respondent's knowledge. Thus, count 5 is dismissed with prejudice.

D. Failure to Cooperate With State Bar Disciplinary Investigation

On April 30, 2004, a State Bar investigator sent respondent a letter asking respondent to respond, in writing no later than May 17, 2004, to specific allegations of misconduct involving Tran. In addition, that letter specifically requested that respondent send the investigator copies of, inter alia, "All correspondence between you and/or your office and David Tran. [¶] Notes, memoranda, and/or other documents reference telephonic communications between you and/or your office and David Tran."

Even though respondent received the State Bar investigator's April 30, 2004, letter, respondent did not respond to it in writing. Nor did respondent otherwise communicate with the investigator until the investigator sent respondent a second letter on May 19, 2004. In her second letter, the investigator included a copy of her first letter (i.e., her April 30, 2004, letter) and asked respondent to provide her with the written response and the documents she requested in her first letter no later than June 4, 2004. On May 20, 2004, respondent received the investigator's second letter and telephoned the investigator and told her that he would provide her with the requested response no later than June 4, 2004, as requested and that his response would include, inter alia, a letter from Tran stating that his complaints had been resolved. Respondent, however, never provided the investigator with a written response or with a copy of any of the documents she clearly requested.

On January 24, 2005, a deputy trial counsel (DTC) sent respondent a notice of intent to file an NDC in response to Tran's complaints. In response to that notice, respondent met with

the DTC on February 18, 2005. At that meeting, respondent gave the DTC an original release and settlement agreement that purportedly signed by Tran. In addition, respondent agreed to provide the DTC with all the remaining materials that supported his defenses to Tran's complaints and explanations (including, but not limited to, letters between respondent and Tran, respondent's telephone notes, and Tran's entire file) no later than Friday, February 25, 2005. Respondent did not so. Instead, on Friday, February 25, 2005, he left the DTC a voicemail message stating that he was sending her the promised materials that night by Federal Express so that she would receive the materials the following Monday morning. Respondent, however, did not send the information by Federal Express or otherwise. Accordingly, on March 1, 2005, the DTC faxed a letter to respondent stating that he did not provide her with the promised documents by the next day, the OCTC had no alternative but to file the NDC in this proceeding against respondent. Even though he actually received the DTC's March 1, 2005, letter, respondent did not provide the DTC with the promised documents. Nor did he otherwise respond to her letter.

Count 6 --Failure to Cooperate with State Bar Investigation

Section 6068, subdivision (i), provides that it is the duty of an attorney to cooperate and participate in any disciplinary investigation or proceeding pending against himself or herself.

The court finds, by clear and convincing evidence, that respondent willfully violated section 6068, subdivision (i) by failing to provide a written response to the two letters that the State Bar investigator sent him in the April and May 2004.

IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

No significant mitigating circumstance was shown by clear and convincing evidence. (Rule Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (standards), std. 1.2(e).)

Respondent testified as to his pro bono activities, including his work for the ACLU during his first two to three years of law practice and his involvement with the Poverty Law Center in Santa Ana that occurred in the first 7 years of his law practice. Respondent was also a fee arbitrator for the Orange County Bar Association over 10 years ago. Respondent has been admitted for more than 25 years. Respondent's brief testimony with respect to these very distant activities was simply insufficient to establish any meaningful mitigation.

Respondent testified that several years ago that he volunteered at the Second Harvest Food Bank. In 2004, respondent worked on juvenile court matters. Respondent testified that he more recently performed pro bono work for the Vietnamese Community. Respondent's brief testimony with respect to these more recent activities was simply insufficient to establish anything more than nominal mitigation particularly since he was given mitigating credit for much, if not all, of these activities in his second prior record of discipline (see review department's September 7, 2005, opinion in State Bar Court case number 00-O-15013, et al.)

B. Aggravation

The record establishes several aggravating circumstance by clear and convincing evidence. (Std. 1.2(b).)

Most notable, respondent has *three* prior records of discipline. (Std. 1.2(b)(i).) In his first prior record of discipline, respondent was privately reprovved with conditions attached in May 1993 for failing to perform legal services competently (rule 3-110(A)) and for withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to his client (rule 3-700(A)(2)) in State Bar Court case number 91-O-06043-DLR (*Shannon I*).

In his second prior record of discipline, respondent was placed on two years' stayed suspension and three years' probation on conditions, including a period of actual suspension for two years and until he establishes this rehabilitation, fitness to practice and learning in the law in

accordance with standard 1.4(c)(ii) by the Supreme Court in an order filed on January 25, 2006, in case number S138429 (State Bar Court case number 00-O-15013, et al.) (*Shannon II*). That discipline was imposed on respondent (1) because, in two client matters respondent, failed to competently perform legal services (rule 3-110(A)), failed to adequately communicate with his clients (§ 6068, subd. (m)), failed to return the client's files (rule 3-700(D)(1)), failed to refund unearned fees (rule 3-700(D)(2)); (2) because, in a third client matter, respondent engaged in the unauthorized practice of law in a sister state (rule 1-300(B)); and (3) because, with respect to four client matters, he failed to participate in the State Bar's disciplinary investigations of the client's complaints against him (§ 6068, subd. (i)). Respondent committed the misconduct in the client matters from 1997 through 2000. Respondent committed the misconduct in failing cooperate in State Bar disciplinary investigations from November to December 2000 to about March 2002. In aggravation, respondent was found culpable of uncharged misconduct aggravation for improperly withdrawing from employment in a fourth client matter (see *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36); respondent's misconduct significantly harmed his clients (std. 1.2(b)(iv)); respondent displayed "troubling behavior of dishonesty" in his dealings with the State Bar, the State Bar Court, his clients and others (std. 1.2(b)(vi).; and he displayed indifference towards rectification of or atonement for the consequences of his misconduct (std. 1.2(b)(v)). In mitigation, respondent presented the testimony of five good character witnesses and engaged in various community and pro bono activities.

