FILED FEBRUARY 21, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **RANDALL D. MASON**, **Member No. 212858,** A Member of the State Bar.	)	**Case Nos. 05-O-00595-PEM; 05-O-03658 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this consolidated default disciplinary matter, respondent **Randall D. Mason** is charged with multiple acts of professional misconduct in six client matters, including (1) failing to perform services competently; (2) failing to return unearned fees; (3) failing to communicate with clients; (4) improperly withdrawing from employment; (5) committing an act of dishonesty; and (6) failing to cooperate with the State Bar.

This court finds, by clear and convincing evidence, that respondent is culpable of 26 of the 29 alleged counts of misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution.

II. Pertinent Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing two Notices of Disciplinary Charges (NDCs) against respondent, as follows:

1. Case No. 05-O-00595 filed March 30, 2006; and

2. Case No. 05-O-03658 filed April 28, 2006.

Respondent filed responses to the two NDCs, which were later consolidated in June. This matter was referred to the State Bar's Program for Respondents with Substance Abuse or Mental

Health Issues (also known as Alternative Discipline Program [ADP]). Due to respondent's failure to participate in the proceedings, he was found not eligible to participate in the ADP.

The State Bar was represented at different times by Deputy Trial Counsel Manuel Jimenez and Cydney Batchelor.

Attorney Dani G. Williams initially represented respondent but later requested to withdraw as attorney of record because she had no contact with respondent as of July 2006. On August 7, 2006, the court granted her motion to withdraw.

On September 7, 2006, this consolidated matter assigned to Judge JoAnn M. Remke was reassigned to Judge Pat McElroy.

Respondent failed to appear at the October 12, 2006 trial. Consequently, respondent's default was entered on the same day. (Rules Proc. of State Bar, rule 201.) He was enrolled as an inactive member on October 15, 2006, under Business and Professions Code section 6007, subdivision (e).[1]

The court originally took this matter under submission on November 7, 2006, following the filing of State Bar's brief on culpability and discipline in case No. 05-O-00595, the first NDC. However, because Deputy Trial Counsel Jimenez had inadvertently omitted to file a brief in case No. 05-O-03658, the second NDC, he filed a supplemental brief on culpability and discipline regarding the second NDC on January 19, 2007.

Accordingly, the court hereby vacates the submission date of November 7, 2006, and takes the entire consolidated matter under submission as of January 19, 2007.

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).)

Respondent was admitted to the practice of law in California on May 6, 2001, and has since been a member of the State Bar of California.

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

A. First Notice of Disciplinary Charges (Case No. 05-O-00595)

1. The Engleman Matter

Sharon Engleman needed legal assistance to prepare a Qualified Domestic Relations Order (QDRO). The Superior California Legal Clinic (SCLC) in Sacramento referred her to respondent.

On March 16, 2004, Engleman met with respondent and told him that time was of the essence because the QDRO had to be filed within 60 days from March 1, 2004. Respondent agreed to represent her in "seeking and securing a stipulated QDRO regarding benefits through Timber Operators Council – Woodworkers regarding the Marriage of Engleman, Sacramento County Superior Court case no. 856474." Engleman paid respondent $750 pursuant to their agreement.

On May 5, 2004, respondent sent a draft of the QDRO to Joseph L. Reinhart, attorney for Timber Operators Council, Inc. – I.W.A. Pension Plan and Trust. Attorney Reinhart immediately wrote to respondent and informed him of the defects in the draft, including incomplete and blank lines and an incorrect plan name. He then provided respondent with a sample of the QDRO language for the Pension Plan and asked that respondent redraft the order.

On May 20, 2004, when Engleman asked about her case, respondent told her that there were a couple of changes in the language but everything was fine and that she should be receiving benefits in about two months.

But, in fact, respondent had not revised the QDRO draft as instructed or responded to attorney Reinhart's May 5th letter. On July 1, 2004, attorney Reinhart inquired whether the revised order was forthcoming and advised respondent that he had 60 days to contact him or the matter would be closed.

After waiting more than two months, Engleman telephoned respondent on 16 occasions between August 5 and October 26, 2004, asking that he return her calls. Other than returning her September 8th telephone call, respondent did not return any other calls during that period. One time, on August 18, when Engleman called respondent's law partner, Robert Fowler, to determine the whereabouts of respondent, attorney Fowler gave the telephone to respondent. Respondent stated that he was in the middle of a huge rush job and agreed to call Engleman back the next morning. Respondent did not call her.

On September 8, 2004, respondent returned Engleman's message and told her that his brother was ill and that her matter should take another two weeks.

On November 1, 2004, respondent misrepresented to Engleman that he had received the approved QDRO from attorney Reinhart and had forwarded it to Engleman's ex-husband for review and signature. Respondent knew or should have known that his statements to Engleman were false.

