PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

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REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **ANTHONY JOSEPH ALLEGRINO, II**, A Member of the State Bar.	**Case No. 04-O-12846** **OPINION ON REVIEW**

In this original disciplinary proceeding, the State Bar's Office of Chief Trial Counsel (State Bar) requested review of a hearing judge's decision recommending a five-year stayed suspension and five years' probation on various conditions including actual suspension for three years and until payment of specified restitution and compliance with standard 1.4(c)(ii).[1] The hearing judge determined that, in a single matter involving two clients, respondent Anthony Joseph Allegrino, II, was culpable of 19 counts of misconduct, including failing to perform competently, charging and collecting illegal and unconscionable fees, misappropriating $40,000, making numerous misrepresentations, failing to return unearned fees, and improperly withdrawing from representation. On review, the State Bar asserts that the appropriate sanction pursuant to the standards is disbarment. Although he participated in the hearing department proceedings below, respondent failed to participate on review.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12; Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we adopt most of the hearing judge's findings and conclusions and modify others, as more fully set forth below. However, as we discuss *post*, we determine that in order to protect the public, the courts, and the legal

[1]The standards are found in the Rules of Procedure of the State Bar, title IV, Standards of Attorney Sanctions for Professional Misconduct. All further references to standards are to this source.

profession, maintain high professional standards, and preserve public confidence in the legal profession, disbarment is the only suitable disciplinary recommendation.

I. Significant Procedural History

Respondent was admitted to practice law on June 1, 1999. He has one prior record of discipline. In three immigration law matters, respondent was found culpable of serious misconduct, including three counts of charging and collecting unconscionable fees, failing to perform and to return unearned fees, and committing acts of moral turpitude in all three cases by making unauthorized charges to clients' credit cards and billing substantially more than the original agreed-upon flat fee. On September 28, 2005, the Supreme Court filed an order suspending respondent from the practice of law for two years and until he complied with standard 1.4(c)(ii), execution stayed, and placing him on five years' probation with conditions including one year of actual suspension.

II. Statement of Facts

On May 5, 2004, Kujtim Gjokaj (Gjokaj), Berat Kabashi (Kabashi) and Fatmir Gashi (Gashi) were detained in Laredo, Texas, by the United States Border Patrol on charges of attempted illegal entry into the United States from Mexico. Gjokaj, Kabashi and Gashi are Albanians from Kosovo, who were seeking political asylum in the United States.[2] Kabashi and Gashi are cousins, and they met Gjokaj on the trip.

After he was detained, Kabashi telephoned his cousin Muhamat "Mike" Kabashi (Mike) in New York. Mike immediately began working to obtain Kabashi's and Gashi's release from

[2]Kabashi and Gashi testified that their families were persecuted by Serbian authorities because of their Albanian ethnicity. They recounted specific incidents from 1998 to 2004 when family members were jailed, beaten and/or killed. Because of their fear of persecution in Kosovo, Kabashi and Gashi sought the help of a travel network to be smuggled out of their country and eventually to Mexico. From Mexico, Kabashi, Gashi and Gjokaj waded across the Rio Grande River and were caught in the desert by the Border Patrol a few miles inside the Texas border.

custody. Their bail was set at $20,000 each. Kabashi asked Mike to telephone Gjokaj's relative, Burim Gjokaj (Burim), who also lived in New York. Mike telephoned Burim and told him about Gjokaj's arrest. On about May 6, 2004, Burim hired respondent to represent Gjokaj. Shortly thereafter, respondent flew from New York to Texas to meet with Gjokaj.[3]

Around May 10, 2004, Kabashi was approached to serve as an interpreter between Gjokaj and respondent.[4] After his meeting with Gjokaj, respondent told Kabashi that he could obtain his and Gashi's release and a change of venue to New York where their relatives lived. Kabashi gave respondent his cousin Mike's telephone number.

About May 10, 2004, respondent called Mike to offer his services to represent Kabashi and Gashi. He proposed to post bail and file motions for a change of venue for a fee of $2,500 for each of them, plus $20,000 each for their bail. Mike told respondent that he thought the price was too high, that he already had an attorney he intended to use for the change of venue, and that he planned to post bail himself at the Immigration and Customs Enforcement (ICE) office in New York as soon as he was able to raise the funds.

Mike contacted numerous bonding companies in his effort to raise funds for bail. He obtained a trust deed on a co-operative owned by one of his brothers to post as collateral for the bail bond only to find out later that a co-operative was not acceptable collateral. Mike eventually contacted an uncle in Kosovo to seek help in finding someone with money or enough credit to pledge as collateral for the bonds. The uncle put Mike in touch with Gjon Lleshaj (Lleshaj), a

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[3]Respondent lives in New York, but is not licensed to practice law in New York or Texas. Whether respondent's practice in New York, or his representation of clients in Texas, constituted the unauthorized practice of law in those jurisdictions was not pursued by the State Bar. (Rules Prof. Conduct, rule 1-300(B) [member shall not practice law in a jurisdiction where to do so would be a violation of regulations of the profession in that jurisdiction].)

[4]At the time, Kabashi spoke only limited English and could not read it at all. Gjokaj and Gashi neither spoke nor read English.

fellow Albanian who owned a construction company in Manhattan. Lleshaj agreed to lend Mike the money.[5]

On Friday, May 14, 2004, Mike drove from his residence in the White Plains area of New York to Lleshaj's Manhattan office to pick up a check for $40,000. He drove back to White Plains and deposited the $40,000 check into his bank, Sound Federal Savings Bank. Mike obtained two bank checks in the sum of $20,000 each for Kabashi's and Gashi's bail.[6] He then drove back to Manhattan to take the checks to the ICE office. Although he arrived at about 1:50 p.m., Mike was told by the ICE staff that it was too late to have the bail bonds processed that day. He was given blank applications and told to return with the completed applications and the checks on Monday, May 17, 2004.

