FILED DECEMBER 21, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **DONALD REZAK**, **Member No. 112186**, A Member of the State Bar.	)	**Case No. 05-O-00321-DFM; 05-O-01682** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default disciplinary matter, respondent **Donald Rezak** is charged with nine counts of professional misconduct in two client matters. The court finds, by clear and convincing evidence, that respondent is culpable of all counts, involving: (1) failure to perform services competently; (2) misrepresentations; (3) failure to communicate; (4) failure to promptly pay client funds; (5) failure to avoid interests adverse to a client which included two loans totaling $600,000; and (6) failure to cooperate with the State Bar.

Based upon the egregious nature and extent of culpability, as well as the applicable aggravating circumstances, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a notice of disciplinary charges (NDC) on August 9, 2007, and properly serving that NDC on respondent at his official membership records address. Respondent did not file a response to the NDC.

On August 29, 2007, Deputy Trial Counsel Eli D. Morgenstern of the State Bar spoke with respondent's former law partner, Elizabeth Moreno, and was told that she last saw respondent about

five years ago. While she did not know his current whereabouts, she stated that the last time that she was in contact with respondent, respondent operated a clothing business in Mexico.

On the State Bar's motion, respondent's default was entered on September 21, 2007, and respondent was enrolled as an inactive member on September 24, 2007, under Business and Professions Code section 6007, subdivision (e).[1] An order of entry of default was sent to respondent's official address.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on September 26, 2007, after the State Bar filed a brief on culpability and discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).) The findings of fact are based on these factual allegations and on the documentary evidence submitted by the State Bar. (Rules Proc. of State Bar, rule 202(b).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on November 14, 1983, and has been a member of the State Bar since that time.

B. The Grubman Matters (Case No. 05-O-00181)

Respondent provided legal representation to Seymour Grubman (Seymour) and to his adult children William Grubman (William), Patricia Grubman (Patricia), and Judith Whitmore (Judith) (collectively referred to as the "Grubmans") in various legal matters. In addition to being the Grubmans' attorney, respondent also had a long-standing personal relationship with the family since the early 1980's. Respondent also lived with Patricia and they had planned to get married.

1. Insurance Case

In November 1996, William, Patricia and Judith employed respondent to file a lawsuit against an insurance broker and two insurance companies. There was no written retainer agreement.

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[1]All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

On December 6, 1996, respondent filed a complaint in Los Angeles County Superior Court ("superior court") entitled *William I. Grubman, Patricia M. Grubman and Judith S. Whitmore v. Mike Murray, Massachusetts Mutual Insurance Company and Connecticut Mutual Life Insurance Company*, case No. BC 162128 ("insurance case"). The Grubmans alleged that they were entitled to damages of at least $2 million from the defendants in the insurance case.

On September 10, 1998, defendants Massachusetts Mutual Insurance Company (Massachusetts) and Connecticut Mutual Life Insurance Company (Connecticut) were dismissed from the insurance case after the superior court sustained a demurrer to the second amended complaint without leave to amend.

On September 21, 1998, the superior court served notice of the order sustaining the demurrer on respondent. Respondent received the notice. On September 21, 1998, respondent agreed to file a notice of appeal of the order sustaining the demurrer on behalf of the Grubmans. Respondent was required to file a notice of appeal by November 20, 1998, but he did not do so.

At no time did respondent inform the Grubmans that he did not file the notice of appeal by November 20, 1998.

In January 2000, the Grubmans settled the insurance case with defendant Mike Murray (Murray) for $100,000 because they thought that respondent had filed a timely notice of appeal to the September 21, 1998 order sustaining the demurrer and that their appeal was still pending.

In January 2000, the Grubmans asked respondent when they would receive the $100,000 in settlement proceeds from Murray. Respondent told the Grubmans that he could not disburse any of the settlement funds until the superior court ruled on how this settlement affected Massachusetts and Connecticut's liability. This statement was false, and respondent knew it was false or was grossly negligent in not knowing that the statement was false at the time he made the statement as he was allowed to disburse the settlement funds at any time.

Thereafter, respondent received a settlement check for $100,000 from Murray.

