

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 04-O-13652-RAP [04-O-14817];
)	06-O-10508; 06-O-14932 [07-O-
)	10555] 05-O-05007 [07-O-12757].
STEVEN GEOFFERY COHN)	
)	DECISION INCLUDING DISBARMENT
Member No. 133439,)	RECOMMENDATION AND
)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER
A Member of the State Bar.)	
)	
_____)	

I. Introduction

In this contested matter, respondent **STEVEN GEOFFERY COHN** is charged with 31 counts of misconduct in seven client matters. The court finds, by clear and convincing evidence, that respondent is culpable of 27 counts of misconduct. The State Bar of California is represented by Supervising Trial Counsel Kimberly G. Anderson. Respondent is represented by Edward O. Lear.

The court recommends that respondent be disbarred.

II. Significant Procedural History

The court consolidated the matters for all purposes by orders filed September 11, 2007 and September 29, 2008.

Although the court referred respondent for evaluation for participation in the Alternate Discipline Program, he was terminated therefrom by order filed on July 26, 2007.

Trial was held on May 4, 5, 6, 7, and 11, 2009. The following witnesses testified at trial: respondent, Cindy Chou, Wayne Myers, Melvin Lebe, Barbara Flanagan, Frankie Clark, Linda Pagter, Ereck Schwartz, Sandra Davidson, William Madigan, Liam Madigan, Jeff Bonelli, Esq., Lester Chon, M.D., Judy Cohn, Ph.D., and Murray Brown, M.D. At the conclusion of briefing, the matter was submitted for decision on July 24, 2009.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in California on May 3, 1988, and has been a member of the State Bar since that time.

B. Credibility Determinations

With respect to credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g., Evid. Code section 780 [lists of factors to consider in determining credibility].) Except as otherwise noted, the court finds the testimony of the witnesses to be credible, except for the testimony of respondent, which lacked candor.

C. Stipulated Facts

The parties stipulated that the following facts are true:

CASE NO. 04-O-13652 (The Cindy Chou Matter):

On April 20, 1998, Cindy Chou (Chou) met with and hired respondent to represent her in relation to pursuing a personal injury claim against a third party based on an accident that had

occurred during her employment with the United States Department of Labor (DOL). During that meeting, Chou told respondent that the Office of Workers' Compensation Programs in the DOL had an interest in any potential settlement.

On June 22, 1999, the DOL mailed a letter to respondent informing him of the DOL's interest in any potential settlement. The June 22, 1999 letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. Respondent received the June 22, 1999 letter.

On July 9, 1999, the DOL mailed a letter to respondent informing him of the DOL's interest in any potential settlement and that respondent should contact the office at least two weeks prior to any settlement in order to obtain a final lien figure. The July 9, 1999, letter was properly mailed to respondent via certified mail – return receipt requested. On July 12, 1999, respondent received the letter.

On September 1, 1999, the DOL mailed a letter to respondent asking him to contact it as he neared the settlement conference. The September 1, 1999, letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business.

In August 2000, Chou agreed to settle the personal injury matter for \$2,501. Respondent did not inform the DOL about the settlement.

In September 2000, respondent received a settlement draft from State Farm Mutual Automobile Insurance Company in the amount of \$2,501 made payable to Chou, respondent, and the DOL.

On May 17, 2004, the DOL mailed a letter to respondent notifying him that it was requesting immediate suspension of Chou's benefits and forfeiture of future benefits for Chou under the Federal Employees' Claims Act because of respondent's failure to cooperate, as

evidenced by his refusal to respond to three previous letters. The letter also stated that the DOL recommended that further action be taken against respondent and Chou to collect its lien and interest, which began to accrue as of September 20, 2003. Although respondent received this letter, he failed to respond to it in any manner.

On June 10, 2004, Chou mailed a letter to respondent enclosing another copy of a Statement of Recovery and demanding that respondent complete it. The June 10, 2004, letter was properly mailed to respondent via certified mail – return receipt requested. Respondent received this letter on or about June 14, 2004 but failed to respond to Chou in any manner and failed to provide a completed Statement of Recovery form to the DOL.

On November 7, 2005, respondent mailed a letter to State Farm Insurance authorizing it to reissue the \$2,501 settlement draft to Chou without respondent's name on it.

On November 16, 2005, respondent provided the DOL with a completed Statement of Recovery form on Chou's behalf.

Additional Findings of Fact and Legal Conclusions

Both Chou and her husband, Wayne Meyers, felt it important to hire an attorney who would handle her federal worker's compensation lien from the Department of Labor and respondent had agreed to do so. The court finds the testimony of Chou and Meyers to be credible. Respondent's testimony that he made no such promise is not credible. The court finds that respondent was hired by Chou to handle her worker's compensation lien. Respondent was aware of the lien from correspondence from the DOL and the settlement check also listed DOL. Respondent never deposited the settlement draft into his CTA, or any account, or notified Chou of its receipt or that the check was never negotiated. Only after the State Bar became involved the matter in November 2007 did respondent finally take any action regarding the settlement check and the DOL lien.

Count One – Failure to Perform with Competence – Rule 3-110(A), Rules of Professional Conduct¹

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not ascertaining the amount of DOL's lien prior to settling the case; not cashing or depositing the settlement draft and not timely providing a completed Statement of Recovery form to DOL, respondent intentionally, recklessly or repeatedly did not perform competently in violation of rule 3-110(A).

Count Two – Failure to Communicate – Business and Professions Code Section 6068, subdivision (m)²

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

By not informing Chou that he had not cashed or deposited the settlement draft; not informing her of the receipt and content of DOL's letters; and not informing Chou that he had not provided a completed Statement of Recovery form to DOL, respondent failed to keep his client reasonably informed of significant developments in violation of section 6068, subdivision (m).

CASE NO. 04-O-14817 (The Flanagan Matter):

On January 24, 2001, Barbara Flanagan (Flanagan) hired respondent to represent her and her husband, Michael Flanagan (Michael), in a personal injury matter. Respondent, Flanagan and Michael agreed that respondent would be compensated by a contingency fee of 40% of any recovery.

¹ Future references to rule(s) are to this source.

² Future references to section(s) are to this source.

On April 19, 2004, respondent appeared with Flanagan and Michael at a settlement conference. At the conclusion of the conference, Flanagan and Michael agreed to settle the personal injury matter with the City of Palm Springs for \$40,000.

On April 23, 2004, the City of Palm Springs issued a settlement draft in the amount of \$20,000 made payable to Flanagan, Michael and respondent.

On April 27, 2004, St. Paul Fire and Marine Insurance Company issued a settlement draft in the amount of \$20,000 made payable to Flanagan Michael, and respondent.

On May 12, 2004, respondent deposited the two settlement drafts totaling \$40,000 into his client trust account at First Commerce Bank (CTA).

On July 2, 2004, Michael telephoned respondent's office and left a voice mail message requesting the status of the settlement funds. Although he received the message, respondent failed to respond in any manner.

On July 6, 2004, Michael telephoned respondent's cell phone and left a voice mail message requesting the status of the settlement. Although he received the message, respondent failed to respond in any manner.

On July 9, 2004, Flanagan telephoned respondent's office and spoke with his secretary who told Flanagan that the check from the City of Palm Springs had arrived the previous week and was on respondent's desk.

On August 4, 2004, Flanagan's brother, Melvin Lebe (Lebe), a retired attorney, mailed a letter to respondent on Flanagan's behalf demanding that respondent provide Flanagan with her settlement proceeds, the amount promised by respondent to compensate Flanagan for her drive to an arbitration hearing which respondent had failed to inform her had been cancelled and a written account of the settlement proceeds specifying all deductions. Respondent received the August 4, 2004 letter.

On August 12, 2004, Lebe spoke with respondent who offered a variety of excuses why the settlement funds had not yet been distributed and promised to send Flanagan a letter by August 17, 2004 setting forth proposed disbursements.