As Mike was leaving the ICE office at about 2:10 p.m., he received a telephone call from respondent asking if he had obtained the bail money. Mike confirmed that he had the money and related the events at the ICE office. Respondent offered to reduce his fee to represent both Kabashi and Gashi for a total of $1,500, and promised to obtain their release the following day (Saturday, May 15, 2004) if Mike deposited $41,500 in certified funds into respondent's Citibank account. That sum represented the $20,000 bail for each detainee plus $1,500 for respondent's fees to post bail and to seek a change of venue to New York.

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[5]At trial, respondent attempted to cast aspersions on Lleshaj by insinuating that he was a recently-indicted criminal. He further sought to attack the credibility of Mike, Kabashi and Gashi by asserting that they were associated with or employed by Lleshaj for criminal purposes. The hearing judge found, and we agree, that respondent's unsupported contentions were successfully refuted by the more credible testimony of Burim and Glenn H. Bank, an experienced immigration attorney in New York who represented Lleshaj in his immigration matter and who ultimately represented Kabashi and Gashi in their asylum petitions.

[6]Mike was able to withdraw these funds the same day as the deposit because he had approximately $90,000 in a corporate account at the same bank from a recent business sale. However, the funds from the sale of the business were still under review by an accountant and could not be released for a couple of weeks.

While consulting with other attorneys, Mike had learned that a change of venue alone would cost around $1,000. He decided the extra $500 respondent was charging was worth it to secure Kabashi's and Gashi's earlier release on Saturday rather than Monday. Although Mike had misgivings about dealing with someone he did not know, the prompt release of Kabashi and Gashi induced him to retain respondent. Mike told respondent that he would require a written agreement before he deposited the funds, and directed respondent to fax the document to a travel agency Mike had recently used. Upon contacting the travel agency later that day, Mike learned that respondent's fax agreement had not arrived. When he reached respondent in Texas, respondent claimed to have already faxed the agreement, but agreed to fax it again. In one of their conversations that same day, respondent told Mike he would bring some forms for Kabashi and Gashi to sign that were necessary for the change of venue.

On May 14, shortly after talking with Mike, respondent met with Kabashi and Gashi, and informed them that Mike had hired him to represent them. Respondent provided documents for Kabashi and Gashi to sign, asserting that they pertained to their release and the change of venue.[7] The men refused to sign anything until they talked with Mike. Kabashi and Gashi left the meeting room and telephoned Mike from a phone in the detention center. Mike explained that, if they agreed, he was prepared to pay respondent $1,500 to post their bail, obtain their release on Saturday, and then seek a change of venue. Kabashi and Gashi agreed to hire respondent. Believing that the papers related to the change of venue, Mike advised them to sign the papers. Kabashi and Gashi rejoined respondent, and despite being unable to read any portion of the documents other than his own name, Kabashi signed two documents – one for himself and one on behalf of Gashi. Although Kabashi informed respondent that neither he nor Gashi could read English, respondent neither translated the documents nor explained the contents.

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[7]Respondent also falsely stated that their bail could be between $20,000 and $50,000 because they were of the Muslim religion, and that their bail would increase the longer they were detained.

Contrary to respondent's representations, the documents Kabashi signed were not for their release or a change of venue, but, instead, were fee agreements. Other than each client's name, the two agreements were identical: three pages with no handwriting, and neither agreement was dated nor signed by respondent. The agreements provided, in relevant part, that:

(1) "All flat fees are earned immediately after Client tenders a payment to Attorney;"

(2) "If additional work is required beyond the normal amount in a similar matter, Client agrees to pay Attorney at a rate of $325.00 Per Hour;"

(3) "Attorney Fees: _____;"

(4) "There will be an administrative charge of no less than $295 to copy a complete case file. Clients who owe any Attorney fees must pay the balance plus the $295.00 in order to obtain a copy of the case file;"

(5) "**There are No Refunds of Flat Rated Attorney Fees or Hourly Attorney's Fees Once Earned or Time Expended On Client's Legal Matter. The Non-Refundable Retainer is to ensure Attorney Availability;**"

(6) "Client grants Attorney a lien on any real, personal or intellectual property that Client has an interest in for all monies owed from this agreement;" and

(7) "Client hereby grants and conveys full release to Attorney as to any financial disputes under this Agreement and all those associated with Attorney upon the presentation of an invoice detailing charges to Client and upon Client signing such invoice acknowledging such services as rendered and correct. However, an unsigned invoice or an unjustified refusal to sign an invoice shall not be deemed a protest of such invoice by such Client. Additionally, after 30 days of presentment of such invoice to Client by Attorney, Client will be deemed to have ratified and accepted such invoice as if signed by such Client. Furthermore, Client hereby agrees to be limited to the remedy of arbitration, which shall be binding or nonbinding at the noncomplaining party's option, which costs shall be borne at the losing party's expense, in the event of a dispute under this Agreement in a venue mutually agreeable to both or all parties to this Agreement."

At the time Kabashi signed the documents, they did not set forth the scope of representation or a flat fee amount. This information was handwritten into the agreements later by respondent without Kabashi's, Gashi's or Mike's knowledge or consent. Specifically, respondent subsequently added the following terms and conditions: (1) under services to be performed: "Evaluate bail situation/modification if needed to obtain release from custody, if possible, and transfer case to New York District, if recommended and if needed and if possible, and prepare asylum petition, if warranted under law, and obtain asylum status, if needed and if

possible and if warranted under law;" (2) under attorney fees: "$27,750;" and (3) directly above the signature line: "Invoice acknowledged as received and any and all charges reflect charges for flat fees for services rendered as agreed for flat fee of $27,750." Respondent never provided Mike with copies of these agreements.[8] Kabashi and Gashi did not know they were fee agreements, and never consented to the terms and conditions set forth therein.