On March 3, 2000, respondent filed a request for dismissal of the entire action with prejudice on behalf of the Grubmans without informing his clients.

On April 13, 2000, respondent filed an appeal of the court's order sustaining the demurrer with the Court of Appeal of the State of California, Second Appellate District (Court of Appeal).

On August 1, 2000, respondent filed a motion in superior court under California Code of Civil Procedure section 473 seeking relief from the request for dismissal that he had filed on March 3, 2000. Respondent alleged that he inadvertently requested that the entire action be dismissed when he intended to have the complaint dismissed as to Murray only.

On September 12, 2000, the Court of Appeal dismissed respondent's appeal because it was untimely filed.

On September 19, 2000, the superior court denied respondent's motion for relief from the request for dismissal.

On September 26, 2000, the attorney for defendants Massachusetts and Connecticut served a notice of the superior court's ruling on respondent. Respondent received the notice.

On November 20, 2000, the Court of Appeal sent a copy of the remittitur and order dismissing the appeal to respondent, which respondent received.

At no time did respondent inform the Grubmans that (1) he had not filed a timely notice of appeal; (2) the Court of Appeal had dismissed the appeal; (3) he had filed a request for dismissal dismissing the entire insurance case with prejudice; (4) he had filed a motion for relief from the request for dismissal in superior court; (5) the superior court had denied his request for relief from the request for dismissal; and (6) he could disburse the settlement proceeds received from Murray.

Instead, between November 20, 1998, through October 2002, respondent told the Grubmans that the insurance case and appeal were still pending, and that he was unable to disburse any of the settlement proceeds received from Murray until the court issued an order allowing him to do so. These statements were false, and respondent knew they were false or was grossly negligent in not knowing that they were false at the time he made the statements.

In June and July 2002, respondent was in Mexico and the Grubmans were unable to communicate with him.

In July 2002, Seymour called respondent's law partner, Elizabeth Moreno (Moreno), to

inquire about the status of the insurance case, the appeal and the settlement proceeds received from Murray, as well as about two other unrelated matters wherein respondent was the Grubmans' attorney.

Seymour then learned from Moreno that respondent had filed a request for dismissal dismissing the entire action on March 3, 2000; that the Court of Appeal had dismissed the appeal on September 12, 2000; and that on June 21, 2002, respondent had transferred the settlement funds received from Murray into respondent and Moreno's new client trust account. This was the Grubmans' first notice that the appeal and the entire insurance case had been dismissed.

On August 12, 2002, Moreno disbursed $107,926.95 to the Grubmans representing the $100,000 settlement proceeds from Murray plus $7,926.95 in interest.

Respondent's representation of the Grubmans ended in October 2002, when the last case that he was handling for them was concluded.

Thereafter, William, Patricia and Judith employed attorney Allen Grodsky (Grodsky) to file a malpractice action against respondent.

On March 21, 2003, attorney Grodsky filed a complaint on behalf of the Grubmans in Los Angeles County Superior Court entitled *Patricia Grubman, William Grubman, and Judith Whitmore v. Donald Rezak, Rezak & Katofsky, LLP, and Rezak & Moreno*, case No. BC292552 ("malpractice case"). The malpractice case alleged causes of action for, inter alia, legal malpractice, breach of fiduciary duty, and fraud.

At no time did respondent participate in the malpractice case.

On May 7, 2004, the Grubmans settled the malpractice case with respondent's errors and omissions liability carrier and with the other remaining defendants. On June 1, 2004, the Grubmans dismissed the malpractice case.

2. $500,000 Loan

In early 2002, respondent asked Seymour for a short term loan of $500,000. Based on respondent's long-standing relationship with Seymour and his family as a trusted family friend and attorney, Seymour agreed to lend him the funds.

On February 2, 2000, respondent signed a promissory note for the $500,000 loan ("Grubman promissory note"). The terms of the Grubman promissory note provided for interest at the rate of 10% per annum. Interest payments were to be made monthly. The entire principal was to be paid on or before August 2, 2000.