On August 26, 2004, respondent informed GEHA, Flanagan's healthcare provider, that he was representing Flanagan and requested a breakdown of all amounts paid on Flanagan's behalf.

On September 1, 2004, respondent sent a letter to Medicare to attempt to determine what amount it had paid out on Flanagan's behalf and the amount it would accept in satisfaction of its lien.

In September 2004, respondent mailed Flanagan a letter enclosing an estimated itemization of costs incurred in the personal injury matter. The itemization stated that GEHA was owed \$3,723.63 and that respondent estimated that United Government Services of California (Medicare) was owed at least \$1,000.

On September 30, 2004, respondent mailed a letter to the Medicare benefits coordinator for Flanagan again asking for the amount paid out on her claim and the amount Medicare would take to satisfy its lien.

On October 21, 2004, Flanagan mailed respondent a letter questioning his handling of the matter and questioning the costs amounts set forth on the estimated expense itemization. Respondent received her letter.

On November 17, 2004, Flanagan mailed respondent a letter asking that he provide her with the uncontested \$12,406.27 in settlement funds. Respondent received her letter.

As of July 19, 2004, after subtracting respondent's contingency fee and any costs from Flanagan's settlement funds, respondent was required to maintain at least \$12,406.27 in his CTA for Flanagan. (The parties disagree as to what other amount respondent was required to maintain in trust, but the parties do agree that respondent was required to maintain at least \$12,406.27 in trust that was to be paid to Flanagan.)

Between on or about July 19, 2004 and August 26, 2004, respondent failed to maintain \$12,406.27 in his CTA, as follows:

DATE	BALANCE
7/31/04	\$4,606.57
8/06/04	\$1,684.99
8/20/04	\$1,192.15

Although respondent had failed to make disbursements to and on behalf of Flanagan between on or about September 8, 2004 and September 30, 2004, the balance in respondent's CTA fell below the \$12,406.27 on numerous dates, including, but not limited to, the following:

DATE	BALANCE
9/23/04	\$4,847.15
9/30/04	\$847.15

On September 26, 2005, respondent readjusted the amount of his costs and disbursed \$17,694.58 to Flanagan from his client trust account.

On September 26, 2005, pursuant to an agreement with GEHA, respondent paid GEHA \$2,400 from his client trust account as payment for Flanagan's outstanding medical lien.

As of July 8, 2004, respondent had failed to provide documentation to the Office of Certification of the State Bar of California (Office of Certification) showing that he had complied with the minimum continuing legal education (MCLE) rules and regulations for the compliance period ending on January 31, 2004.

As a result, on July 15, 2004, the Office of Certification wrote respondent informing him that he would be enrolled as an inactive member if he failed to comply with MCLE requirements by September 15, 2004. The July 15, 2004 letter was properly mailed to respondent at his official State Bar membership records address. Respondent received the July 15, 2004, letter.

On August 6, 2004, the Office of Certification wrote respondent again informing him that he would be enrolled as "not entitled" to practice law if he failed to comply with MCLE requirements by September 15, 2004. The August 6, 2004 letter also informed respondent that once placed on "not entitled" status, he would have to be reinstated from that status before he could practice law. The August 6, 2004 letter was properly mailed to respondent at his official State Bar membership records address, via certified mail – return receipt requested. On August 10, 2004, respondent's office received the August 6, 2004 letter.

On September 16, 2004, respondent was placed on administrative inactive status with the State Bar of California.

On September 23, 2004, the Office of Certification wrote respondent notifying him that he had been enrolled as “not entitled” effective September 16, 2004. The September 23, 2004 letter informed respondent that as of that date, he was not eligible to practice law and he would not be able to practice law until he had been reinstated to active status. The September 23, 2004 letter was properly mailed to respondent’s State Bar membership address.

On September 29, 2004, while respondent was ineligible to practice law, respondent mailed a letter to the Intake Department of the State Bar of California on his business letterhead which indicated that he was a law corporation.

On September 30, 2004, respondent mailed a letter to the Medicare benefits coordinator on behalf of Flanagan asking for the amount paid out on her claim and the amount it would take to satisfy Medicare’s lien. Respondent’s letterhead indicated that he was a law corporation.

Additional Findings of Fact and Legal Conclusions

As of July 2004, respondent was required to maintain approximately \$24,000 in settlement funds in the Flanagan matter in his CTA, less costs and expenses already paid. Respondent has no client ledger and he was unable to say what expenses were paid from his CTA on behalf of Flanagan. However, respondent was required to hold at least the following amounts in his CTA on behalf of Flanagan: \$12,406.27 for Flanagan; \$1,000 for Medicare; and \$3,723.63 for GEHA, a total of \$17,129.90. As of September 30, 2004, the balance in respondent’s CTA was \$847.15. Respondent cannot account for the whereabouts of the remaining funds. Accordingly, respondent is culpable of failing to maintain client funds in his trust account and misappropriation of client funds in the amount of \$16,282.75.

Respondent failed to inform his clients that he received the two \$20,000 settlement checks or that he deposited the two checks into his CTA; failed to timely pay his client’s medical liens; and failed to promptly respond to client inquiries.

Respondent's testimony concerning his inactive enrollment for failing to comply with his MCLE requirements was not credible. At first, respondent testified he did not open his mail from the State Bar from July to October 2004, but later testified that he opened mail from the State Bar's Office of the Chief Trial Counsel but not mail from the State Bar's Office of Certification. Respondent intentionally or acting with gross negligence, held himself out as entitled to practice law while he was not an active member of the State Bar.

Count Three – Failure to Maintain Client Funds in Trust Account – Rule 4-100(A)

Rule 4-100(A) requires, in relevant part, that an attorney place all funds held for the benefit of clients, including advances for costs and expenses, in a client trust account. There is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining \$16,282.75 of client funds in the trust account.

Count Four – Misappropriation – Section 6106

Section 6106 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 relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by misappropriating \$16,282.75 in client funds. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

Count Five – Failure to Perform With Competence – Rule 3-110(A)

The court finds that there is clear and convincing evidence that respondent wilfully failed to perform with competence by failing to promptly pay Flanagan's medical liens and failing to respond to repeated client inquiries, in violation of rule 3-110(A).

Count Six – Unauthorized Practice of Law – Section 6068, subdivision (a)

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By mailing letters to the State Bar and to Medicare on letterhead that described him as a law corporation and by sending Medicare a letter on Flanagan's behalf while he was not entitled to practice law, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

Count Seven – Moral Turpitude – Section 6106

There is not clear and convincing evidence that respondent violated section 6106 by misrepresenting to the State Bar and to Medicare that he was entitled to practice law. This charge is duplicative of count six in which respondent was found culpable of violating section 6068, subdivision (a). Accordingly, this count is dismissed with prejudice.

CASE NO. 06-O-10508 (The Schwartz Matter):

On May 1, 2000, respondent and Ereck Schwartz (Schwartz) entered into a contingent-fee agreement whereby respondent agreed to represent Schwartz in a personal injury dog bite case that had occurred on November 29, 1999. Schwartz's minor son, Peter, was present during the incident but was not physically injured.

On November 21, 2000, respondent filed a complaint on behalf of Schwartz and Peter. (*Ereck Schwartz et al. v. David Whyte*, Orange County Superior Court, case no. 00CC14068.)

On September 13, 2001, Kaiser Permanente (Kaiser) notified respondent of its third-party lien.

On November 5, 2001, the litigation was transferred from Orange County to the Van Nuys Branch of the Los Angeles Superior Court and was given a new case number, 02E04466.

On January 15, 2003, Kaiser sent respondent a reminder notice about its outstanding lien.

On April 14, 2004, respondent filed a notice of settlement in case number 02E04466. Schwartz was in Mexico at the time of the settlement conference and was unavailable for settlement approval.

On April 28, 2004, a settlement check in the amount of \$8,000.00 was issued by Farmers Insurance to respondent and Schwartz. On this same date, another settlement check was issued to respondent and Peter in the amount of \$1,000.00. Respondent received the Farmer's settlement checks on or about April 28, 2004.