On Saturday morning, May 15, Mike redeposited the two $20,000 checks he had previously drawn, and had a bank check issued for $40,000 payable to respondent and a separate check for $1,500 also payable to respondent. The $1,500 check bore the typed-in notation: "Legal fees at Laredo, Texas, paid in full." Although Mike still had not received any written agreement from respondent, he nevertheless deposited the checks into respondent's account as directed because he was anxious to secure the release of Kabashi and Gashi that same day.

After depositing the money into respondent's account, Mike drove immediately to the travel agency and found two identical faxes from respondent. In the faxes, respondent promised to "post immigration bonds" for Kabashi and Gashi upon receipt of the funds.[9] After reading the faxes, Mike telephoned respondent to tell him that the deposit had been made to his account. He

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[8]The hearing judge found respondent's testimony as to the circumstances surrounding the execution of the fee agreements not to be credible. More specifically, the hearing judge determined that respondent was not credible when he contended, among other things, that his services were to be rendered for a flat fee of $27,750 each; the fee was payment solely to reserve his time; he was retained to represent Kabashi and Gashi on May 6, 2004; he had worked over 100 hours by May 20, 2004; and the $325 per hour rate set forth in the retainer agreement was for extra work not usually included as part of the representation, and was in addition to the $27,750 flat fee to reserve his time. Conversely, the hearing judge found Mike to be a credible witness. These credibility determinations are supported by overwhelming evidence, and we thus find no reason to reject or modify them on review. (Rules Proc. of State Bar, rule 305(a) [review department gives great weight to hearing judge's findings resolving issues of credibility]; *Franklin v. State Bar* (1986) 41 Cal.3d 700, 708.)

[9]As discussed *post*, respondent subsequently altered this document to reflect that the entire $41,500 was for attorney fees.

requested that respondent call him immediately upon the release of Kabashi and Gashi as Mike had already made their travel arrangements to New York.

That same morning, respondent checked out of his hotel in Laredo, visited Kabashi and Gashi in custody for 10 to 15 minutes, and apprised them of the deposit made on their behalf. He mentioned that he was having "some trouble with the judge," and thus, they would not be released that day as he had hoped. He further told them that he would obtain their release on Monday, May 17, 2004. However, respondent knew that he was not going to be in Texas on May 17 to secure their release because he had a mandatory court appearance in Los Angeles on that date in his prior disciplinary matter before the State Bar Court. Later on Saturday, Kabashi told Mike that respondent had visited briefly that morning and had told them that they would not be released until Monday. After the brief meeting on May 15, 2004, respondent had no further contact with Kabashi or Gashi.

On May 17, 2004, Mike attempted unsuccessfully to reach respondent several times on his cell phone. Kabashi and Gashi were still being held in Laredo and were awaiting their release that day as respondent had promised. After respondent failed to return Mike's calls, Mike called once more, this time leaving a message that he was going to alert law enforcement unless he heard from respondent by 10 a.m. on Tuesday. On Tuesday morning, May 18, 2004, respondent called Mike and informed him that Kabashi and Gashi would be released that day and asked him not to contact the police. He assured Mike that he was taking care of everything. However, Kabashi and Gashi were not released on May 18, 2004, and respondent stopped returning Mike's telephone calls.

On May 19, 2004, Mike filed a criminal complaint against respondent with Joseph Crispino of the New York State Police. Mike gave Crispino copies of the faxed agreement from respondent, the checks he had deposited into respondent's account, and the deposit slip for $41,500.

Crispino contacted respondent, who agreed to meet for an interview. During their discussion, respondent gave Crispino the agreement that he had altered after faxing it to Mike. The alterations included: (1) adding the words "by power of attorney" after the words "as you [Mike] are financially responsible for their case," and (2) adding the words "to handle matter - legal fees" at the end of the sentence instructing Mike to deposit $41,500. By making the second change, respondent endeavored to falsely characterize the entire $41,500 as his attorney fees. When Crispino showed respondent the fax agreement furnished by Mike, respondent alleged that he added the additional language after Mike notified him that the first fax had not been received in an effort to clarify their agreement. Mike never received a version of the agreement respondent provided to the police.

Respondent admitted to Crispino that he did not meet or know of Kabashi and Gashi until he arrived in Laredo to represent Gjokaj around May 10, 2004. He told Crispino that he had decided to withdraw as counsel for Kabashi and Gashi on May 15, 2004, before leaving Laredo because he was unwilling to act unethically as Kabashi and Gashi had wanted.[10] Respondent also told Crispino that Kabashi and Gashi were suspected terrorists who had asked him to concoct a fraudulent basis for their asylum claims. However, Kabashi and Gashi never fully discussed with respondent the facts upon which their asylum applications would be based.[11] Nor did Kabashi or Gashi ever ask respondent to fabricate grounds for their asylum claims. Kabashi and Gashi were never told by the authorities or respondent that they were suspected terrorists.

When Crispino questioned respondent as to why he did not return the fees when he decided to withdraw, respondent claimed that he had earned all the money. He claimed that he had performed a lot of research. However, respondent was unable to provide Crispino with

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[10]Respondent's remarks to Crispino are inconsistent with the billing statements respondent subsequently submitted to Mike, which indicate that he started working on the cases on May 6, 2004, and continued until May 20, 2004.

[11]Respondent had never prepared an asylum petition for any client prior to May 6, 2004.

billing sheets, research results, or any other documentation to support his claim. When respondent was asked to justify charging $41,500, respondent stated that it was a flat-rate fee and that he was entitled to it even if he only worked one hour.

As a result of Crispino's investigation, criminal charges were filed against respondent in New York for grand theft, and his bank account containing approximately $38,000 at the time was frozen. The criminal matter was still pending at the time of the hearing below.