On February 2, 2000, respondent also signed a security agreement for the loan. Respondent provided as security his purported one-third unencumbered ownership interests in three companies – Bark Like A Dog, LLC; Squat Like A Hen, LLC; and Widow Appelbaum's, LLC. However, thereafter, respondent also pledged as security his interest in Squat Like a Hen to at least two other individuals for other loans. He subsequently sold and transferred his interests in the three companies to other individuals.

Seymour gave respondent a check in the amount of $500,000, made payable to respondent. Respondent executed and negotiated the check.

Before accepting the loan, respondent did not advise Seymour in writing that he could seek the advice of an independent lawyer of his choice, did not allow Seymour a reasonable opportunity to seek independent legal advice, and did not obtain Seymour's written consent to the terms of the loan. Thereafter, respondent made no interest payments to Seymour; nor did he pay any portion of the $500,000 principal.

Consequently, Seymour employed attorney Douglas Kuber (Kuber) to file an action against respondent to enforce the Grubman promissory note. On March 17, 2003, attorney Kuber filed a complaint on behalf of Seymour in Los Angeles County Superior Court entitled *Seymour Grubman v. Donald Rezak*, case No. BC292300 ("Grubman collection case") to collect the money that respondent owed Seymour. The complaint alleged causes of action for, inter alia, breach of contract and fraud.

On June 9, 2003, attorney Grodsky (the Grubmans' attorney in the malpractice case) substituted in as attorney of record for Seymour in the Grubman collection case.

On May 26, 2005, the court entered a judgment by default in the Grubman collection case in favor of Seymour and against respondent in the amount of $751,703.26.

To date, respondent has failed to pay any portion of the interest or principal pursuant to the Grubman promissory note, or any portion of the judgment in the Grubman collection case.

3. The State Bar Investigation

On February 14 and March 7, 2005, the State Bar wrote to respondent regarding the Grubman matters. The letters were addressed to respondent at his current State Bar membership records address. The United States Postal Service did not return the State Bar's letters as undeliverable or for any other reason. Respondent received the letters.

The letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Grubman matters. Respondent did not respond to the letters or otherwise communicate with the State Bar.

Count 1: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))[2]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. By failing to file a notice of appeal by November 20, 1998; by failing to inform the Grubmans that Murray was the only remaining defendant in the insurance case prior to accepting the settlement; by filing a request for dismissal of the entire action with prejudice when he was not authorized to do so; and by filing an untimely appeal on April 13, 2000, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Counts 2 and 3: Misrepresentations (Bus. & Prof. Code, § 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. By misrepresenting to the Grubmans that the insurance case and appeal were still pending and that he was unable to disburse any of the settlement proceeds received from Murray until the court issued an order allowing him to do so, respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Moreover, respondent's failure to disclose to the Grubmans that he failed to file a timely

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[2]References to rule(s) are to the current Rules of Professional Conduct, unless otherwise noted.

notice of appeal; that the untimely notice of appeal that he filed on April 13, 2000, was dismissed by the Court of Appeal on September 12, 2000; and that he had dismissed the entire insurance case with prejudice without their consent or knowledge constituted misrepresentations by omissions. Thus, the court finds by clear and convincing evidence that respondent is further culpable of violating section 6106, by knowingly and intentionally concealing his acts of omissions in count 3.

Count 4: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to inform the Grubmans: (1) that he failed to file a notice of appeal by November 20, 1998; (2) that he had dismissed the entire insurance case with prejudice; (3) that he filed an untimely notice of appeal on April 13, 2000; and (4) that the Court of Appeal dismissed the appeal on September 12, 2000, respondent willfully failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 5: Failure to Pay Client Funds Promptly (Rules Prof. Conduct, Rule 4-100(B)(4))

Rule 4-100(B)(4) provides that an attorney shall promptly pay or deliver, as requested by the client, any funds or properties in the possession of the attorney which the client is entitled to receive. By not disbursing the settlement funds of $100,000 received from Murray for more than two years after he had received them, respondent failed to pay *promptly*, as requested by a client, any funds in respondent's possession which the client is entitled to receive, in willful violation of rule 4-100(B)(4).