On May 11, 2004, respondent sent a letter to Schwartz and Peter asking them to sign the releases proposed by Farmers Insurance.

On May 18, 2004, Schwartz and Peter (who was now an adult) both signed the releases and returned them to respondent.

Schwartz employed attorney Steve Mazin to contact respondent regarding Schwartz's settlement funds and accounting. On October 25, 2004, Mazin sent a letter to respondent at his official membership records address.

Additional Findings of Fact and Legal Conclusions

Although the NDC in this matter alleges that respondent failed to obtain his clients' approval before settling the matter, Schwartz testified that she did approve the settlement, although she was not pleased with it. Respondent deposited the two settlement checks into his CTA on May 28, 2004.

Mazin sent a second letter to respondent on November 12, 2004. Respondent failed to respond to both letters. Respondent claims to have worked out an agreement with Mazin

concerning the Schwartz funds and an accounting, but this could not be corroborated since Mazin is now deceased.

Schwartz sent a letter to respondent on February 22, 2006, requesting an accounting and the distribution of the funds in her matter. Respondent failed to respond to this communication. Respondent also failed to provide an accounting or distribute the funds. Respondent claims that there were no funds remaining to be distributed to Schwartz and that he could not distribute the funds due to a lien on the recovery from Kaiser. The lien however was not valid in February 2006. According to respondent there were no funds to distribute to Schwartz after all fees, costs, and expenses were totaled.

Respondent designated his father, Dr. Lester Cohn, as an expert witness in the Schwartz matter. Although required to do so, respondent did not disclose to Schwartz in writing his personal relationship to Dr. Cohn. Respondent testified that he notified Schwartz orally of the designation of Dr. Cohn as an expert witness. He also noted that, although he designated his father as an expert witness in the Schwartz matter, he did not have to pay him for his services because his father was lending him money. Respondent was required to inform his client in writing of this financial relationship with the expert witness designated in her case.

Count One – Failure to Perform With Competence – Rule 3-110(A)

There is not clear and convincing evidence that respondent wilfully violated rule 3-110(A). There is no indication that the clients' matter was not completed other than accounting for and distributing the settlement funds. Those events are addressed below in counts two and three. Accordingly, this count is dismissed with prejudice.

Count Two – Failure to Render Accounts of a Client – Rule 4-100(B)(3)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing Schwartz with an accounting of the settlement funds, Respondent wilfully violated rule 4-100(B)(3).

Count Three – Failure to Pay Client Funds Promptly – Rule 4-100(B)(4)

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

By not distributing the clients' settlement funds as requested in the Schwartz matter, respondent wilfully violated rule 4-100(B)(4).

Count Four – Conflict – Relationship With A Party or Witness – Rule 3-310(B)(1)

Rule 3-310(B)(1) prohibits an attorney from accepting or continuing representation of a client without providing written disclosure to the client where the attorney has a legal, business, financial, professional or personal relationship with a party or witness in the same matter.

The court finds that there is clear and convincing evidence that respondent failed to give written disclosure to the client that respondent had a personal relationship and a financial relationship with Dr. Lester Cohn, his father, who was the designated expert witness in the client's matter, in wilful violation of rule 3-310(B)(1).

CASE NO. 06-O-14392 (The Clark Matter):

In 1995, Frankie Sue Clark (Mrs. Clark) sustained injuries while under the medical care of Dr. Harvey A. Birsner (Dr. Birsner) and Dr. Abdallah Farrukh (Dr. Farrukh).

On August 30, 1995, Mrs. Clark and Dr. Farrukh's group, Antelope Valley Neuroscience Medical Group, entered into a Physician-Patient Arbitration Agreement.

On May 2, 1996, Mrs. Clark and her husband, Allen Clark (Mr. Clark), retained respondent on a contingency-fee basis to represent them in a medical malpractice action against Dr. Birsner and Dr. Farrukh. A written retainer agreement was executed that same day.

On November 8, 1996, respondent filed a complaint for medical malpractice on behalf of Mrs. Clark in the Los Angeles County Superior Court. (*Frankie Sue Clark vs. Harvey A. Birsner, M.D., et. al.*, case no. MC 008242 (first medical malpractice action)).

On December 12, 1996, respondent filed a second complaint for medical malpractice on behalf of Mr. and Mrs. Clark in the Los Angeles County Superior Court. (*Frankie Sue Clark and Allen C. Clark vs. Harvey A. Birsner, M.D., et. al.*, case no. MC 008304 (second medical malpractice action)).

On September 17, 1997, respondent filed a Notice of Claim and Demand for Arbitration (arbitration matter) on behalf of Mrs. Clark.

On November 3, 1997, Don Fesler (Mr. Fesler) of La Follette, Johnson, De Haas, Fesler & Ames, counsel for defendants Dr. Birsner, Dr. Farrukh, and Antelope Valley Neuroscience Medical Group in the arbitration matter, served an answer to the first medical malpractice action in response to plaintiff's demand for arbitration. Along with the answer, Mr. Fesler sent a letter to respondent advising him that he represented Dr. Birsner, Dr. Farrukh and Antelope Valley Neuroscience Medical Group and that he had received and accepted respondent's Demand for Arbitration in the first medical malpractice action. In the letter, Mr. Fesler also informed respondent that he had selected Ted Hammond (Mr. Hammond) as their arbitrator. The answer (with the letter enclosed) was properly served on respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record (which was not his membership records address for State Bar purposes). The answer and letter were not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the answer and Mr. Fesler's November 3, 1997 letter.

On November 3, 1997, the defendants in the arbitration matter propounded their First and Second Set of Interrogatories, their First Set of Requests for Admissions, and their First Set of Demands for Production of Documents for Inspection and Copying. The discovery was properly served on respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to Respondent at his address of record. The discovery was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' discovery request. Mrs. Clark's responses were due on or about December 8, 1997. Respondent failed to request for an extension and failed to timely respond to the defendants' discovery requests on behalf of Mrs. Clark.

On November 5, 1997, respondent sent a letter to Mrs. Clark via regular mail enclosing copies of the defendants' discovery documents and requesting that she respond to them promptly. In the letter, respondent advised Mrs. Clark that he had to prepare the responses to defendants' discovery request within 10 days from the date of his letter, i.e. November 15, 1997, and that failure to respond to discovery could result in her case being dismissed.

On December 16, 1997, Mr. Fesler, counsel for defendants in the arbitration matter, wrote a letter to respondent advising him that Mrs. Clark's discovery responses were past due. Mr. Fesler demanded that respondent serve full and complete answers by December 31, 1997 or else he would file an appropriate court motion, including a request for sanctions. The letter was properly mailed to respondent via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to respondent at his address of record. The letter was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received Mr. Fesler's letter.

On March 25, 1998, respondent served Mrs. Clark's responses to defendants' First and Second Sets of Interrogatories, defendants' First Set of Requests for Admissions, and defendants' First Set of Demands for Production of Documents.

On August 20, 1998, the defendants in the arbitration matter propounded their Specialized Damage Interrogatories, Set 3 and their Specialized Interrogatories, Set 4. The

discovery was properly served on respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The discovery was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' discovery request. Mrs. Clark's responses were due on or about September 24, 1998. Respondent failed to request for an extension and failed to timely respond to the defendants' discovery requests on behalf of Mrs. Clark.

On October 22, 1998, the defendants in the arbitration matter propounded their Second Set of Demands for Production of Documents for Inspection and Copying. The discovery was properly served on respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The discovery was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' discovery request. Mrs. Clark's responses were due on or about November 26, 1998. Respondent failed to request for an extension and failed to timely respond to the defendants' discovery requests on behalf of Mrs. Clark.

On December 28, 1998, on its own motion, the court in the second medical malpractice action issued an Order to Show Cause for Failure to Prosecute the Case (OSC) and set the hearing on February 26, 1999. The court properly served respondent with notice of the February 26, 1999 hearing. The notice was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the notice of the OSC hearing.