On May 21, 2004, respondent called Mike and told him: "I told you to trust me. You did not. You went to the police, so, therefore, I quit. When I get around to it, I will send you a final bill." Sometime thereafter, Mike received from respondent a letter dated May 20, 2004, and two billing statements. In the statements, respondent represented that Kabashi and Gashi had each paid only $20,750 of a $27,750 nonrefundable flat fee, and therefore owed him an additional $7,000 each. In the letter accompanying the statements, respondent declared that he had fulfilled his obligations under the agreements and was withdrawing from representation because: (1) Kabashi and Gashi did not have valid asylum claims; (2) they had made statements and requests necessitating withdrawal; (3) Mike had not met his financial obligations; and (4) Mike had engaged in outrageous, uncooperative and unacceptable conduct. The letter stated that the flat fee was nonrefundable. Respondent did not communicate his intent to withdraw to Kabashi or Gashi.

At the time respondent withdrew from representation, he had performed no services of value. He filed no documents on behalf of Kabashi and Gashi, and made no court appearances. He neither posted bail nor secured their release. Respondent never returned any portion of the advanced fees he was paid to represent Kabashi and Gashi. His failure to return the $41,500 humiliated and frustrated Mike, who remains indebted to Lleshaj for that amount.

When respondent did not appear in court on Kabashi's and Gashi's behalf on May 20, 2004, they employed another lawyer from Texas who represented them at a bail reduction hearing on May 27, 2004, for a fee of $1,000 each. Kabashi's and Gashi's bail was reduced to

$4,000 each and both were released shortly after the bail reduction hearing. Mike paid for the bail and attorney fees in both cases. Glenn H. Bank (Bank) ultimately took over the cases and his flat fee for the removal proceedings, including an asylum petition and change of venue, was less than $5,000 each for Kabashi and Gashi.[12]

III. Culpability

A. Jurisdiction

Although the misconduct in this matter occurred in Texas and New York, we have jurisdiction to regulate misconduct even when it occurred in another state. (*Emslie v. State Bar* (1974) 11 Cal.3d 210.) "Although the State Bar has discretion whether to pursue allegations of alleged misconduct in other states, there is simply no jurisdictional requirement that the alleged misconduct must occur in this state in order to be prosecuted by the State Bar of California." (*In the Matter of Respondent V* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 442, 447; see also Bus. & Prof. Code, § 6049.1(e) [permitting disciplinary proceedings against a California attorney based on conduct in another jurisdiction].)

B. Failure to Perform Services with Competence (Counts One and Two)

Respondent was charged in counts one and two of the Notice of Disciplinary Charges (NDC) with violating rule 3-110(A) of the Rules of Professional Conduct by intentionally,

[12]Bank, an attorney who has practiced immigration law in New York since 1979 and who has handled 200-250 cases for people from Kosovo over the last five years, testified as an expert in immigration practices. Based on Bank's credible testimony, the hearing judge adopted, as do we, the following findings: (1) an hourly rate of $325 exceeds the prevailing rate in immigration matters; (2) a $27,500 flat fee for representation in any immigration matter is unprecedented; (3) change of venue motions are routinely granted where, as in this case, the detainees have family living near another immigration court; and (4) Kabashi and Gashi had valid grounds for political asylum petitions based on the requirement to demonstrate subjective fear of persecution due to ethnic identity or political opinion in their home country and that such fear must be objectively reasonable.

recklessly and/or repeatedly failing to perform legal services competently.[13] Respondent was hired to post bond to obtain Kabashi's and Gashi's release and to seek a change of venue to New York. However, he failed to post bond, file any papers, make any court appearances or take any action to obtain his clients' release or a change of venue. Respondent had only two very brief meetings with Kabashi and Gashi on May 14 and 15 during which no substantive legal issues were discussed. The hearing judge concluded, and we agree, that respondent intentionally and repeatedly failed to perform with competence by not taking any steps to resolve Kabashi's and Gashi's matters prior to withdrawing from their representation in wilful violation of rule 3-110(A).

C. Illegal and Unconscionable Fees (Counts Three through Seven)

Rule 4-200(A) prohibits an attorney from entering into an agreement for, charging or collecting an illegal or unconscionable fee. The State Bar alleges that respondent violated this rule in five different ways by charging unconscionable fees, by collecting those fees, and by entering into an agreement for illegal fees. We agree with the hearing judge that respondent wilfully violated rule 4-200(A) by charging unconscionable fees. However, as discussed below, we dismiss count five, which alleges that respondent collected unconscionable fees, because we find that count to be inconsistent with the more serious finding that the funds were misappropriated. We also dismiss counts six and seven, which allege that respondent entered into agreements for illegal fees, finding that there were no valid or enforceable fee agreements.

1. Charging unconscionable fees (counts three and four)

We agree with the hearing judge that respondent violated rule 4-200(A) by charging $27,750 as a flat fee ($41,500 total) for his proposed services. Our determination of unconscionability is not based on the written fee agreements respondent had Kabashi sign unknowingly, since, as we explain below, we conclude they are not valid or enforceable fee

[13]All further references to rule or rules are to the Rules of Professional Conduct unless otherwise indicated.

agreements. Rather, the finding is based on respondent's repeated claim to $41,500 in fees despite the fact that he failed to perform any services of value.

In the absence of a valid fee agreement, we measure an attorney's compensation based on a theory of quantum meruit, rather than the full contract price. (*Spires v. American Bus Lines* (1984) 158 Cal.App.3d 211, 216.) Here, however, respondent failed to perform any services of value. He was hired to post bond and seek a change of venue. He did neither. Instead, respondent immediately left town without performing any legal work on behalf of Kabashi and Gashi. According to respondent's own testimony, his fee did not include an asylum petition, and if he decided that one was appropriate, he would charge an additional $325 an hour to prepare it. As an experienced immigration lawyer, Bank testified that a $27,000 flat fee for representation in any immigration matter is unprecedented and incredibly high. Bank subsequently charged Kabashi and Gashi less than $5,000 each for his services, which included seeking changes of venue and preparing asylum petitions. Additionally, Mike could have hired other attorneys to resolve the venue matter for as little as $1,000. As for posting bail, Mike was prepared to handle it himself and only hired respondent because he was misled into believing that respondent could expedite their release.

