FILED JUNE 22, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **TIMOTHY GRADY SULLIVAN, JR.**, **Member No. 127833**, A Member of the State Bar.	**Case No. 04-O-14436-JMR; 04-O-14979 04-O-15643; 04-O-15709 04-O-15713; 04-O-15854 (Cons.)** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

I. Introduction

In this disciplinary matter, Manuel Jimenez appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Timothy Grady Sullivan, Jr., did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

II. Significant Procedural History

The Notice of Disciplinary Charges (NDC) was filed on November 30, 2005, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section[1] 6002.1, subdivision (c) (official address). Copies were also served at two alternate addresses (Daly City and P.O. Box) also by certified mail return receipt requested. All of this correspondence was returned as undeliverable.

[1]Future references to section are to the Business and Professions Code.

Respondent did not file a responsive pleading to the NDC. On January 20, 2006, a motion for entry of default was filed and properly served on respondent at his official address. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

On February 7, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address.

On March 8, 2006, respondent was properly served at his official address with an order vacating the submission date of this matter so that the State Bar could provide the court with evidence of respondent's prior disciplinary record. This correspondence was returned as undeliverable.

The State Bar's efforts to locate and contact respondent were fruitless.

The matter was submitted for decision without hearing March 24, 2006, after the State Bar filed a brief.

III. Findings of Fact and Conclusions of Law

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (Section 6088; Rules of Proc. of State Bar[2], rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. ___Jurisdiction

Respondent was admitted to the practice of law in California on June 17, 1987, and has been a member of the State Bar at all times since.

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[2]Future references to the Rules of Procedure are to this source.

B. Case no. 04-O-15643 (The Ragone Matter)

1. Facts

On August 14, 2002, Ronald Ragone retained respondent to represent him in an unlawful termination of employment matter and paid him $500 for filing fees and processing of paperwork.

Respondent deposited Ragone's $500 check into his law firm's general account at Wells Fargo Bank although he was aware that these funds were for costs and should have been deposited into a client trust account.

On February 28, 2003, respondent filed the matter entitled *Ragone v. Infortal Worldwide*, case no. 1-03-CV-815120. On that same date, the court notified respondent that his filing was defective because it did not have a case cover sheet. He was also advised that the initial case management conference was scheduled for July 1, 2003. Respondent received the notification.

Respondent did not perform any work on Ragone's behalf after February 28, 2003, nor did he inform Ragone that he intended to terminate the attorney-client relationship.

Respondent did not appear at the initial case management conference. The court set the matter for an order to show cause (OSC) why the case should not be dismissed. The OSC specifically stated that respondent was to appear at the hearing.

On July 30, 2003, the court scheduled the OSC hearing for August 28, 2003. The notice of hearing was sent to respondent's address of record with the court. He received it.

On August 27, 2003, the court prepared two orders regarding the OSC hearing. One order cited respondent's failure to serve the defendants properly and to appear on the case. The other order cited respondent's failure to appear at the initial status conference and to appear on the case.

Respondent did not appear at the OSC hearing.

On September 30, 2003, the court notified the parties that the case had been dismissed on the court's own motion for respondent's failure to appear and/or show cause in writing why the dismissal should not be entered. Respondent never advised Ragone that the case had been dismissed.

In an April 1, 2004, letter sent by certified mail, Ragone told respondent that he had tried, unsuccessfully, to contact him. He stated that he had left several messages on respondent's answering machine and that respondent had not returned any of the calls. Ragone requested that respondent contact him, stating that, if he did not do so, he would file a complaint with the State Bar. The letter was returned to Ragone by the United States Postal Service marked "unclaimed."