Count 6: Avoiding Interests Adverse to a Client (Rules Prof. Conduct, Rule 3-300)

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless the transaction or acquisition is fair and reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client may seek the advice of an independent

lawyer of the client's choice and is given a reasonable opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition. The purpose of this rule is to "recognize the very high level of trust a client reposes in his attorney and to ensure that that trust is not misplaced. [Citations.] Sadly, this case stands with too many others as an example of an attorney's preference of his personal interests in manifest disregard of the interests of his client." (*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 623.)

Here, respondent entered into loan and security agreements and received $500,000 from his client without ever repaying the funds. That transaction was unfair and unreasonable. By entering into these transactions with his clients; by failing to fully disclose that the loan was not really secured; failing to advise Seymour in writing that he may seek the advice of an independent attorney; failing to give Seymour a reasonable opportunity to seek that legal advice; and failing to obtain Seymour's written consent to the loan, respondent violated rule 3-300.

Count 7: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 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. Respondent failed to cooperate with the State Bar in willful violation of section 6068, subdivision (i), by failing to respond to the State Bar's February and March 2005 letters or participate in the investigation of the Grubman matters.

C. The Klein Matter – $100,000 Loan (Case No. 05-O-01682)

In May 1998, respondent asked his former client Phyllis Klein to lend $100,000 to him and his company, Plexus Merchant International, Inc. ("Plexus"). On May 4, 1998, respondent signed a promissory note on behalf of himself and Plexus for the $100,000 loan ("Klein promissory note"). The terms of the Klein promissory note provided for interest at the rate of 12% per annum. Interest payments were to be made on August 3, 1998, November 3, 1998, February 3, 1999, and May 3, 1999. The entire principal was to be paid on May 3, 1999.

On May 4, 1998, respondent also signed a guaranty for the $100,000 loan. By signing the guaranty, respondent agreed to be personally liable for the entire principal and interest in the event

that Plexus did not honor any portion of its obligations pursuant to the Klein promissory note.

Before accepting the loans, respondent did not advise Klein in writing that she could seek the advice of an independent lawyer of her choice, did not allow Klein a reasonable opportunity to seek that independent legal advice, and did not obtain Klein's written consent to the terms of the loans.

On May 14, 1998, Klein gave respondent a check in the amount of $100,000, representing the loan proceeds. The check was made payable to respondent only and Plexus' name was not included. Respondent executed the check by signing his name only and negotiated the check.

Thereafter, respondent paid Klein $6,000 in principal pursuant to the Klein promissory note. Neither respondent nor Plexus made any other payments to Klein.[3] An outstanding balance of $94,000 in principal plus interest remained.

On October 13, 2002, Klein properly mailed a letter to respondent terminating him as her attorney. Thereafter, Klein employed attorney David Voss to collect on the money owed pursuant to the Klein promissory note.

On December 27, 2002, attorney Voss filed a complaint on behalf of Klein in Los Angeles County Superior Court entitled *Klein v. Rezak, et al.*, case No. BC287678 ("Klein collection case") to collect the debt from respondent and Plexus.

On October 28, 2003, the court entered a judgment by default in the Klein collection case in favor of Klein and against respondent and Plexus in the amount of $165,118.

To date, respondent and Plexus never repaid the obligation, other than the $6,000.

On April 21 and May 9, 2005, the State Bar mailed letters to respondent regarding the Klein matter. The two letters were not returned as undeliverable or for any other reason. Respondent received the letters. The State Bar's letters requested that respondent respond in writing to specified allegations of misconduct in the Klein matter. Respondent did not respond to the State Bar's letters or otherwise communicate with the State Bar.

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[3]Based on Klein's declaration (State Bar exhibit 3), Klein claimed that the $6,000 paid was toward the amount borrowed and not an interest payment as alleged in the NDC.

Count 8: Avoiding Interests Adverse to a Client (Rules Prof. Conduct, Rule 3-300)

By entering into the above loan and guaranty agreement with Klein without advising Klein in writing that she may seek the advice of an independent attorney; by failing to give Klein a reasonable opportunity to seek the legal advice; and by failing to obtain Klein's written consent to the loan, respondent improperly entered into an unfair and unreasonable business transaction with and acquired a pecuniary interest adverse to a client, in willful violation of both the substantive and procedural protections of rule 3-300.