On January 15, 1999, respondent served Mrs. Clark's responses to defendants' Specialized Damage Interrogatories, Set 3 and to defendants' Specialized Interrogatories, Set 4.

On February 26, 1999, the court in the second malpractice action held the OSC hearing. Respondent failed to appear at the hearing. The court dismissed the second medical malpractice action pursuant to Code of Civil Procedure section 583.410. The court properly served respondent with notice of the dismissal on or about March 2, 1999. The notice of dismissal was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the notice of dismissal. Respondent did not take any action to vacate the dismissal of

the second medical malpractice action or any other action to reinstate the case on behalf of the Clarks.

On July 14, 1999, on its own motion, the court in the first medical malpractice action issued an Order to Show Cause for Failure to Prosecute the Case (OSC) and set the hearing on September 24, 1999. The court properly served respondent with notice of the September 24, 1999 hearing. The notice was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the notice of the OSC hearing.

On September 24, 1999, the court in the first medical malpractice action held the OSC hearing. Respondent did not appear at the hearing. The court dismissed the first medical malpractice action pursuant to Code of Civil Procedure section 583.410. The court properly served respondent with notice of the dismissal on or about September 27, 1999. The notice of dismissal was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the notice of dismissal.

On November 16, 1999, Michael Lamb (Mr. Lamb) of Schmid & Voiles substituted in as attorney for defendant Dr. Farrukh in the arbitration matter.

On August 8, 2000, Mr. Fesler, counsel for defendants Dr. Birsner and Antelope Valley Neuroscience Medical Group in the arbitration matter, propounded their Third Set of Demands for Production of Documents for Inspection and Copying. The discovery was properly served on Respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The discovery was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' discovery request. Mrs. Clark's responses were due on or about September 12, 2000. Respondent failed to request for an extension and failed to timely respond to the defendants' discovery requests on behalf of Mrs. Clark.

On July 16, 2001, Troy Roe, Esq. (Mr. Roe) was selected as the neutral arbitrator in the arbitration matter.

On November 25, 2002, Kathleen D. Marrero (Ms. Marrero) of Schmid & Voiles, counsel for defendant Dr. Farrukh, filed a Notice of Motion and Motion for Order Dismissing the Arbitration as to Respondent Abdallah Farrukh, M.D., Only, for Claimant's Failure to Prosecute with Reasonable Diligence (Motion to Dismiss) in the arbitration matter. The Motion to Dismiss was properly served upon respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The Motion to Dismiss was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' Motion to Dismiss.

On March 13, 2003, Mr. Fesler, counsel for defendants Dr. Birsner and Antelope Valley Neuroscience Medical Group, filed a Notice of Joinder to Co-Respondent Abdallah Farrukh, M.D.'s Motion to Dismiss (Joinder Motion) in the arbitration matter. The Joinder Motion was properly served upon respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The Joinder Motion was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' Joinder Motion.

On April 11, 2003, respondent filed an Opposition to the Motion to Dismiss on behalf of Mrs. Clark via facsimile transmission in the arbitration matter.

On April 14, 2003, Ms. Marrero, counsel for defendant Dr. Farrukh, filed a reply brief in support of the Motion to Dismiss in the arbitration matter. The reply brief was properly served upon respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The reply brief was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received defendant Dr. Farrukh's reply brief.

On September 15, 2003, the defendants Dr. Birsner and Antelope Valley Neuroscience Medical Group in the arbitration matter, propounded their Supplemental Interrogatories to Claimant to Elicit Later Acquired Information (Set 7) and their Fourth Set of Demands for Production of Documents for Inspection and Copying. The discovery was properly served on

Respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The discovery was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' discovery request. Mrs. Clark's responses were due on or about October 20, 2003. Respondent failed to request for an extension and failed to timely respond to the defendants' discovery requests on behalf of Mrs. Clark.

On November 25, 2003, attorney David Reinard (Mr. Reinard), counsel for Dr. Birsner and Antelope Valley Neuroscience Medical Group in the arbitration matter, wrote a letter to respondent advising him that Mrs. Clark's discovery responses were past due. Defendants' counsel requested that respondent serve complete answers by December 5, 2003 before the upcoming arbitration. The letter was properly mailed to respondent via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to Respondent at his address of record. The letter was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received defendants' counsel's letter.

On December 12, 2003, Mr. Reinard, counsel for Dr. Birsner and Antelope Valley Neuroscience Medical Group in the arbitration matter, wrote a letter to the arbitrator requesting him to order respondent to respond to the discovery requests that were propounded on September 15, 2003. A copy of defendants' counsel's letter was properly mailed to respondent via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to Respondent at his address of record. The letter was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent failed to respond to the letter and failed to serve discovery responses on behalf of Mrs. Clark to defendants' counsel.

On December 30, 2003, the arbitrator wrote a letter addressed to all parties stating that he had chosen to treat defendants' counsel's December 12, 2003 letter as a motion to compel answers to interrogatories, to which respondent failed to respond. In his letter, the arbitrator ordered respondent to provide full, written, verified responses to the interrogatories no later than January 15, 2004. The letter was not returned as undeliverable or for any other reason by the

U.S. Postal Service. Respondent failed to respond to the letter and failed to serve discovery responses on behalf of Mrs. Clark to defendants' counsel by January 15, 2004.

On January 20, 2004, Mr. Reinard, counsel for Dr. Birsner and Antelope Valley Neuroscience Medical Group, filed a Notice of Motion and Motion to Dismiss for Failure to Comply with Order to Provide Discovery Requests (Second Motion to Dismiss) in the arbitration matter. The Second Motion to Dismiss was properly served upon respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The Second Motion to Dismiss was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the defendants' Second Motion to Dismiss.

On January 21, 2004, Mr. Lamb, counsel for Dr. Farrukh, filed a Notice of Joinder and Joinder in Co-Defendants' Second Motion to Dismiss (Second Joinder Motion) in the arbitration matter. The Second Joinder Motion was properly served upon respondent by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The Second Joinder Motion was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received defendant Dr. Farrukh's Second Joinder Motion.

On February 13, 2004, the Second Motion to Dismiss in the arbitration of the first medical malpractice action was heard and granted. The Order for Dismissal was properly served on respondent on or about March 1, 2004 by mail via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his address of record. The Order for Dismissal was not returned as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the Order for Dismissal. Respondent did not inform Mr. and Mrs. Clark that the arbitrator had dismissed the arbitration of the first medical malpractice action.

On May 26, 2006, at the request of her mother, Mrs. Clark's daughter, Sara Mullin (Ms. Mullin), contacted counsel for Dr. Birsner and Antelope Valley Neuroscience Medical Group to

verify whether her mother's case was still active. She learned through counsel that the case had been closed since February 27, 2004 and that there was no arbitration pending.

On May 26, 2006, at the request of her mother, Ms. Mullin contacted counsel for Dr. Farrukh to verify whether her mother's case was still active. She learned from counsel that the case had been closed since April 15, 2004 and that there was no arbitration pending.

On June 3, 2006, Mr. and Mrs. Clark retained attorney Steven Glickman (Mr. Glickman) to represent them in a legal malpractice action against respondent.

On June 19, 2006, Mr. and Mrs. Clark wrote a letter to respondent requesting that he immediately send them copies of the original retainer agreement, copies of their case file, and their medical records. The letter was properly mailed to respondent via the U.S. Postal Service, certified mail, return receipt requested, postage prepaid in a sealed envelope properly addressed to his membership records address. The letter was not returned to Mr. and Mrs. Clark by the U.S. Postal Service as undeliverable or for any other reason. Respondent received the letter, but failed to respond to their letter.

On September 27, 2006, the State Bar opened an investigation, case no. 06-O-14392, pursuant to a complaint filed by Mr. and Mrs. Clark (Clark matter).