"[I]n general, the negotiation of a fee agreement is an arm's-length transaction. [Citations.]" (*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.) "The test is whether the fee is '"so exorbitant and wholly disproportionate to the services performed as to shock the conscience."' [Citations.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.) Under the facts and circumstances of this case, respondent's claim to a flat fee of $41,500 is "so exorbitant and wholly disproportionate to the services performed as to shock the conscience."

Thus, his attempt to charge $41,500 in fees is indisputably unconscionable. Accordingly, we find that respondent wilfully violated rule 4-200(A) by charging unconscionable fees.

2. Collecting unconscionable fees (count five)

We decline to find that respondent also violated rule 4-200(A) by collecting the $41,500 in unconscionable fees. Collection of a fee implies consent on the part of the client to pay that fee, which consent was absent in this case. (See *Most v. State Bar* (1967) 67 Cal.2d 589, 597 [attorney may not unilaterally determine his fee and withdraw funds held in trust for his client as payment without knowledge or consent of client].) The $40,000 collected from Mike was not intended as fees. The $40,000 was specifically intended as bail money. Respondent unilaterally decided to keep the money and claim it as his fees. Under the facts of this case, we find respondent's conversion of the bail money to fall within the purview of misappropriation rather than collection of unconscionable fees. Accordingly, we dismiss count five with prejudice.

3. Entering into an agreement for illegal fees (counts six and seven)

Respondent argued below that the fee agreements prove his position that Kabashi and Gashi agreed to pay him $27,750 each as a flat fee for his services. However, respondent obtained the signatures on the fee agreements only by fraudulently representing to Kabashi and Gashi that the documents related to their release and change of venue. Neither Kabashi nor Gashi knew that the papers were in fact fee agreements. Furthermore, respondent added the key provisions regarding the fee amount and the scope of services after the agreements were signed. As a result, Kabashi and Gashi never knew about, and could not have agreed to, the terms and conditions of the fee agreements. It was neither their understanding nor their intent to pay a flat fee of $27,750 each. They agreed to pay respondent $1,500 as his fee.

While fraud in the execution of a contract may result in a finding that mutual assent is lacking, it does not mean that the contract is automatically void. The rule in California, as clarified by the Supreme Court in *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, is that fraud in the execution does not render a written contract void where the defrauded party had a reasonable opportunity to discover the real terms of the contract before signing it. Therefore, "[o]ne party's misrepresentations as to the nature or character of the

writing do not negate the other party's apparent manifestation of assent, if the second party had 'reasonable opportunity to know of the character or essential terms of the proposed contract.'" (*Id.* at p. 423, citing Rest.2d Contracts, § 163, p. 443.) In *Rosenthal*, two plaintiffs declared they were unable to read the documents presented to them because they knew very little English and one asserted she could not read the documents because she was legally blind. The Supreme Court held that these facts, assuming they were true, deprived the plaintiffs "of a reasonable opportunity to learn the character and essential terms of the documents they signed" (*id.* at p. 428, citation omitted) and "would suffice to establish reasonable reliance for purposes of showing fraud in the execution of the agreement." (*Id.* at p. 429.) Thus, "[a] party does not have 'a reasonable opportunity' to discover the true nature of the writing if the party is prevented from doing so by some physical or other impairment." *(Jones v. Adams Financial Services* (1999) 71 Cal.App.4th 831, 837 [contract void where 79-year-old woman, who was legally blind and suffered from dementia and hypothyroidism, was tricked into signing loan agreement by being told that papers merely authorized defendants to obtain payoff information on her existing mortgage].)

In the instant case, respondent clearly misrepresented the nature and character of the documents. However, as set forth in *Rosenthal v. Great Western Fin. Securities Corp., supra,* 14 Cal.4th 394, the analysis does not stop with a finding of respondent's fraud. The issue is whether the defrauded party had a "reasonable opportunity" to learn about the nature of the document before it was signed. If the answer is in the affirmative, "such 'negligence' precludes a finding the contract is void for fraud in the execution. [Citation.]" (*Id*. at p. 423.) Here, Kabashi and Gashi were detained in custody in Texas at the time the agreements were signed. Neither of them could read English, and Kabashi's English speaking was limited. Gashi neither spoke nor read English. Despite knowing this, respondent failed to provide any translation of the documents. Kabashi and Gashi declined to sign the documents and contacted Mike, who confirmed what respondent had previously told him, i.e., the documents were for their release and change of

venue. Kabashi and Gashi had already been in custody for nine days, and respondent promised that he was going to be able to obtain their release the next day, Saturday. Respondent also told them that their bail would increase the longer they remained in custody. He repeatedly urged Kabashi and Gashi to trust him because he was their attorney. Under the circumstances, the court finds that neither Kabashi nor Gashi acted in an objectively unreasonable manner in signing the papers. Accordingly, based on respondent's fraud in the execution of the agreements, and his clients' complete lack of consent to enter into the agreements, mutual assent was lacking and the agreements are void.

Although we dismiss with prejudice counts six and seven, we find respondent's unilaterally modified written contract is evidence of overreaching, which we consider a serious factor in aggravation. (See discussion *post*, § IV., A.)

D. Misappropriation of Funds (Counts Eight and Nine)

Business and Professions Code section 6106[14] makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his or her relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

We agree with the hearing judge that there is clear and convincing evidence that respondent violated section 6106 by misappropriating the $40,000 advanced for Kabashi's and Gashi's bail. We note that "an attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation." (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304, citing *Copren v. State Bar* (1944) 25 Cal.2d 129, 134.) Rather than post bail as promised, respondent kept the money, falsely claiming it as his fees. Respondent's misappropriation of these funds violates basic notions of honesty and endangers public confidence in the legal confession.

