

FILED JANUARY 19, 2006

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

In the Matter of	)	<b>Case No. 04-O-15806-PEM</b>
	)	
<b>PAUL RAJ GIDEON,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 211862,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this default matter, respondent **Paul Raj Gideon** is found culpable, by clear and convincing evidence, of (1) engaging in unauthorized practice of law; (2) committing an act of dishonesty; (3) failing to maintain an official address with the State Bar; and (4) failing to cooperate with the State Bar.

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

**II. Pertinent Procedural History**

On September 16, 2005, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, at his official membership records

address (official address) under Business and Professions Code section 6002.1, subdivision (a).<sup>1</sup> The NDC was returned as undeliverable.

The State Bar also sent three additional courtesy copies of the NDC to respondent in California by certified mail addressed to (1) 10713 Curtis St., Loma Linda; (2) 906 Mangrove Ave., Sunnyvale; and (3) P.O. Box 2319, Rialto. The copy sent to Loma Linda was returned as undeliverable, but the other two copies were not returned as undeliverable.

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

On September 27, 2005, the State Bar attempted to contact respondent by telephone but the number was disconnected.<sup>2</sup>

On the State Bar's motion, respondent's default was entered on November 3, 2005, and respondent was enrolled as an inactive member on November 6, 2005, under section 6007(e). An order of entry of default was sent to respondent's official address. It was returned as undeliverable.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on November 22, 2005, following the filing of the State Bar's brief on culpability and discipline.

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<sup>1</sup>References to section are to the California Business and Professions Code, unless otherwise noted.

<sup>2</sup>In August 2005, State Bar investigator Francoise Jacobs spoke with respondent about the investigation regarding allegations of his misconduct. Respondent told Jacobs that he had no address or telephone number where he could be reached. That was the only contact the investigator had with respondent.

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

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 18, 2000, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

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

In 2004, the State Bar's Office of Certification had written twice to respondent at his official address, informing him that he had failed to comply with his Minimum Continuing Legal Education (MCLE) requirements.

On July 15, 2004, the State Bar advised respondent that he needed to comply with his MCLE requirements by September 15, 2004, and that failure to do so would result in respondent being placed on not-entitled-to-practice-law status. The letter was returned to the State Bar as undeliverable.

On August 6, 2004, the State Bar again wrote to respondent and informed him that he still had not complied with his MCLE requirements. If he did not comply with the requirements by September 15, 2004, he would be placed on not entitled status. The letter was also returned to the State Bar as undeliverable.

On September 16, 2004, respondent was placed on administrative inactive/not entitled status due to his noncompliance with the MCLE requirements. On September 23, the State Bar notified respondent that he had been placed on not entitled status; but the letter was returned as undeliverable.

On October 18, 2004, respondent appeared in Santa Clara County Superior Court in a criminal matter entitled the *People v. Monica Montalvo*, case No. BB408375. Deputy District Attorney Bryan Slater represented the People. As they approached the judge's bench, attorney Slater stated to respondent, "I thought you weren't entitled to practice."

According to attorney Slater, respondent replied, “Oh, no, I have a dispute with the State Bar or a mix up with the State Bar about some MCLE requirements, but I’m working that out.”

Respondent is currently still not entitled to practice law in California.

**C. A Musician, But Not An Attorney**

On September 21, 2004, respondent was stopped and arrested by the police in Santa Clara County. At the time of his arrest, he identified his occupation as a musician but did not inform the arresting officer that he was an attorney, even though he actively and consistently appeared in court and was known to the Santa Clara County District Attorney’s Office and the Superior Court staff. Respondent did not identify his occupation as an attorney to the arresting officer in an attempt to keep the officer from noting it in the arrest report, thereby alerting the prosecuting agency of its requirement to comply with section 6101, subdivision (b).<sup>3</sup>

**D. Failure to Cooperate with the State Bar**

In or about November 2004, the State Bar opened case number 04-O-15806 pursuant to a complaint received from the Santa Clara County District Attorney’s Office.

On February 22 and March 11, 2005, the State Bar wrote to respondent regarding the District Attorney’s Office complaint and sent the letters to his official address. However, they were returned as undeliverable.

On April 8, the State Bar sent a third letter to respondent and addressed it to respondent’s home address at 12 Kim Louise Drive, Apt. #3, Campbell, California 95008. Still, the letter was returned by the United States Postal Service.