Since June 5, 1995, respondent's official address has remained unchanged. During its investigation of possible ethical violations, the State Bar obtained two other addresses at which respondent received mail (Daly City and Palos Verdes). Prior to October 22, 2004, respondent stopped receiving mail at his official address and did not execute a change of address form with the State Bar within 30 days of his move. As a result, he did not receive letters sent to that address from the State Bar seeking his response to the allegations of misconduct set forth in the NDC, as more fully set forth below. On January 11, 2005, respondent spoke with a State Bar investigator and became aware of some of the disciplinary matters pending against him.[3] He did not communicate with the State Bar after that date.[4]

On December 6, 2004, the State Bar opened an investigation pursuant to a complaint filed by Ragone. On January 7, 2005, a State Bar investigator wrote to respondent regarding this complaint. The letter was addressed to respondent's official membership records address as well as to the Daly City and Palos Verdes addresses. They were sent by first-class mail, postage prepaid. The letter sent to the official address was returned as undeliverable. The others were not. Respondent received the letters sent to the Daly City and Palos Verdes addresses. He did

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[3]On its own motion and pursuant to Evidence Code section 452, subdivision (d), the court judicially notices its findings in its decision in respondent's prior disciplinary matter which indicate that, during this telephone conversation, respondent confirmed his address as the Palos Verdes address. He also requested and was sent copies of all the pleadings in that disciplinary case. (*In the Matter of Timothy Grady Sullivan, Jr.,* State Bar Court case nos. 04-O-12438; 04-O-12915 (Cons.), at 2:8-12. The court's findings and recommendations were accepted by the Supreme Court in order no. S137099, filed on December 28, 2005.)

[4]The facts in this paragraph apply to all of the client matters addressed in this decision with regard to possible violations of sections 6068, subdivisions (i) and/or (j). The court synthesized the facts from the NDC in the interest of ease and cohesion. The legal conclusions with regard to these ethical violations are found at Counts Twenty-Three and Twenty-Four *post*.

not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count One - Rule of Professional Conduct[5] 3-100(A) (Failing to Perform Competently)

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

By not properly filing and serving the Ragone complaint and not appearing at scheduled events in that case, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

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

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 depositing Ragone's $500 check for costs in the trust account.

Count Three - Section 6068, subdivision (m) (Failure to Communicate)

Section 6068, subdivision (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 returning Ragone's calls, by not advising him that the case had been dismissed, and by failing to tell his client he was withdrawing from the case, respondent did not respond promptly to his client's reasonable status inquiries or keep him reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

Count Four - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until he has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel,

[5]Future references to rule are to this source.

complying with rule 3-700(D) and with other applicable laws and rules.

By not performing any services on Ragone's behalf after February 28, 2003, respondent effectively withdrew from employment. By not informing the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

However, the same facts support the violations of rule 3-110(A) and section 6068(m). It is inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. "There is 'little, if any, purpose served by duplicative allegations of misconduct.'" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice.

Count Five - Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By not appearing at the OSC hearing after being ordered to do so, respondent wilfully disobeyed a court order in wilful violation of section 6103.

B. Case no. 04-O-15854 (The Johnson Matter)

1. Facts

On March 12, 2001, Ernest Johnson retained respondent to represent him in an unlawful termination suit. He paid respondent $1,500 in advanced attorney fees.

On March 21, 2001, Johnson filed a complaint in superior court in the matter entitled *Johnson v. Palo Alto Sanitation, ABI Consulting and Pharmchem Laboratories*, case no. CV796872.

On May 3, 2001, Johnson paid respondent $6,500 in advanced attorney fees.

On June 12, 2001, respondent filed a substitution of counsel and became attorney of record in the litigation.

As the case progressed, respondent appeared at scheduled matters but did not file

management conference statements/questionnaires at the conferences scheduled on September 18 and November 6, 2001; and January 22, March 5 and July 18, 2002.

On November 5, 2001, defendant ABI Consulting (ABI) served respondent with a motion to quash service of summons. Respondent did not respond to the motion nor did he appear at its January 17, 2002, hearing. The court granted the motion and set a further case management conference for January 22, 2002. Respondent did not promptly inform Johnson about the outcome of this motion.