On October 18, 2006, an investigator for the State Bar wrote a letter to respondent regarding the Clark matter. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. The letter was properly mailed to Respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned to the State Bar as undeliverable or for any other reason. Respondent received the investigator's letter.

The investigator's October 18, 2006 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Clark matter. Respondent failed to provide a response to the letter or otherwise communicate with the investigator concerning the Clark matter.

On November 3, 2006, an investigator for the State Bar wrote another letter to respondent regarding the Clark matter. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned to the State Bar as undeliverable or for any other reason. Respondent received the investigator's second letter.

The investigator's November 3, 2006 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Clark matter. Respondent failed to provide a response to the letter or otherwise communicate with the investigator concerning the Clark matter.

On November 17, 2006, an investigator for the State Bar wrote a third letter to respondent regarding the Clark matter. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned to the State Bar as undeliverable or for any other reason. Respondent received the investigator's third letter.

The investigator's November 17, 2006 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Clark matter. Respondent failed to provide a response to the letter or otherwise communicate with the investigator concerning the Clark matter.

On February 22, 2007, respondent sent Mr. and Mrs. Clark's file to the State Bar without any explanation or a written response to the investigator's letters.

Additional Finding of Facts and Conclusions of Law

Frankie Sue Clark and Allen Clark met with respondent at his office on March 6, 2004, to prepare for the arbitration that they thought was scheduled for March 16, 2006. Frankie Sue Clark recalls speaking with respondent at least three times between February and March 2004 and was under the impression from respondent that her matter was still pending. Allen Clark

recalls numerous telephone conversations with respondent during the time period and also believed the case was still pending. Allen Clark recalls respondent telling him that the March 15th arbitration had been continued to March 17th and later being told by respondent that it had been postponed. Frankie Sue Clark spoke with respondent the day before her daughter discovered that her case had been dismissed. During the conversation, she asked respondent to fax to her the case number of the case and the next date for arbitration because she was starting to become suspicious.

Count One – Failure to Perform With Competence – Rule 3-110(A)

The court finds that there is clear and convincing evidence that respondent wilfully failed to perform with competence by failing to timely answer discovery requests; failing to comply with arbitrator's order to provide discovery responses; failing to timely file opposition to defendant's motion to dismiss; failing to prosecute the first medical malpractice action; failing to prosecute the second medical malpractice action; by failing to appear at two OSC hearings in violation of rule 3-110(A).

Count Two – Failure to Communicate – Section 6068, subdivision (m)

The court finds that there is clear and convincing evidence that respondent wilfully failed to inform his client of a significant development by failing to inform the Clarks that the first and second medical malpractice cases were dismissed and the arbitrator had dismissed the arbitration matter; in violation of section 6068, subdivision (m).

Count Three – Failure to Release Client File – Rule 3-700(D)(1)

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By not releasing the file to the client for nine months after it was requested, respondent wilfully violated rule 3-700(D)(1).

Count Four – Misrepresentation to Client – Section 6106

The court finds that there is clear and convincing evidence that respondent committed an act or acts of moral turpitude, dishonesty or corruption by misrepresenting to his clients the status of their matter for two years and by concealing the dismissals of the first and second medical malpractice actions and the dismissal of the arbitration action in violation of section 6106.

Count Five – Failure to Cooperate in State Bar Investigation – Section 6068, subdivision (i)

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By failing to respond in writing to three letters sent by the State Bar to respondent concerning allegations of misconduct in the Clark matter, respondent wilfully violated of 6068, subdivision (i).

CASE NO. 07-O-10555 (The Madigan Matter):

At all times relevant herein, respondent maintained a client trust account at First Private Bank & Trust (client trust account).

On April 16, 2001, Liam D. Madigan (Mr. Madigan), a snowboard instructor at Mammoth Mountain Ski Area (MMSA), was injured while in the course and scope of his employment with MMSA by a customer of the ski resort, minor David Graham. The minor's parents are Geoffrey and Laura Graham (Grahams).

On November 14, 2001, Mr. Madigan retained respondent to represent him in a personal injury action against the Grahams.

On April 4, 2002, Ronald Briggs (Mr. Briggs), attorney for MMSA, filed a civil complaint in the Mono County Superior Court, in the matter entitled, *Mammoth Mountain Ski Area vs. David Graham, et. al.*, case no. CV 14447, to recover the workers' compensation benefits that were paid to Mr. Madigan as a result of the April 16, 2001 injury (workers' compensation benefits action).

On April 12, 2002, respondent filed a civil complaint on behalf of Mr. Madigan in the Los Angeles County Superior Court, in the matter entitled, *Liam Madigan vs. David Graham, et. al.*, case no. SC 71698 (personal injury action).

In October 2003, the personal injury action was transferred to Mono County Superior Court and was consolidated with the workers' compensation benefits action.

On May 18, 2006, respondent appeared with Mr. Madigan at the mandatory settlement conference in the consolidated action.

On May 30, 2006, respondent received a settlement draft in the amount of \$60,000.00 from the Travelers Indemnity Company as settlement of Mr. Madigan's personal injury action. The check was made payable to respondent and Liam Madigan.

On June 1, 2006, Mr. Madigan signed the settlement release regarding his personal injury action and returned it to respondent.

On June 6, 2006, respondent deposited the \$60,000.00 settlement draft into his client trust account.

On June 9, 2006, the balance in respondent's client trust account fell to \$29,244.53, which was below the amount respondent was required to maintain on behalf of Mr. Madigan.

On June 19, 2006, respondent dismissed the personal injury action with prejudice on behalf of Mr. Madigan.

On June 26, 2006, the balance in respondent's client trust account fell to \$15,494.53.

On June 30, 2006, the balance in respondent's client trust account fell to \$8,358.88, which was below the amount respondent was required to maintain on behalf of Mr. Madigan.

In early November 2006, respondent provided Mr. Madigan with an income/expense statement, dated October 9, 2006. In the income/expense statement, respondent claimed that his attorney fees were based on the gross settlement of \$100,000.00, which included both the settlement of Mr. Madigan's personal injury action and MMSA's workers' compensation benefits action. In the income/expense statement, respondent calculated that he should be awarded \$40,000.00 in attorney fees and that the expenses totaled \$5,947.88, leaving Mr. Madigan with \$14,052.12 as his share of the settlement funds.

On November 4, 2006, upon receipt of the expense itemization, Mr. Madigan sent a letter to respondent, disputing the amount that respondent proposed as his share of the settlement funds. In his letter, Mr. Madigan calculated that he was owed \$36,034.75 of the \$60,000.00 received as settlement of the personal injury action. Mr. Madigan calculated that Respondent's attorney fees amounted to \$18,017.37, which equaled one third of the settlement proceeds less expenses deducted. Mr. Madigan requested that respondent forward a check to him in the amount of \$36,034.75 if he agreed with the amount, and if he didn't agree with the amount, to contact Mr. Madigan's new attorney, John Jay (Mr. Jay), and to provide him with copies of proof of payment of the itemized expenses. The letter was sent to respondent's office. The letter was properly mailed to respondent via the U.S. Postal Service, first-class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Mr. Madigan as undeliverable or for any other reason by the U.S. Postal Service.

Respondent failed to respond to Mr. Madigan's November 4, 2006 letter. As a result, in early December 2006, Mr. Madigan resent the letter to respondent via certified mail, return receipt requested, postage prepaid in a sealed envelope addressed to respondent's office. On December 7, 2006, Mr. Madigan received a signed return receipt card, which acknowledged that Mr. Madigan's letter had been received by respondent's office.

Respondent failed to respond to Mr. Madigan's letter. As a result, on or about December 23, 2006, William Madigan (Mr. W. Madigan), Mr. Madigan's father, sent an e-mail to respondent, on behalf of his son, requesting that he immediately provide Mr. Madigan with a

copy of the settlement check, a copy of the trust account statement for his settlement funds, an accounting of all disbursements made, and a check in the amount of \$34,000.00. The e-mail was sent to respondent at the email listed on respondent's State Bar membership records.