Count 9: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))

By not providing a written response to the State Bar regarding the Klein matter or otherwise cooperating in its investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was offered or received into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[4] Although respondent has no record of prior discipline in his 15 years of practice when the misconduct began in 1998, his lack of record is not considered as mitigation because his present misconduct is very serious. (Std. 1.2(e)(i).)

B. Aggravation

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

Respondent committed multiple acts of misconduct, including failing to perform services competently; committing acts of moral turpitude; failing to inform clients of significant developments; failing to promptly pay client funds; and failing to avoid interests adverse to a client. (Std. 1.2(b)(ii).)

Respondent's misconduct of obtaining two loans, totaling $600,000 from his clients without repayment, was surrounded by bad faith, dishonesty, concealment, and overreaching; and therefore

[4]All further references to standards are to this source.

is considered as aggravation. (Std. 1.2(b)(iii).) In the Grubman loan matter, respondent, as security of the loan, pledged his interests in three companies that were already encumbered and then later sold his interests. The loan was basically unsecured.

Respondent's misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) The clients had to hire other attorneys to sue respondent to recover their damages. The Grubmans lost their right to appeal the insurance case against the insurance companies since respondent dismissed the case with prejudice without their knowledge or consent. As a result, they had to file a malpractice lawsuit against respondent and settled with respondent's insurance carrier. Moreover, the clients lost their loans. Respondent has not paid any portion of the default judgment of $751,703.26 in the Grubman collection case or the default judgment of $165,118 in the Klein collection case.

Respondent demonstrated indifference toward rectification or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Respondent has not shown remorse or apologized to his clients, nor has he taken any remedial action on behalf of his clients. He has yet to pay his loans back.

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

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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) 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.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standards 2.2(b), 2.3, 2.4, 2.6 and 2.8 apply in this matter.

Standard 2.3 provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Standard 2.6(a) provides for discipline ranging from suspension to disbarment for violations of section 6068, subdivision (m), depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 2.8 provides that culpability of a willful violation of rule 3-300 must result in suspension unless the extent of the misconduct and the harm to the client are minimal, in which case, the degree of discipline must be reproval.

Respondent has been found culpable of serious misconduct in two client matters, including making misrepresentations to clients, failing to promptly pay client funds, failing to communicate, failing to perform competently, and failing to avoid interests adverse to clients.

The State Bar urges disbarment. The court agrees. Respondent's misconduct reflects a blatant disregard of professional responsibilities. He had flagrantly breached his fiduciary duties to his clients and abused their trust as their attorney.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) The Supreme Court noted that "[t]he essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert

unique influence over the dependent party." (*Id.*)

In *In the Matter of Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824, the attorney engaged in business transactions with a client and committed acts of moral turpitude by his seven year self-dealing with over $500,000 of investment funds he was asked by his client to handle, which included the attorney unilaterally paying himself nearly $450,000 in management and legal fees. The attorney's failure to demonstrate an appreciation of misconduct or learn from his extended period of overreaching of his vulnerable client was a significant aggravating factor to disbar him. "We believe that the public is therefore at risk unless respondent is required to successfully complete a reinstatement proceeding before again being allowed to practice law in this state." (*Id.* at p. 830)

In this matter, respondent had abused his clients' trust and absconded more than $600,000 from them. His taking of the funds is tantamount to misappropriation. The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

Respondent's acts of dishonesty "manifest an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.)

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.) "It is clear that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding.

Although respondent has been an attorney since 1983 without any prior record of discipline, it is unfortunate but he "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Respondent's failure to participate in this hearing leaves the court without information about the underlying cause of respondent's offense or of any mitigating circumstances surrounding his misconduct. Therefore, based on the severity of the offense, the serious aggravating circumstances, the standards and the case law, the court concludes that the appropriate level of discipline is disbarment.

VI. Recommended Discipline

Accordingly, the court recommends that respondent **Donald Rezak** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Inactive Enrollment

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

Dated: December 21, 2007

DONALD F. MILES
Judge of the State Bar Court