On February 4, 2002, the court entered its order granting ABI's motion. Respondent was served with and received the order.

On March 5, 2002, the court ordered the parties to judicial arbitration.

On March 26, 2002, the court entered an order stating that respondent had not filed a case management questionnaire and ordered him to appear on May 30, 2002. The May 30 date would be vacated if respondent complied with the order. Respondent received the order and complied with it.

On July 18, 2002, in respondent's presence, the court set the matter for trial on January 21, 2003.

After July 18, 2002, respondent did not perform any services for Johnson nor did he inform Johnson that he intended to terminate the attorney-client relationship.

In its August 15, 2002, order after case management conference, the court set forth the items that had been addressed at the conference, including the dates for the mandatory settlement conference and trial, January 16 and 21, 2003, respectively. Respondent was properly served with the order and received it.

On September 10, 2002, defendants Palo Alto Sanitation (PASCO) and Pharmchem filed motions for summary judgment, among other things. Respondent was properly served with and received the motions. He did not file a response to either motion.

On October 3, 2002, Pharmchem and PASCO filed and served on respondent reply briefs regarding their motions.

On October 8, 2002, the court held a hearing on the motions. Respondent did not appear

at the hearing. The court granted the motions and, on that same date, entered its orders. Respondent was served with and received them. He did not inform Johnson about the October 8 hearing or about its outcome.

On October 15 and November 15, 2002, respectively, the court issued judgment in favor of Pharmchem and PASCO and awarded them costs. Respondent was properly served with and received the orders.

Johnson did not become aware that his case was dismissed until December 2004 when he called the court to inquire about the case's status.

On December 21, 2004, the State Bar opened an investigation on case no. 04-O-15854 pursuant to a complaint filed by Johnson. On April 6, 2005, a State Bar investigator wrote to respondent regarding the Johnson matter. The letter was addressed to respondent's official membership records address as well as to the Daly City and Palos Verdes addresses. They were sent by first-class mail, postage prepaid. The letter sent to the Palos Verdes address was returned as undeliverable and noted that there was no forwarding address. The others were not. He did not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count Six - Rule 3-110(A) (Failing to Perform Competently)

By not filing case management statements/questionnaires; not responding to the defendants' various motions; and not appearing at the summary judgment motions hearing, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Seven - Section 6068, subdivision (m) (Failure to Communicate)

By not informing or promptly informing his client about the outcome of defendants' various motions, respondent did not keep Johnson reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

Count Eight - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not performing any services for Johnson after July 18, 2002, respondent effectively withdrew from employment without telling his client that he intended to do so. By not informing

the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

However, the same facts support the violations of rule 3-110(A) and section 6068(m). Accordingly, this charge is dismissed with prejudice.

C. Case no. 04-O-14436 (The Eckert Matter)

1. Facts

On June 29, 2002, Steven Eckert retained respondent to assist him in appealing the denial of a variance application before the City of Belmont. (*Eckert v. City of Belmont*, case no. CIV424959.) Eckert paid respondent $3,500 in advanced attorney fees.

On February 24, 2003, Eckert paid respondent $3,021 in attorney fees.

On September 19, 2003, respondent did not appear at the scheduled case management conference because he was in Alameda. The court did not issue any sanctions for his failure to appear but continued the matter to November 26, 2003 at 9:00 a.m. for an OSC hearing regarding contempt for respondent's failure to appear. Respondent was properly served with the court's order and he received it.

Respondent did not perform any services for Eckert after September 19, 2003, nor did he inform him that he intended to terminate the attorney-client relationship.

Respondent did not appear at the November 26 OSC hearing. The court imposed $500 in sanctions to be paid on December 26, 2003, and also set another hearing on February 11, 2004, on an OSC regarding dismissal for lack of prosecution. The court properly served this order on respondent on December 2, 2003. He received it.