On December 29, 2006, respondent contacted Mr. W. Madigan by phone and suggested that they meet to discuss how to resolve the disputed amount.

On December 30, 2006, Mr. W. Madigan sent an e-mail to respondent, on behalf of his son, informing respondent that he was unable to meet with him. In the e-mail, Mr. W. Madigan demanded that respondent provide Mr. Madigan with his portion of the settlement proceeds and an accounting of how the funds were distributed. Mr. W. Madigan demanded respondent to provide a proposed settlement amount by January 2, 2007.

On January 4, 2007, Mr. W. Madigan sent a letter to respondent, on behalf of his son, pursuant to a conversation that he had with respondent that same morning. In the letter, Mr. W. Madigan demanded that respondent provide a written response to Mr. Madigan's December 23, 2006 e-mail, a copy of the settlement check in the amount of \$60,000.00, a copy of respondent's trust account statement showing that the settlement funds were deposited and still remained in his client trust account and a written accounting of all disbursements made on behalf of Mr. Madigan. The letter was sent to respondent via certified mail, return receipt requested postage prepaid to respondent's office. On January 8, 2007, Mr. Madigan received a signed return receipt card, which acknowledged that Mr. Madigan's letter had been received by respondent's office.

On January 19, 2007, respondent sent an e-mail to Mr. W. Madigan in response to Mr. Madigan's November 4, 2006 letter. In the e-mail, respondent stated that he was entitled to 40% of the settlement proceeds, as opposed to one-third of the settlement proceeds, since he filed a lawsuit on behalf of Mr. Madigan. Respondent also stated that he should receive 40% of the \$100,000.00 (as opposed to the \$60,000.00) as his attorney fees. In the e-mail, respondent requested that Mr. W. Madigan meet with him to discuss a compromised settlement amount, and to discuss Mr. Madigan's concerns regarding the handling of his case.

On January 22, 2007, Mr. W. Madigan sent a letter to respondent, on behalf of his son, requesting that respondent immediately send a check, in the amount of \$14,053.00, the undisputed amount, to Mr. Madigan. In the letter, Mr. W. Madigan again requested respondent to provide a copy of the settlement check in the amount of \$60,000.00, a copy of respondent's trust account statement showing that the settlement funds were deposited and still remained in his client trust account, and a written accounting of all disbursements made on behalf of Mr. Madigan. The letter was sent to respondent via certified mail, return receipt requested postage prepaid to respondent's office. On January 25, 2007, Mr. W. Madigan received a signed return receipt card, which acknowledged that his letter had been received by respondent's office.

As of the date of the filing of the NDC in this matter (January 24, 2008), respondent had failed to provide an accounting to Mr. Madigan, or to Mr. Jay, explaining how he distributed the \$60,000.00 in settlement funds belonging to Mr. Madigan, despite their repeated requests.

On February 9, 2007, the State Bar opened an investigation, case no. 07-O-10555, pursuant to a complaint filed by Mr. Madigan's attorney, Mr. Jay, on behalf of Mr. Madigan (Madigan matter).

On March 22, 2007, an investigator for the State Bar wrote a letter to respondent regarding the Madigan matter. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned to the State Bar as undeliverable or for any other reason. Respondent receive the investigator's letter.

The investigator's March 22, 2007 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Madigan matter.

Respondent failed to provide a response to the letter or otherwise communicate with the investigator concerning the Madigan matter.

On August 7, 2007, an investigator for the State Bar wrote another letter to respondent regarding the Madigan matter. The letter was placed in a sealed envelope correctly addressed to respondent at his State Bar membership records address. The letter was properly mailed to respondent by first-class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The letter was not returned to the State Bar as undeliverable or for any other reason. Respondent received the investigator's second letter.

The investigator's August 7, 2007 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Madigan matter. Respondent failed to provide a response to the letter or otherwise communicate with the investigator concerning the Madigan matter.

Additional Findings of Fact and Legal Conclusions

According to the retainer, respondent was entitled to one-third of the all amounts received on behalf of Madigan if the case resolved by compromise or settlement and forty percent of all amounts received of respondent was required to file a lawsuit or claim for arbitration.

Mr. Briggs, attorney for MMSA, and the defendants appeared at the mandatory settlement conference.

Initially, respondent claimed a fee interest in the \$40,000 settlement received by MMSA. Subsequently, respondent withdrew his demand, but only after the client continuously protested to the additional fee demand.

After respondent deposited the \$60,000 settlement check into his CTA on June 6, 2006, he failed to disburse any of the settlement funds from his client trust account to Madigan or to any medical lien holder. As of this date, respondent was required to maintain at least

\$30,052.12 in settlement funds on behalf of Madigan. As of November 30, 2006, the balance in respondent's CTA was \$39.53. Respondent had not paid any funds to Madigan.

Respondent failed to respond to Mr. Madigan's December 23, 2006, e-mail.

Respondent failed to provide an accounting of the settlement funds to Madigan after receiving Mr. Madigan's December 30, 2006, e-mail.

On January 31, 2007, the balance in respondent's CTA was \$9.53, well below the amount respondent was required to maintain on behalf of Madigan.

On February 28, 2007, the balance in respondent's CTA was a negative \$5.47.

Respondent failed to inform Madigan that: on November 24, 2004, the Mono County Superior Court issued an order granting defendant's summary judgment motion and that a Notice of Entry of Summary Judgment was served on respondent on December 10, 2004; on January 31, 2005, Mr. Briggs, attorney for MMSA, and respondent filed a Notice of Appeal in the California Third Appellate District appealing the judgment after an order granting a summary judgment motion in his matter; on January 26, 2006, the California Third Appellate District ruled in his favor and reversed the judgment in favor of the defendants and remanded the case to Mono County Superior Court; did not inform his client that he had received the \$60,000 settlement check until five months after he received and deposited in his CTA; did not inform his client that any settlement would result in a credit to be taken for future medical by Mammoth Mountain's worker's compensation insurer until the day of the settlement conference; and did not inform his client that he had dismissed the personal injury claim with prejudice on June 19, 2006.

On March 7, 2007, the balance in respondent's CTA was zero.

On January 24, 2008, Respondent sent a \$40,000 cashier's check to Madigan which was not issued from his client trust account

Count Six – Failure to Maintain Client Funds in Trust Account – Rule 4-100(A)

The court finds that there is clear and convincing evidence that respondent failed to maintain client funds in a trust account by failing to maintain a balance of \$30,052.12 of Madigan's settlement funds in his CTA in wilful violation of rule 4-100(A).

Count Seven – Misappropriation – Section 6106

The court finds that there is clear and convincing evidence that respondent committed an act or acts of involving moral turpitude, dishonesty, or corruption by misappropriating \$30,052.12 of Madigan's settlement funds for his own use and purpose in wilful violation of section 6106.

Count Eight – Failure to Pay Client Funds Promptly – Rule 4-100(B)(4)

The court finds that there is clear and convincing evidence that respondent failed to promptly pay or deliver Madigan's settlement funds to Madigan despite repeated requests in wilful violation of rule 4-100(B)(4).

Count Nine – Failure to Render Accounts of Client Funds – Rule 4-100(B)(3)

The court finds that there is clear and convincing evidence that respondent failed to maintain complete records of all funds of a client and failed to render appropriate accounts regarding Madigan's settlement funds despite repeated requests to do so in wilful violation of rule 4-100(B)(3).

Count Ten – Failure to Communicate – Section 6068, subdivision (m)

The court finds that there is clear and convincing evidence that respondent wilfully failed to inform a client of significant development by failing to: inform his client that the court had issued an order granting defendant's summary judgment motion; that respondent had filed a Notice of Appeal in the California Third Appellate District; that respondent had received a

\$60,000 settlement check on behalf of his client; and that respondent had dismissed his client's personal injury suit with prejudice in wilful violation of section 6068, subdivision (m).