Respondent's third prior record of discipline is this court's July 22, 2005, decision in State Bar Court case number 03-O-01631-RAP (*Shannon III*). In *Shannon III*, this court recommended that respondent be placed on two years' stayed suspension and four years' probation on conditions, including six months' actual suspension consecutive to the actual suspension imposed on respondent in *Shannon II*. Even though OCTC filed a request for review

in *Shannon III* and even though *Shannon III* has been pending in the review department since August 2005 and has not yet been set for oral argument, this court must still consider its prior decision a prior record of discipline. (Std. 1.2(f); Rules Proc. of State Bar, rule 216.) Ordinarily, this court would make two discipline recommendations in the present proceeding. (Rules Proc. of State Bar, rule 216(c)(1)&(2).) One based on the assumption that this court's discipline recommendation in *Shannon III* is adopted by the Supreme Court. The other based on the assumption that the discipline recommendation in *Shannon III* is dismissed or modified. (*Ibid.*) However, under the facts of this case and in light of the facts that the State Bar sought review of this court's decision in *Shannon III* seeking a greater level of discipline and that respondent has not contested the adverse culpability findings this court made against him in *Shannon III*, the court concludes that, regardless of whether its discipline recommendation in *Shannon III* is dismissed or modified, the appropriate level of discipline to recommend in the present proceeding is disbarment. Therefore, an alternative recommendation of discipline is not necessary.

In *Shannon III*, in a single client matter, respondent again failed to competently perform legal services (rule 3-110(A)), failed to adequately communicate with the client (§ 6068, subd. (m)), and again failed to refund unearned fees (rule 3-700(D)(2)). In addition, he was again found culpable of failing to participate in the State Bar's disciplinary investigations of the client's complaints against him. (§ 6068, subd. (i).) Respondent committed that misconduct beginning 2002 through early 2004. In aggravation, he had, at that time, two prior records of discipline (std. 1.2(b)(i)), engaged in multiple acts of misconduct (std. 1.2(b)(ii)), and cause significant client harm (std. 1.2(b)(iv)). There was no mitigation.

Furthermore, in the present proceeding respondent again committed multiple acts of wrongdoing, including failure to perform, failure to promptly repay unearned fees, and failure to cooperate in a State Bar investigation. (Std. 1.2(b)(ii).)

Furthermore, just as he did in *Shannon II*, respondent has demonstrated indifference toward rectification or atonement for the consequences of his misconduct in the present proceeding. Respondent's testimony to the effect that he paid Tran the \$5,000 because he was not worth the pain (or the trouble of fighting) clearly establishes that respondent is still unwilling to acknowledge, if not incapable of acknowledging, his misconduct and to accept responsibility for it. (Std. 1.2(b)(v).) This demonstrated lack of acknowledgement of the seriousness of his misconduct is particularly troubling to this court because it suggests that it may reoccur. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Accordingly, the court finds that respondent's refusal, failure, or inability (as the case may be) to acknowledge and understand the nature of his wrongdoings is an extremely serious aggravating factor.

V. DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve confidence in the profession and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Ca.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.) 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 Cr. Rptr. 615, 628.) As the review department noted more than 14 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though standards are not to be applied in a talismanic fashion, the are to be followed unless there is a compelling reason that justifies not to do so. (Accord, *In re Silvertown* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar*

(1990) 52 Cal.3d 276, 291.) Second, the court 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(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 standard 1.7(b), which provides that, if an attorney has two prior records of discipline, the discipline imposed in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.

There are no compelling mitigating circumstances that justify departing from the disbarment provided for in standard 1.7(b). In fact, the facts of this case support a disbarment recommendation independent of standard 1.7(b). Excluding the misconduct in *Shannon I*, respondent has been engaged in some type of professional misconduct since 1997 through 2005. He committed the misconduct in *Shannon III* and the present proceeding, while he was involved in disciplinary proceedings, a time when he was put on notice that his conduct failed to meet the minimum standards of the profession. He has repeatedly failed to competently perform legal services in six client matters (one client matter in *Shannon I*; four client matters in *Shannon II*; one client matter in *Shannon III*; and one client matter in the present proceeding). Had all these matters been prosecuted in one State Bar Court proceeding and respondent did not have any prior record of discipline, disbarment would be called for.

Moreover, this is the second disciplinary proceeding in which respondent has been found to have made misrepresentations and presented false testimony. The Supreme Court has repeatedly

held that false testimony (fraudulent and contrived misrepresentations) in the State Bar Court may constitute a greater offense than misappropriation, which itself ordinarily warrants disbarment. (*Middleton v. State Bar* (1990) 51 Cal.3d 548, 560.) Even though this fact strongly supports the court's disbarment recommendation, the court would recommend disbarment even if respondent had not deliberately presented the false testimony in this proceeding that Tran signed the settlement agreement and even if respondent had not proffered that forged agreement into evidence. Nonetheless, it is clearly part of respondent's misconduct from which he must establish rehabilitation should he ever seek reinstatement to the practice of the law in this state.

VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **TERRANCE JAMES SHANNON** be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

VII. RULE 955 AND COSTS

The court recommends that **SHANNON** be ordered to comply with California Rules of Court, rule 955 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.

VIII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **SHANNON** be involuntary enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: July 18, 2006.

RICHARD A. PLATEL
Judge of the State Bar Court