Respondent did not appear at the February 11, 2004, OSC hearing. The court dismissed the case. Its dismissal order was issued and properly served on respondent on March 5, 2004. He received it. He did not tell Eckert that his case had been dismissed.

On September 16, 2004, the State Bar opened an investigation on case no. 04-O-14436 pursuant to a complaint filed by Eckert. On October 22, 2004, a State Bar investigator wrote to respondent regarding the Eckert matter. The letter was addressed to respondent's official membership records address. It was sent by first-class mail, postage prepaid. It was returned as

undeliverable. He did not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count Nine - Rule 3-110(A) (Failing to Perform Competently)

By not appearing at three hearings on Eckert's case and allowing it to be dismissed, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

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

By not telling Eckert that his case had been dismissed and by failing to tell Eckert that he was withdrawing, respondent did not keep him reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

Count Eleven - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not performing services for Eckert after September 19, 2003, respondent effectively withdrew from employment without telling his client that he was doing so. By not informing the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

However, the same facts support the violations of rule 3-110(A) and section 6068(m). Accordingly, this charge is dismissed with prejudice.

Count Twelve - Section 6103 (Violation of Court Order)

By not appearing at three hearings on Eckert's case, respondent wilfully disobeyed a court order in wilful violation of section 6103.

D. Case no. 04-O-14797 (The Miller Matter)

1. Facts

On January 6, 2004, Robert Miller retained respondent to represent him in the matter entitled *Saralyn Bregman v. Robert Miller*, case no. CIV435638. Miller paid respondent $500 in advanced attorney fees.

On February 19, 2004, respondent gave Miller several documents to file and serve on the plaintiff, including a demurrer to the complaint, memorandum of points and authorities and a request for judicial notice. Miller filed the documents with the court.

On February 25, 2004, Miller paid respondent $500 in advanced attorney fees.

On March 22, 2004, Miller and respondent met to discuss the next stage in the case.

On March 24, 2004, the court held a hearing on the demurrer. Neither respondent nor Miller appeared at the hearing. The court overruled the demurrer.

On March 30, 2004, the court held a case management conference. Respondent entered his appearance on Miller's behalf. He was ordered to file an answer to the complaint. The parties agreed to go to mediation. A trial date was set for August 24, 2004.

Respondent never informed Miller that he had agreed to mediation.

After March 30, 2004, respondent did not perform any services for Miller nor did he inform him that he intended to terminate the attorney-client relationship.

Respondent did not file an answer to the complaint. On July 29, 2004, the plaintiff sought default. A request for dismissal without prejudice was filed and entered.

On July 30, 2004, the court held a mandatory settlement conference in which it vacated the trial date and set the matter for a prove-up hearing. Respondent did not attend the settlement conference. He was properly served with and received the court's July 30, 2004, order.

Respondent never informed Miller about the order vacating the trial date for failure to file an answer. He did not tell Miller about the prove-up hearing or its outcome.

On August 3, 2004, plaintiff filed a request for default and properly served the documents on respondent.

Respondent did not appear at the August 24, 2004, prove-up hearing. The court ordered the partition and private sale of the property with the proceeds to be divided among the parties. Respondent was properly served with the court's August 24 order. The court took the proposed default judgment under submission until August 26, 2004.

On September 8, 2004, the court entered the default judgment against Miller and appointed a referee to sell the property. The court properly served this order on respondent and he received it. Respondent never informed Miller about this order.

On September 21, 2004, Miller wrote to respondent asking to be contacted immediately because he had just learned that his home, the subject of the litigation, was to be placed on the

market. He sent the letter by certified mail to respondent's official address. Respondent did not answer this letter.

On September 23, 2004, Miller wrote to respondent asking to be contacted immediately because he had just become aware of the outcome of the prove-up hearing and needed respondent to take immediate action. Miller sent the letter to respondent's Daly City address. Respondent did not answer the letter.