Count Eleven – Failure to Cooperate in a State Bar Investigation – Section 6068, subdivision (i)

The court finds that there is clear and convincing evidence that respondent failed to cooperate in a State Bar investigation by not responding in writing to two letters sent by the State Bar to respondent concerning allegations of misconduct in the Madigan matter in wilful violation of section 6068, subdivision (i).

CASE NO. 05-O-05007 (The Davidson Matter):

On or before January 21, 2003, Sandra Davidson employed respondent on a contingency fee basis to represent her in a medical malpractice action.

On January 21, 2003, Davidson sent a letter to respondent enclosing copies of medical records from Dr. Longjohn, as well as hospital records. In the letter, she advised that she was awaiting medical records from Dr. Shields and would fax them to respondent once she received them. Respondent received Davidson's letter and the medical and hospital records.

On January 24, 2003, respondent sent a letter to Davidson thanking her for selecting him as her attorney. With the letter, respondent enclosed various documents, including a retainer agreement, claim authorization forms, client information sheet, authorization forms to release records and verifications forms for Davidson to sign and return to him.

On January 28, 2003, Davidson signed the various documents, including the written retainer agreement, and returned them to respondent by mail. Respondent received the signed documents from Davidson.

From February 2003 to June 2004, Davidson had periodic communication with respondent regarding the status of her case.

On February 10, 2003, a claims specialist from the Doctors Company sent a letter to respondent acknowledging respondent's representation with regard to several of the potential defendants and requesting documentation of all aspects of Davidson's claim.

On April 3, 2003, a claims specialist from the Doctors Company sent another letter to respondent, again acknowledging respondent's representation and requesting documentation of all aspects of Davidson's claim.

On July 15, 2003, having received no further communication from respondent or Davidson since early February 2003, the Doctors Company closed its file on Davidson's claim.

On June 28, 2004, after her third attempt at contacting respondent by phone, Davidson spoke to respondent's secretary who informed her that a medical malpractice complaint had never been filed on her behalf.

In November 2005, Davidson filed a State Bar complaint against respondent alleging respondent's failure to perform and failure to advise her of significant events regarding her case. The State Bar contacted respondent, requesting his response to Davidson's allegations.

In response to the inquiry of the State Bar, respondent provided a letter, dated January 18, 2006 and enclosed various documents purportedly from Davidson's file. In his written response, respondent advised that he had had Davidson's medical records reviewed by his father, Dr. Lester Cohn. According to respondent, Dr. Cohn opined that Davidson did not have a case against the defendant doctors and that there would be no possible way to prove that any doctor did anything which caused or contributed to her injury in connection with the surgery.

Respondent further represented in his written response to the State Bar that, after the case was reviewed by Dr. Cohn and after his own independent review, he had a telephone conversation with Davidson in which he informed her that he did not believe she had a viable medical malpractice case. Respondent claims that at the end of the discussion, Davidson agreed that no medical malpractice lawsuit would be filed on her behalf.

Based upon respondent's representations and a copy of the April 24, 2003 letter, the investigation was closed without prejudice in May 2006.

Thereafter, Davidson advised the State Bar that she had not had any such conversation with respondent nor did she receive any such letter from respondent.

Additional Findings of Fact and Legal Conclusions

The statute of limitations in Davidson's medical malpractice matter ran on about July 15, 2003.

Respondent had Davidson's medical records reviewed by his father, Dr. Lester Cohn, to determine whether or not Davidson had a good case. Initially, the State Bar alleged that respondent was required to provide Davidson with written notice that he had employed a family member to be a witness in her matter. The State Bar requests, and the court grants, that this count be dismissed in the interest of justice.

Davidson testified that she was not aware that respondent had dropped her case until June 2004. The court finds her testimony to be credible. Respondent testified that he notified Davidson orally he was dropping her case and later sent her confirming letter on April 24, 2003. Davidson disputes both assertions. Respondent also included a copy of the April 24th letter to the State Bar in his January 18, 2006, written response to the State Bar concerning the Davidson complaint. Although the court finds respondent's testimony not to be credible, this finding does not automatically lead to a conclusion that respondent's January 18, 2006, response to the State Bar was a wilful misrepresentation. There is no supportive evidence to show that respondent prepared the April 24th letter for the purposes of litigation, only that Davidson never received the letter. Dr. Cohn reviewed Davidson's file and came to a conclusion that Davidson's matter was not a good case and that he relayed that information to respondent. Dr. Cohn is a credible witness.

The evidence in this matter shows that respondent failed to notify Davidson in a timely manner that he had dropped her case. Davidson had occasional contact with respondent

between February 2003 to June 2004 and respondent never informed her that her case had been dropped. In June 2004, Davidson was finally able to speak with respondent after his secretary informed her that respondent was not pursuing her case. Respondent told Davidson that he was referring her case to another attorney because the case was too complicated for him. Respondent disputes this claim. However, the court finds Davidson to be a credible witness.

Davidson sent a letter to respondent in December 2005 requesting her file within seven days. Respondent did not respond to the letter. In April 2006, Davidson unsuccessfully attempted to subpoena her file from respondent. Although the subpoena was defective, respondent did not return Davidson's file.

Count One – Misrepresentation to Client – Section 6106

The court finds that there is clear and convincing evidence that respondent committed an act or acts of moral turpitude, dishonesty or corruption, by misrepresenting to Davidson the status of her medical malpractice action in wilful violation of section 6106.

Count Two – Misrepresentation to State Bar – Section 6106

The court finds that there is not clear and convincing evidence that respondent committed an act or acts of moral turpitude, dishonesty or corruption when respondent submitted a copy of an April 2003 letter to State Bar in January 2006. Accordingly, this charge is dismissed with prejudice.

Count Three – Conflict – Relationship with a Party or Witness – Rule 3-310(B)(1)

The court finds that there is not clear and convincing evidence that respondent failed to provide written disclosure to his client of his relationship with Dr. Lester Cohn, the expert witness in the Davidson matter, in violation of rule 3-310(B)(1). The State Bar's motion to dismiss this charge in the interest of justice is granted. Therefore, it is dismissed with prejudice.

Count Four – Failure to Release Client File – Rule 3-700(D)(1)

The court finds that there is clear and convincing evidence that respondent wilfully violated rule 3-700(D)(1) by not promptly returning Davidson's file as requested after his services had concluded.

CASE NO. 07-O-12757 (The Pagter Matter):

At all times relevant herein, respondent maintained a client trust account at First Commerce Bank (client trust account or CTA).

On November 28, 2002, Linda Pagter (Pagter) employed respondent to represent her in a personal injury claim arising from an automobile accident that occurred on March 16, 2002. Respondent represented Pagter on a contingency fee basis, which entitled him to receive one-third of all amounts received on behalf of Pagter if the case were resolved by compromise or settlement and 40% of all amounts received on behalf of Pagter if respondent were required to file a lawsuit or claim for arbitration.

On March 17, 2003, respondent filed a civil complaint on behalf of Pagter in the Los Angeles County Superior Court (*Linda Pagter v. Gabriella Tiznado, et. al.*, case number MC014564 (personal injury matter).)

In July 2005, respondent settled Pagter's personal injury matter for \$15,000.00.

On July 7, 2005, Allstate Insurance Company issued a settlement draft in the amount of \$15,000.00 made payable to respondent and Pagter.

On July 13, 2005, Pagter signed the settlement release for \$15,000.00 and returned it to respondent.

On July 28, 2005, respondent deposited the settlement draft into his client trust account.

As of July 28, 2005, after accounting for respondent's contingency fee (\$6,000.00) and costs (\$6,093.20) from Pagter's settlement funds, respondent was required to maintain at least \$2,906.80 in his client trust account on behalf of Pagter.

On December 18, 2005, respondent faxed Pagter an Estimated Expense Itemization Statement, dated December 16, 2005. In the Estimated Expense Itemization Statement, respondent calculated that he was entitled to \$6,000.00 in attorney fees, that the costs and expenses totaled \$6,093.20 and that the estimated outstanding medical liens totaled \$761.50.