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[14]All further references to section are to the Business and Professions Code unless otherwise indicated.

E. Moral Turpitude Based on Misrepresentations (Counts Ten through Sixteen)

Section 6106 expressly states that moral turpitude includes acts of dishonesty, and it has long been established such dishonesty includes an attorney's false or misleading statements. (*Bach v. State Bar* (1987) 43 Cal.3d 848, 855; *Chefsky v. State Bar* (1984) 36 Cal.3d 116, 124; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 184.) In counts ten through sixteen of the NDC, respondent was charged with seven separate counts of moral turpitude based on multiple allegations of misrepresentations.

We agree with the hearing judge that there is clear and convincing evidence that respondent made the following misrepresentations:

(1) to Mike, that he would post immigration bonds for Kabashi and Gashi upon receipt of the funds (count ten);

(2) to Kabashi and Gashi that their bail was going to be between $20,000 and $50,000 because of their Muslim religion (count eleven);

(3) to Mike, that respondent could obtain Kabashi's and Gashi's release from custody on Saturday, May 15, if Mike deposited $41,500 into respondent's bank account immediately;

(4) to Kabashi and Gashi, that he was having trouble with the judge on their cases, but that they would be released on Monday, May 17 (count thirteen);

(5) to Mike, that Kabashi and Gashi would be released on May 18 (count fourteen);

(6) to Mike, that the reason for respondent's withdrawal from representation of Kabashi and Gashi was that they had asked him to concoct false claims for their asylum petitions (count fifteen); and

(7) to agents of the New York State Police, that Kabashi and Gashi were suspected terrorists, that they had asked respondent to concoct false claims for their asylum applications, and that he had decided to withdraw from representing them on May 15 (count sixteen). He also provided the police with a version of the agreement faxed to Mike that had been altered to allot the entire $41,500 as respondent's fees.

The hearing judge found, and we agree, that respondent knew at the time he made the representations that they were false. We adopt the hearing judge's findings, and accordingly, conclude that respondent's multiple misrepresentations are acts of dishonesty constituting moral turpitude within the meaning of section 6106. (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 9, 15; *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 321, 330.)

F. Failing to Return Unearned Fees Promptly (Count Seventeen)

The hearing judge found respondent violated rule 3-700(D)(2), which requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. After he withdrew as their counsel, respondent did not return the $1,500 fee paid to him to represent Kabashi and Gashi, which was unearned, as discussed above. Respondent's failure to return the unearned fee is a clear violation of rule 3-700(D)(2). However, as discussed *post*, we also find that respondent violated rule 3-700(A)(2) as charged. Since rule 3-700(A)(2) is more comprehensive and mandates compliance with rule 3-700(D)(2), we decline to find a separate violation of rule 3-700(D)(2), and dismiss with prejudice count seventeen as duplicative. (*In the Matt of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.)

G. Improper Withdrawal from Representation (Counts Eighteen and Nineteen)

The hearing judge found that respondent violated rule 3-700(A)(2), which prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client. This includes giving due notice to the client, allowing time to retain other counsel, complying with rule 3-700(D) and complying with other applicable laws and rules. We agree.

Respondent effectively withdrew from employment on May 15, 2004, when he left Texas having done nothing to seek or obtain Kabashi's and Gashi's release. Respondent never informed Kabashi and Gashi of his intent to withdraw from their representation and, indeed,

never again communicated with them after his brief initial meeting. On May 20, 2004, they had to request a continuance of the hearing in order to obtain new counsel, and as a result, they remained in custody until after May 27, 2004. Furthermore, as discussed above, respondent failed to return the unearned fee of $1,500. By not informing the clients of his intent to withdraw as their attorney and by not returning the unearned fee, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to Kabashi and Gashi in wilful violation of rule 3-700(A)(2).

IV. Discipline

In determining the appropriate level of discipline, we consider the aggravating and mitigating factors.

A. Aggravation

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) As noted *ante*, on September 28, 2005, the Supreme Court filed an order suspending respondent from the practice of law for two years and until he complied with standard 1.4(c)(ii), execution stayed, and placing him on five years' probation with conditions including one year of actual suspension. In three immigration law matters, respondent was found culpable of making unauthorized charges to clients' credit cards and billing substantially over the original agreed-upon flat fee. Discipline was imposed for three violations of rule 4-200 (charging and collecting unconscionable fees), one violation each of rule 3-100(A) (failure to perform) and rule 3-700(D)(2) (failure to return unearned fees), three violations of sections 6106 (moral turpitude, dishonesty or corruption) and two violations of section 6068, subdivision (c) (maintaining an illegal or unjust action).

No mitigating circumstances were found in the prior disciplinary matter. In aggravation, respondent committed multiple acts of misconduct. There also was significant client harm, including loss of funds, additional expenditures to participate in the fee arbitration process, the defense against an unjust lawsuit, and out-of-state travel to participate in State Bar Court proceedings. Indifference toward atonement for or rectification of the consequences of his

misconduct was also an aggravating circumstance. Respondent failed to demonstrate remorse or recognize his wrongdoing.

In the case at hand, the hearing judge found that the misconduct in the prior matter started shortly after respondent was admitted to practice and continued into 2004, and that the misconduct in the present case took place in 2004. Based on the timing of the misconduct in both matters, the hearing judge determined that the aggravating effect of the prior discipline was diminished as it was not indicative of respondent's inability to conform to ethical norms. Thus, he considered the totality of the findings in both cases to ascertain the appropriate discipline had the matters been brought as one case. We disagree with the hearing judge's decision to diminish the aggravating effect of the prior record of discipline. The misconduct in the instant case took place during the trial of respondent's prior disciplinary matter. We are also very concerned about the similarities between the misconduct in the prior and current cases, particularly the charging of unconscionable fees and respondent's dishonesty. The fact that respondent was participating in the prior proceeding for similar misconduct should have amplified respondent's sensibilities to his ethical responsibilities. Thus, we find respondent's prior record of discipline to be a serious aggravating factor.