On October 1, 2004, Miller wrote to respondent and provided him with a declaration for respondent's signature. The declaration was to be attached to a motion to vacate default judgment. Miller sent the letter to respondent's Daly City address. Respondent did not answer this letter.

On October 13, 2004, the State Bar opened an investigation on case no. 04-O-14979 pursuant to a complaint filed by Miller. On November 17, 2004, a State Bar investigator wrote to respondent regarding the Miller matter. The letter was addressed to respondent's official membership records address as well as to the Daly City address. They were sent by first-class mail, postage prepaid. The letter sent to the official address was returned as undeliverable on December 1, 2004. The other was not. He did not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count Thirteen - Rule 3-110(A) (Failing to Perform Competently)

By not filing an answer or appearing at scheduled court dates in Miller's case, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Fourteen - Section 6068, subdivision (m) (Failure to Communicate)

By not responding to Miller's correspondence, by not informing him of the outcomes of the various hearings and orders, and by failing to Miller that he was withdrawing from representation, respondent did not respond promptly to Miller's reasonable status inquiries or keep him reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

Count Fifteen - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not performing any services for Miller after March 30, 2004, respondent effectively withdrew from employment without telling his client that he was doing so. By not informing the client of his intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

However, the same facts support the violations of rule 3-110(A) and section 6068(m). Accordingly, this charge is dismissed with prejudice.

E. Case no. 04-O-15713 (The Maki Matter)

1. Facts

In March 2004, Allen Maki retained respondent to represent him in an unlawful termination case.

On May 18, 2004, Maki paid respondent $250 in advanced attorney fees.

On July 26, 2004, respondent received a settlement offer from Maki's employer.

On each of August 21, September 1 and 20, 2004, Maki paid respondent $333.33 in attorney fees.

On August 31, 2004, respondent drafted the civil complaint on Maki's case, but did not file it.

Effective September 16, 2004, respondent was suspended from the practice of law by the Supreme Court in order no. S126962 for not paying his State Bar membership fees. He was properly served with the Supreme Court's order. Respondent never informed Maki about the suspension. Respondent should have withdrawn from the case.

After September 20, 2004, respondent did not perform any legal services for Maki. Respondent never told Maki that he was terminating the attorney-client relationship.

On October 29, 2004, Maki wrote to respondent and set forth his efforts in trying to reach respondent. Maki noted that respondent's telephone and fax numbers had been disconnected and had been reconnected for a brief period. Maki asked respondent to answer this letter. He sent it to respondent by certified mail to his Daly City address. Although respondent received it, he did not answer the letter.

On November 30, 2004, the State Bar opened an investigation on case no. 04-O-15713 pursuant to a complaint filed by Maki. On January 7, 2005, a State Bar investigator wrote to respondent regarding the Maki matter. The letter was addressed to respondent's official membership records address as well as to the Daly City and Palos Verdes addresses. They were sent by first-class mail, postage prepaid. The letter sent to the official address was returned as undeliverable. The others were not. He received the letters sent to the Daly City and Palos Verdes addresses. He did not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count Sixteen - Rule 3-110(A) (Failing to Perform Competently)

There is not clear and convincing evidence that respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A). The complaint was drafted on August 31, 2004, and respondent was suspended by September 16, 2004. There is no evidence that up to August 31st that respondent acted incompetently or with undue delay. Shortly thereafter, respondent was not entitled to practice. The brief period between August 31 and September 16, 2004, is insufficient to find a rule 3-110(A) violation based on the limited facts provided.

Count Seventeen - Section 6068, subdivision (m) (Failure to Communicate)

By not answering Maki's letter, respondent did not respond promptly to his client's reasonable status inquiries in wilful violation of section 6068, subdivision (m).

Count Eighteen - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

There is clear and convincing evidence that respondent's withdrew from employment in wilful violation of rule 3-700(A)(2) by not providing Maki with due notice of his suspension and inability to practice.