In July 2005, the State Bar spoke with respondent by telephone and informed him that the investigation was completed but that respondent could send the State Bar a letter

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<sup>3</sup>Section 6101, subdivision (b), provides that the district attorney, city attorney, or other prosecuting agency must notify the State Bar of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney.

explaining and responding to the allegations in the investigation and that his letter would be placed in the investigation file. Respondent agreed to do so.

But respondent never responded to the allegations in the District Attorney's Office matter or provided the letter he promised to send to the State Bar.

**E. Respondent's Official Address**

Effective March 3, 2003, and continuing to the present date, respondent's official address is 12 South First Street, #420, San Jose, California 95113.

Although the State Bar sent correspondence to respondent's official address, asking that he respond to the allegations contained in District Attorney's Office complaint. The State Bar's letters were returned as undeliverable.

Respondent did not change his official State Bar address of record after abandoning his official membership records address. As a result, respondent did not receive the letters from the State Bar requesting his reply to the allegations of misconduct.

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

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

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125 and 6126. While he was on suspension for failing to comply with the MCLE requirements, respondent knew or should have known that he was not entitled to practice law effective since September 16, 2004. Yet, he held himself out as entitled to practice law by appearing before the Santa Clara County Superior Court on October 18, 2004. And when the Deputy District Attorney Slater questioned his status, respondent claimed that it was a mistake.

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

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

By failing to inform the arresting officer that he was an attorney at the time of his arrest, respondent knew or should have known that such concealment was an attempt to keep the officer from noting it in the arrest report, thereby alerting the prosecuting agency of its requirement to comply with section 6101, subdivision (b). Accordingly, respondent engaged in an act of dishonesty, in wilful violation of section 6106.

***Count 3 – Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations in the District Attorney's Office matter or otherwise cooperate in its investigation, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068, subdivision (i).

***Count 4 – Failure to Update Membership Address (§ 6068, Subdivision (j))***

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes.

By clear and convincing evidence, respondent wilfully violated section 6068, subdivision (j), when he failed to maintain a current official membership records address and did not provide the State Bar with an alternative address to be used for State Bar purposes. His official address has not been changed since March 2003. As a result, the letters sent to his official address from the State Bar were returned as undeliverable.

#### **IV. Mitigating and Aggravating Circumstances**

##### **A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup>

Respondent's almost four years of trouble-free law practice at the time of his misconduct in 2004 is far too short to constitute mitigation. Where an attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; Std. 1.2(e)(i).)

##### **B. Aggravation**

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

Respondent committed multiple acts of wrongdoing, including committing acts of dishonesty, engaging in unauthorized practice of law and failing to maintain a current State Bar address. (Std. 1.2(b)(ii).)

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

#### **V. Discussion**

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

The standards for respondent's misconduct provide a broad range of sanctions ranging from suspension to disbarment, depending upon the gravity of the offenses and

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<sup>4</sup>All further references to standards are to this source.

the harm to the client. (Std. 1.6, 2.3, and 2.6.) While the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar recommends a one-year stayed suspension and 60 days actual suspension, citing *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585 in support of its recommendation.

In *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, the attorney who had no prior record of discipline in 12 years of practice was actually suspended for 60 days for misconduct in a single client matter. The attorney failed to communicate with his client and failed to perform competently which caused his client to lose her case. He also improperly held himself out as entitled to practice law by misleading his client into believing he was still working on her case while he was on suspension for not paying his State Bar dues. He defaulted in the disciplinary proceedings as well.

In a similar case, *Farnham v. State Bar* (1976) 17 Cal.3d 605, the attorney abandoned two clients and engaged in the unauthorized practice of law while under actual suspension. The Supreme Court found that the attorney's actions "evidence a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes." (*Id.* at p. 612.) He also had a prior record of discipline for abandonment of clients' interests in four separate matters and lacked insight into the impropriety of his actions. As a result, he was actually suspended for six months with a stayed suspension of two years upon conditions of probation. Here, respondent's misconduct is not as egregious as that of the attorney in *Farnham*.

In this matter, the gravamen of respondent's misconduct is his unauthorized practice of law during his administrative suspension. Respondent's misconduct reflects a blatant disregard of professional responsibilities.



In light of the foregoing case law, the State Bar's recommendation of 60 days actual suspension is proper. In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.)

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

## **VI. Recommended Discipline**

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

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

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

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) If respondent is actually suspended for 90

days or more, he is further ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court's order imposing discipline in this matter. Wilful failure to comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>5</sup>

## **VII. Costs**

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

Dated: January 19, 2006

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

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<sup>5</sup>Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)