We adopt the hearing judge's finding that respondent committed multiple acts of wrongdoing based on our determination that respondent is culpable of 15 counts of misconduct in two client matters. (Std. 1.2(b)(ii).)

We find additional uncharged misconduct in aggravation as the result of respondent's dishonesty and overreaching of his clients, constituting additional acts of moral turpitude in violation of section 6106. (Std. 1.2(b)(iii).) Knowing of his clients' English language limitations, respondent falsely told his clients that the documents they were signing were for their release and change of venue, concealing that they were actually fee agreements. "'The essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed . . . is in a superior position to exert unique

influence over the dependent party.' [Citation.]" (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) Respondent's exploitation of his position of trust to the detriment of his vulnerable clients clearly constitutes moral turpitude within the meaning of section 6106. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 243-244.)

Furthermore, as noted *ante*, "[a]lthough void for lack of mutual assent, the agreement nevertheless is strong evidence of respondent's overreaching, since it contains express provisions that are anathema to respondent's fiduciary relationship with his client, and indeed are against the public policy of this state." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 989.) For example, the fee agreement included a provision that the flat fee was earned immediately upon payment and was nonrefundable. Such "earned immediately" provisions are contrary to public policy because they impair a client's "absolute" power to discharge an attorney, with or without cause. (*FSLIC v. Angell, Holmes & Lea* (9th Cir. 1988) 838 F.2d 395, 397; see also *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923 [where fee was not a true retainer, respondent must comply with rule 3-700(D)(2) and refund any unearned fee promptly].) The objectionable nature of this type of provision is more than evident in the case at hand where respondent claims he was entitled to retain the entire $41,500 as a nonrefundable flat fee even if he worked only *one* hour. Other problematic provisions in the fee agreement that provide further evidence of respondent's overreaching include: (1) the clients are not entitled to copies of their case files until they pay any balance due on attorney fees and/or until they pay an administrative charge of no less than $295 (see *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 377 [return of file is mandatory and not conditional on clients' signing a substitution of attorney]); (2) respondent is granted a full release "as to any financial disputes under this Agreement and all those associated with Attorney" upon the presentation of an invoice and the invoices are deemed ratified and accepted after 30 days (see rule 3-400 [attorney must not contract with a client prospectively limiting attorney's liability to the client for the attorney's professional malpractice]); and (3) the

client agrees to be limited to the remedy of arbitration, which shall be binding or nonbinding at the noncomplaining party's option (see § 6204, subd. (a) [parties may agree in writing to be bound by arbitration *after* the fee dispute has arisen]). It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar, supra,* 43 Cal.3d at p. 813.) Here, respondent flagrantly breached his fiduciary duties to his clients through his dishonesty and overreaching – a significant factor in aggravation.

We agree with the hearing judge that respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).) The funds Mike borrowed to give respondent have not been refunded and he remains indebted for those funds. Other counsel had to be retained to represent Kabashi and Gashi, incurring further expenses. Most significantly, as a result of respondent's failure to perform, Kabashi and Gashi remained in custody longer than necessary.

We also agree with the hearing judge's conclusion that respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent has shown no remorse or recognition of wrongdoing. Despite overwhelming evidence to the contrary, respondent maintains that he has not engaged in misconduct, and as of the date of the hearing below, he had not refunded the misappropriated funds or unearned fees.

Finally, we find that not only did respondent lie to Mike, his clients and the New York State Police, he continued to provide false testimony during the State Bar Court proceedings. Disregarding the abundance of evidence in contradiction, respondent testified that he entered into valid fee agreements with Kabashi and Gashi, to which Mike agreed, for a flat fee of $27,750 each. Respondent's lack of candor during the proceedings is a serious factor in aggravation. (Std. 1.2(b)(vi).)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) As in the prior disciplinary matter, respondent offered no evidence in mitigation, and based on our independent review of the record, we find none.

C. Discussion

The purposes of disciplinary proceedings and of sanctions are to protect the public, the courts and the legal profession. (*In re Silverton* (2005) 36 Cal.4th 81, 91, quoting *In re Morse, supra* 11 Cal.4th 184, 205, quoting std. 1.3.) In determining the appropriate level of discipline, we first consider the standards applicable to this case. While we are "not compelled to strictly follow [the standards] in every case," we look to them for guidance (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and they should generally be given great weight in order to assure consistency in attorney disciplinary cases. (*In re Brown* (1995) 12 Cal.4th 205, 220.) The standards applicable to this case are 1.7(a), 2.2(a), 2.3, 2.4(b), and 2.7. Standard 1.6(a) provides in part that "[i]f two or more acts of professional misconduct are found . . . and different sanctions are prescribed . . . the sanction imposed shall be the more or most severe of the different applicable sanctions."

The most severe sanction is found in standard 2.2(a), providing that the "[c]ulpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed."[15]

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[15]Standard 1.7(a) provides that if an attorney has a prior record of discipline, the degree of discipline imposed in the current proceeding shall be greater unless the prior discipline imposed was so remote in time and the offense for which it was imposed was so minimal in severity that imposing greater discipline would be manifestly unjust.

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.

Standard 2.4(b) provides that failing to perform services, which does not demonstrate a pattern of misconduct, shall result in reproval or suspension.

(continued...)

This case involves the misappropriation of $40,000, which is a substantial sum, and there are no compelling mitigating circumstances.