Count Nineteen - Rule 3-700(B)(2) (Mandatory Withdrawal from Representation)

Rule 3-700(B)(2) requires an attorney to withdraw from representing a client, either before a tribunal or otherwise, if he or she knows or should know that continued employment will result in a violation of the Rules of Professional Conduct or of the State Bar Act. The crux

of this case is respondent's improper withdrawal as set forth above. Thus, since the court found that respondent withdrew and stopped performing, it will not find a rule 3-700(B)(2) violation based on respondent's alleged failure to withdrew.

F. Case no. 04-O-15709 (The Brooks Matter)

1. Facts

On April 14, 2000, Deborah Brooks retained respondent's office, the Law Offices of Martin and Sullivan, to represent her in a case against Pacific Gas and Electric (PG&E). David Martin became ill and respondent became the sole attorney of record in the case.

On June 28, 2000, respondent timely filed the civil suit against PG&E.

On April 6, 2001, PG&E filed for Chapter 11 bankruptcy and sought an automatic stay.

On April 11, 2001, PG&E properly noticed its bankruptcy filing and request for automatic stay in the matter entitled *Brooks v. Pacific Gas and Electric*, case no. CGC00-313266 (Brooks case). The notice of filing voluntary petition and imposition of automatic stay put respondent on notice that the Brooks case would be stayed by order of the bankruptcy court and that he would have to identify Brooks as a creditor in PG&E's bankruptcy proceeding by filing a proof of claim form.

PG&E mailed a proof of claim form to the attention of David Martin at respondent's firm.

Respondent never attempted to obtain the proof of claim form from PG&E. He also did not list Brooks as an unsecured creditor in PG&E's bankruptcy.

Respondent continued to move forward with the arbitration process in the state court matter. However, after September 2003, he did not participate in any of the following court matters scheduled in that case:

(1) September 19, 2003, status conference;

(2) November 17, 2003: failure to appear at OSC, sanctions issued;

(3) March 15, 2004: failure to appear at OSC, sanctions issued.

After October 2003, respondent did not perform any legal services for Brooks nor did he inform Brooks that he was terminating the attorney-client relationship.

On April 14, 2004, PG&E filed a notice of termination of automatic stay in the Brooks

case, notifying the court and respondent that the case was no longer stayed.

On April 27, 2004, PG&E's attorneys wrote to David Martin advising that Brooks' claim would be dismissed because there was no proof of claim on file prior to December 22, 2003, the confirmation date of PG&E's reorganization.

On August 2, 2004, the court notified the parties that it had set an early settlement conference on October 8, 2004.

On October 8, 2004, the court notified the parties that it was rescheduling the settlement conference to October 29, 2004, pending the outcome of a motion in bankruptcy court.

On October 8, 2004, the bankruptcy court ordered respondent's law firm to file a request for dismissal in the Brooks case.

In October 2004, Brooks wrote to respondent at his Daly City address and requested that her file be returned. She asked respondent to contact her by November 1, 2004, to make arrangements to retrieve the file. He did not respond to this request.

On November 18, 2004, the Brooks case was removed from the settlement conference calendar due to the bankruptcy court's order requiring its dismissal.

On November 22, 2004, David Martin filed a request for dismissal in the Brooks case.

On November 4, 2004, the State Bar opened an investigation on case no. 04-O-15709 pursuant to a complaint filed by Brooks. On January 7, 2005, a State Bar investigator wrote to respondent regarding the Brooks matter. The letter was addressed to respondent's official membership records address as well as to the Daly City and Palos Verdes addresses. They were sent by first-class mail, postage prepaid. The letter sent to the official address was returned as undeliverable on January 24, 2005. He received the letters sent to the Daly City and Palos Verdes addresses. He did not respond to the allegations or otherwise cooperate in the investigation.