Upon receipt of the Estimated Expense Itemization Statement, Pagter telephoned respondent, disputing the costs and expenses. Respondent told Pagter that he would call her back later to discuss the charges.

On April 11, 2006, Pagter's brother-in-law, R. Gibson Pagter (Gibson) sent a letter to respondent on behalf of Pagter questioning the various costs and expenses listed in the Estimated Expense Itemization Statement and demanding that respondent either provide a "settlement" proposal or copies of the various documents requested in his letter. Respondent received Gibson's April 11, 2006 letter.

Respondent eventually agreed that he would pay Pagter \$6,000.00 as her portion of the settlement proceeds.

On January 5, 2007, Pagter sent a letter to respondent demanding that he send a check for \$6,000.00 plus interest from July 2005 within seven days to her or else she would file a State Bar complaint against respondent. The letter was returned to Pagter, so she left several messages on his telephone to call her and notify her of his current address.

On March 19, 2007, Pagter sent another letter to respondent at a different address that she found demanding that he send her a check for \$6,000.00 plus interest from July 2005 within seven days or else she would file a State Bar complaint against respondent.

On January 25, 2008, after the State Bar complaint was filed and more than two and a half years after the case had settled, respondent sent a cashier's check in the amount of \$7,500.00 to Pagter.

On August 10, 2007, an investigator for the State Bar wrote a letter to respondent regarding the Pagter matter. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Pagter matter.

On August 24, 2007, an investigator for the State Bar wrote another letter to respondent regarding the Pagter matter. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Pagter matter.

Additional Finding of Facts and Legal Conclusions

On September 16, 2005, the balance in respondent's CTA was \$144.27.

On October 4, 2005, the CTA balance was a negative amount.

Respondent never called Pagter, after telling her that he would do so, to explain the charges on the Estimated Expense Itemization Statement.

Respondent failed to respond to Gibson's April 11, 2006, letter.

Respondent failed to respond to Pagter's January 5 and March 19, 2007, letters.

On January 25, 2008, respondent sent a cashier's check to Pagter in the amount of \$7,500, as her portion of the settlement.

From April 2005 to October 2005, respondent repeatedly made personal deposits of funds into his CTA. Respondent deposited seven personal checks totaling \$97,000 into his CTA. Respondent used the funds deposited into his CTA to pay business and personal expenses.

As occurred in all the cases of misappropriation of client funds, respondent borrowed money from his parents or others to pay his clients.

Count Five - Failure to Maintain Client Funds in Trust Account – Rule 4-100(A)

The court finds that there is clear and convincing evidence that respondent wilfully violated rule 4-100(A) by not maintaining \$2,906.80 of Pagter's settlement funds in the CTA.

Count Six – Misappropriation – Section 6106

The court finds that there is clear and convincing evidence that respondent committed an act or acts of moral turpitude, dishonesty or corruption, by misappropriating \$2,906.80 of Pagter's settlement funds in wilful violation of section 6106.

Count Seven – Commingling Personal Funds in Client Trust Account – Rule 4-100(A)

The court finds that there is clear and convincing evidence that respondent commingled personal funds in his client trust account by depositing seven personal checks totaling \$97,000 into his CTA in wilful violation of rule 4-100(A).

Count Eight – Using Client Trust Account as Personal/Business Account – Section 6106

The court finds that there is clear and convincing evidence that respondent repeatedly used his client trust account as his personal/business account in wilful violation of section 6106.

Count Nine – Failure to Cooperate in State Bar Investigation – Section 6068, subdivision (i)

The court finds that there is clear and convincing evidence that respondent failed to cooperate in a State Bar investigation by failing to respond in writing to two letters sent by the State Bar to respondent concerning allegations of misconduct in the Pagter matter in wilful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

The record establishes three mitigating factors. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.2(e).)

Respondent has no prior record of discipline over many years of practice. (Std. 1.2(e)(i).) He had a blemish-free record for approximately nine and one-half years before the misconduct commenced. (*In the Matter of Respondent Z* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 85, 89 (about nine years).)

Respondent was suffering from extreme emotional difficulties at the time of some of his misconduct. (Std. 1.2(e)(iv).) During the time of his misconduct, respondent was suffering extreme emotional difficulties due to the illness suffered by his then-wife and his responsibilities to his children. This mitigating evidence was proven by competent medical testimony. However, respondent committed significant acts of misconduct outside the time frame of his wife's illness and his depression.

At trial, respondent entered into an extensive stipulation to facts and admission of documents which saved court time and resources. (Std. 1.2(e)(v).)

Respondent produced the testimony of mostly family members to attest to his good character. Respondent called one non-family member to testify to his good character. Respondent's offering was not an extraordinary demonstration of good character attested to by a wide range of references in the legal and general community. Therefore, no weight is given for this factor. (Std. 1.2(e)(vi).)

At trial, it was noted that respondent's father paid the amounts outstanding to respondent's clients. This is insufficient for mitigating effect pursuant to standard 1.2(b)(vii).

³ Future references to standard or std. are to this source.

B. Aggravation

The record establishes several factors in aggravation. (Std. 1.2(b).)

Respondent's misconduct is comprised of multiple acts as well as a pattern of wrongdoing. (Std.1.2(b)(ii).) His misconduct evidences a pattern of trust accounting violations and of conduct encompassing moral turpitude, including the misappropriation of funds.

Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act and Rules of Professional Conduct, and the inability to account for entrusted funds. (Std. 1.2(b)(iii).) At trial, respondent was unable to account for entrusted funds belonging to Flanagan, Pagter and Madigan. Moreover, he did not notify Flanagan about the receipt and deposit of the settlement funds, a violation of rule 4-100(B)(1). Respondent did not respond to Schwartz's or her counsel's letters requesting an accounting and distribution of settlement funds, a violation of section 6068, subdivision (m). Pagter suffered a two-year delay in receiving her portion of her settlement funds, a violation of rule 4-100(B)(4).

Respondent's misconduct harmed significantly a client, the public or the administration of justice. (Std. 1.2(b)(iv).) Chou was threatened with adverse action by the DOL due to respondent's inaction and her receipt of her settlement funds was delayed. Schwartz had to retain other counsel to try to obtain an accounting and distribution of her and her son's settlement funds. Clark had to retain other counsel and pursue a legal malpractice action against respondent. Clark and Davidson lost their causes of actions.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent's misconduct continued in the Pagter and Madigan matters while he was facing disciplinary action by the State Bar. Also, as he testified at trial, respondent refused to accept responsibility for the misappropriation of client

funds, falsely claiming that he had funds available to pay his client when the overwhelming evidence proved otherwise.

Respondent displayed a lack of candor and cooperation to any victims of his misconduct or the State Bar during the disciplinary investigation or proceedings. (Std. 1.2(b)(vi).)

Respondent repeatedly testified at trial that he did not misappropriate client funds, referring to missing client funds as “dips” in his CTA, and could not explain the location of the missing client funds. Respondent’s testimony lacked candor. It is apparent to the court that respondent does not understand that he engaged in unethical conduct. His lack of insight may lead to recidivism.

V. Discussion

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

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

The most severe sanction is found at standard 2.2(a) which recommends disbarment for wilful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension. The one-year “minimum discipline” set forth in the standard “is not faithful to the teachings of [the Supreme] court's

decisions” and “should be regarded as a guideline, not an inflexible mandate.” (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar recommends disbarment. The court agrees. Pursuant to standard 2.2(a), disbarment is recommended because the amounts respondent misappropriated are hardly insignificantly small and mitigating circumstances do not clearly predominate. There is not a compelling, well-defined reason to deviate from the standard.

VI. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **STEVEN GEOFFERY COHN** be DISBARRED from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VII. Costs

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

VIII. Order Regarding Inactive Enrollment

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

Dated: November 19, 2009.

RICHARD A. PLATEL
Judge of the State Bar Court