Our discipline analysis is tempered by the decisional law. A review of similar cases leads us to conclude that the three-year actual suspension recommended by the hearing judge is insufficient under the circumstances presented here. In recommending three years' actual suspension, the hearing judge cited to *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, finding that respondent's misconduct "resulted more from his lack of understanding or recognition of his conduct measured against an attorney's duties rather than from innate venality." (*Id*. at p. 665.) The hearing judge concluded that he believes respondent can be rehabilitated by a lengthy suspension. Based on respondent's serious prior misconduct that virtually mirrors his present widespread dishonesty and overreaching, we do not agree that the facts of this case allow for such a generous interpretation of respondent's serious misconduct. The State Bar recommends disbarment, and we agree.

The intentional misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – i.e., disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21, 29.)

In *Chang v. State Bar* (1989) 49 Cal.3d 114, the Supreme Court disbarred an attorney who had misappropriated $7,898.44 in attorney fees that should have been paid to the attorney's former law firm. The attorney had no record of prior discipline in approximately eight years of practice. The Supreme Court noted that the attorney had made misrepresentations to the State Bar during its investigation of the matter and to the hearing panel that heard the proceeding. Noting that "fraudulent and contrived misrepresentations to the State Bar may perhaps constitute

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[15](...continued)

Standard 2.7 provides that a violation of rule 4-200 shall result in at least a six-month actual suspension, irrespective of mitigating circumstances.

a greater offense than misappropriation," the Supreme Court ordered the attorney's disbarment. (*Id.* at p. 128, citation omitted.)

In *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, the Supreme Court disbarred an attorney who intentionally misappropriated $29,000 from his law firm. The attorney had been admitted to practice for 12 years at the time of his misconduct and had no prior record of discipline. Even though the attorney promptly made full restitution upon being confronted with the misappropriation and despite the existence of mitigating circumstances, which included marital stress and the terminal illness of his mother-in-law, the Supreme Court concluded that the attorney's behavior was "grievously improper" and warranted his disbarment.

In *Grim v. State Bar, supra,* 53 Cal.3d 21, the Supreme Court disbarred an attorney who misappropriated the client's share of a judgment in the amount of about $5,500 after the client had moved to another state. The attorney had been admitted to practice for 20 years prior to his misconduct in this proceeding, although he had previously received a private reproval for commingling funds by depositing approximately $960 of client funds in his general office account. The Supreme Court found that the "misappropriation . . . was not the result of carelessness or mistake; [respondent] acted deliberately and with full knowledge that the funds belonged to his client. Moreover, the evidence supports an inference that [respondent] intended to permanently deprive his client of [his] funds . . ." (*Id*. at p. 30.) The attorney presented mitigating factors, including cooperation with the State Bar and ten character witnesses. In rejecting the attorney's financial stress as a mitigating factor because it was neither unforeseeable nor beyond his control, the Supreme Court stated: "It is precisely when the attorney's need or desire for funds is greatest that the need for public protection afforded by the rule prohibiting misappropriation is greatest. [Citations.]" (*Id.* at p. 31.)

The misconduct in the present case is as serious as in the cases discussed above, and in many ways, even more egregious. Respondent's clients were incarcerated, did not speak English, and faced deportation. Respondent is culpable of misappropriating $40,000 from these

vulnerable clients, in addition to numerous other serious acts of misconduct, including failing to provide any services of value, making misrepresentations to his clients and to the police, charging unconscionable fees, and improperly withdrawing from representation.[16] Respondent neither acknowledges that his conduct was wrongful nor expresses any remorse for the harm that he has caused. Instead of contrition, respondent went to great lengths during his testimony to justify his behavior and deny any wrongdoing. As the Supreme Court has repeatedly noted, "deception of the State Bar may constitute an even *more serious offense* than the conduct being investigated [Citations.]." (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 712 (dis. opn. of Lucas, J.).) Respondent's dishonest testimony before the court is "misconduct of a serious nature, calling into question his fitness to practice law." (*Ibid*.) Furthermore, unlike the cases discussed above, respondent has a serious prior record of discipline for similar misconduct. Shortly after being admitted in 1999, and continuing through the trial below, respondent has repeatedly shown his "disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great." (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 581.) We thus conclude that "respondent is also not a good candidate for suspension and/or probation." (*Ibid*.) Finally, not only did respondent fail to establish "the most compelling mitigating circumstances," he offered no evidence in mitigation. Consequently, there is no evidence before us to support a finding that respondent is capable of and willing to conform to the ethical responsibilities of an attorney.

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[16]These other acts of misconduct alone would justify significant discipline. *(In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725 [disbarment for moral turpitude based on charging and collecting an unconscionable fee through extensive fraudulent billing and withdrawing disputed funds]; *In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343 [one-year actual suspension for misconduct including the collection of an illegal fee for services not performed and moral turpitude for lying to his client on several occasions]; *Borré v. State Bar* (1991) 52 Cal.3d 1047 [two years' actual suspension for deceiving the State Bar by fabricating a letter, abandoning an incarcerated client, and deceiving the client about the status of the case].)

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) As a result, we conclude that the protection of the public requires that respondent be disbarred from the practice of law in the State of California.

V. Recommendation

We recommend that respondent Anthony J. Allegrino II be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys licensed to practice.

We further recommend that respondent make restitution within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund (CSF) payment, whichever is later (Rules Proc. of State Bar, rule 291), to Muhamat Kabashi in the amount of $41,500 plus 10% interest per annum from May 15, 2004 (or to the CSF to the extent of any payment from the fund to Muhamat Kabashi, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution to the CSF is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in section 6140.7 of that code and as a money judgment.

We further recommend that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (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.

VI. Order of Inactive Enrollment

Pursuant to Business and Professions code section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar, respondent is ordered enrolled inactive. The order of inactive enrollment is effective three days after service of this opinion.

REMKE, P. J.

We concur:

EPSTEIN, J.

WATAI, J.