2. Conclusions of Law

Count Twenty - Rule 3-110(A) (Failing to Perform Competently)

By not advising the bankruptcy court that Brooks was an unsecured creditor in the PG&E bankruptcy and by not filing a proof of claim form, respondent intentionally, recklessly or

repeatedly did not perform competently in wilful violation of rule 3-110(A).

Count Twenty-One - Rule 3-700(D)(1) (Failure to Return Client Papers or Property)

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.

Rule 3-700(A)(2), which prohibits prejudicial withdrawal from representation, mandates compliance with rules 3-700(D)(1) and (D)(2), which require, respectively, the prompt return of unearned fees and client papers or property upon termination of employment. Thus, an attorney's failure to promptly return unearned fees or client papers and property may be a portion of the conduct disciplinable as a violation of rule 3-700(A)(2). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) Because respondent's failure to return his client's file is encompassed in his culpability for improperly withdrawing from representation, addressed *post*, the court dismisses Count Twenty-One with prejudice.

Count Twenty-Two - Rule 3-700(A)(2) (Improper Withdrawal from Representation)

By not performing legal services for Brooks after October 2003, respondent effectively withdrew from employment without telling his client that he was doing so. By not informing the client of his intent to withdraw from employment, and by failing to return his client's file, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

G. All Matters

1. Facts

The facts supporting the following legal conclusions have been set forth *ante* with respect to each of the foregoing client matters.

2. Conclusions of Law

Count Twenty-Three - Section 6068, subdivision (j) (Failure to Maintain Address)

Section 6068, subdivision (j) requires an attorney to comply with the requirements of

section 6002.1, which, among other things, requires him to maintain a current address and telephone number with the State Bar and to notify the State Bar within 30 days of any change in same.

By not maintaining a current address and telephone number with the State Bar, respondent wilfully violated section 6068, subdivision (j) with regard to the Ragone, Eckert, Miller, Maki and Brooks matters.

Count Twenty-Four - Section 6068, subdivision (i) (Failure to Participate in a Disciplinary Investigation)

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 not answering the State Bar's letters regarding allegations of misconduct, respondent did not participate in disciplinary investigations regarding the Ragone, Maki and Brooks matters in wilful violation of 6068, subdivision (i).

There is not clear and convincing evidence that respondent wilfully violated section 6068, subdivision (i) with regard to the Johnson and Miller matters because there was no allegation that respondent received any of the State Bar's letters seeking his participation in the investigations. (Cf. *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 578-579.)

IV. Level of Discipline

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).[6])

Respondent has one prior instance of discipline. (Std. 1.2(b)(i).) In Supreme Court case no. S137099 (State Bar Court case no. 04-O-12438; 04-O-12915 (Cons.)), filed on December 28, 2005, discipline was imposed consisting of one years' stayed suspension and actual suspension

[6]Future references to standard or std. are to this source.

for 75 days and until he made specified restitution and complied with rule 205 of the Rules of Procedure, among other things. In that default case, respondent was found culpable, in two client matters, of improperly withdrawing from employment, not communicating or rendering an accounting and of not maintaining an official address or cooperating with the State Bar. The only mitigating factor was the absence of prior discipline in 15 years of practice. In aggravation, the court found multiple acts of misconduct, client harm (including one client's case dismissed), indifference toward rectification and not participating in the proceedings prior to the entry of default.

The court notes, however, that the misconduct in the prior disciplinary matter occurred around the same time as the misconduct at hand. Accordingly, the aggravating effect of this prior discipline is diminished as it is not indicative of respondent's inability to conform to ethical norms and the court will consider the totality of the findings in both cases to ascertain what the discipline would have been had the matters been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

Respondent's misconduct demonstrates a pattern of wrongdoing. (Std. 1.2(b)(ii).) Considering both disciplinary matters, he abandoned seven clients during approximately a four-year period.

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) The cases of Ragone, Johnson, Eckert and Brooks were dismissed due to his misconduct. Miller had a default judgment entered and, as a result, his home was subject to an order of partition and sale. Johnson did not know that his case had been dismissed until over two years later when he called the court to inquire about his case.

Respondent's failure to participate in these proceedings prior to the entry of default, as in the prior proceeding, demonstrates his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. 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.)

Standards 2.2(b), 2.4(a) and 2.6(a) and (b) apply in this matter. The most severe sanction is prescribed by standard 2.4(a) which suggests disbarment for culpability of a pattern of wilfully failing to perform services demonstrating the attorney's abandonment of the causes for which he or she was retained.

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.

As previously stated, the court will consider the totality of the findings in this and the prior disciplinary matter to ascertain what the discipline would have been had both matters been brought as one case.

Respondent's misconduct herein involves six separate client matters. In five of those matters during approximately four years, respondent essentially abandoned his clients. He also failed to cooperate with the State Bar's investigation in three of the matters, and in all six cases he was found culpable of not providing the State Bar with his correct address. Aggravating factors include a pattern of misconduct, client harm and not participating in the proceedings prior to the entry of default.

In the prior case, respondent was found culpable of similar misconduct in two client matters, wherein he abandoned his clients. He also did not render an accounting and did not maintain an official address or cooperate with the State Bar. The only mitigating factor was the absence of prior discipline in 15 years of practice. In aggravation, the court found multiple acts of misconduct, client harm (including one client's case dismissed), indifference toward rectification and not participating in the proceedings prior to the entry of default.

Due to the nature and extent of this misconduct, the court finds that respondent's disregard of his clients' interests is habitual. His misconduct evidences a pattern of wilfully failing to perform services demonstrating his abandonment of the causes in which he was retained under standard 2.4(a).

Cases involving a pattern of misconduct similar to respondent's generally result in the attorney's disbarment even when the attorney has no prior record of discipline. (*In re Billings* (1990) 50 Cal.3d 358 [15 matters of partial or complete abandonment of clients; disbarment]; *Coombs v. State Bar* (1989) 49 Cal.3d 679 [13 matters of failure to perform services; disbarment]; *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1 [14 matters involving systematic failures to competently perform and client abandonment; disbarment].)

When disbarment is not imposed for such a pattern of misconduct, the attorney provided significant mitigation beyond merely having a discipline-free practice. (*Pineda v. State Bar* (1989) 49 Cal.3d 753 [although attorney failed to competently perform and abandoned clients in seven matters, disbarment was not called for in view of mitigating factors, including the attorney's cooperation with the State Bar throughout the disciplinary proceedings, his

demonstrated remorse and determination to rehabilitate himself and his concurrent family problems]; *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071 [ethical violations in 14 matters demonstrating a pattern of misconduct involving client abandonment did not warrant disbarment in light of fact that attorney fully cooperated with the State Bar in the proceedings, was experiencing severe financial and emotional problems during period of misconduct, and thereafter substantially improved her condition through counseling]; *Frazer v. State Bar* (1987) 43 Cal.3d 564 [disbarment not recommended where attorney failed to perform competently and abandoned clients in 14 matters due to evidence of attorney's financial problems, depression, agoraphobia and rehabilitation therefrom].) Not only are respondent's present and prior disciplinary cases devoid of compelling mitigation which could justify a discipline recommendation short of disbarment, they also present substantial aggravation, particularly in terms of a pattern of abandonment that results in harm to his clients.

Thus, there is no compelling, well-defined reason to deviate from the standard recommending disbarment. The serious and unexplained nature of the misconduct and the lack of participation in these and the prior proceedings suggest that respondent is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent.

V. Discipline Recommendation

IT IS HEREBY RECOMMENDED that respondent Timothy Grady Sullivan, Jr., be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 955, 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.

VI. 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.

VII. Order of 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: June 22, 2006

JOANN M. REMKE
Judge of the State Bar Court