On November 15, 2004, when Engleman told respondent that her ex-husband had not received the revised and approved QDRO, respondent represented that he would send it again.

Since attorney Reinhart had not received a revised draft of the QDRO or a response from respondent, he advised respondent that both the plan administrator and his firm would be closing their files as of November 24, 2004. However, attorney Reinhart informed respondent that the files would be reopened upon submission of a revised QDRO. Attorney Reinhart also sent a courtesy copy of his letter to Engleman.

On November 27, 2004, Engleman received attorney Reinhart's letter and left a message on respondent's cellular telephone.

On November 29, 2004, Engleman sent a letter to respondent memorializing her November 27 telephone message to respondent and requested a status update by December 3, 2004. Engleman sent a copy of her letter to attorney Reinhart and her ex-husband.

On November 29, 2004, respondent spoke with Engleman and told her that he had not read the November 24, 2004 letter from attorney Reinhart. Engleman then read portions of the letter to him. Respondent stated that he had proof that attorney Reinhart had approved the language changes in the QDRO even though he knew or should have known that his statement was false. Furthermore, he stated that he would take care of the matter and agreed to give Engleman a status report by December 3, 2004. Respondent did not follow up.

However, on December 6, 2004, Engleman received a letter from respondent, in which he stated that he was moving his office to a new location and would respond to her concerns and provide her with copies of certain documents by December 14, 2004.

Between December 8, 2004, and January 14, 2005, Engleman left messages for respondent at his office, cellular telephone number and the SCLC. Respondent did not respond to any of her messages.

On December 27, 2004, attorney Reinhart wrote to Engleman informing her that he had yet to receive a draft QDRO to review.

On January 20, 2005, Engleman sent a letter by facsimile to respondent attaching a copy of attorney Reinhart's December 27, 2004 letter and requesting respondent to call her. Respondent received Engleman's facsimile but did not call her or attorney Reinhart.

Respondent had not provided a revised or approved QDRO to attorney Reinhart or file a QDRO on behalf of Engleman.

On March 7, 2005, Engleman wrote to respondent, demanding that he return the $750 that she paid him and an additional $2,481 for the benefits lost due to respondent's failure to timely file the QDRO, totaling $3,231.

On March 21, 2005, Engleman again wrote to respondent and formally terminated his representation. She also advised him that she had filed a small claims action against him with a hearing set for April 25, 2005, and that she was willing to enter settlement discussions.

On April 25, 2005, respondent failed to appear at the small claims hearing and a judgment was entered in favor of Engleman. On April 27, 2005, a notice of entry of judgment was served on respondent.

Although respondent provided no services of value to Engleman, he did not refund any portion of the unearned fee to her.

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.

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

By failing to file a QDRO within the 60-day deadline, by failing to correct the defective draft QDRO after receiving attorney Reinhart's May 5, 2004 letter, by failing to respond to attorney Reinhart's letters of May 5, July 1, and November 24, 2004, and by not taking any action in the case, respondent recklessly and repeatedly failed to perform legal services with competence in the Engleman matter in wilful violation of rule 3-110(A).

Count 2: Moral Turpitude (Bus. & Prof. Code, § 6106)

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

By misrepresenting to Engleman on November 1, 2004, that he had received an approved QDRO from attorney Reinhart and that he had sent it to Engleman's ex-husband and by misrepresenting on November 29, 2004, that he had proof that attorney Reinhart had approved changes to the language of the QDRO, respondent committed acts of dishonesty in wilful violation of section 6106.

Count 3: Failure to Communicate (§ 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 respond to Engleman's case status inquiries between August and October 2004 and between December 2004 and January 2005 and by failing to inform her of attorney Reinhart's July 1, 2004 letter regarding the closing of the case, a significant case development, respondent failed to respond promptly to reasonable status inquiries of a client and failed to inform his client of significant developments, in wilful violation of section 6068, subdivision (m).

Count 4: Withdrawal From Employment Without Court's Permission (Rule 3-700(A)(1))

Rule 3-700(A)(1) provides that an attorney must not withdraw from employment in a proceeding without the court's permission if its rules require such permission for the termination of employment.

The State Bar alleged that respondent wilfully violated rule 3-700(A)(1) by withdrawing from employment in a proceeding before a tribunal without its permission.

Although respondent failed to competently perform services on behalf of Engleman, there is no clear and convincing evidence that the court's permission was required for respondent's withdrawal from employment. Therefore, respondent did not wilfully violate rule 3-700(A)(1).

Count 5: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

Upon the client's termination of respondent's employment on March 21, 2005, respondent was obligated to refund the $750 advance fee, which he had not earned. His failure to do so was a wilful violation of rule 3-700(D)(2).

2. The Wiley Matter

On August 17, 2004, Heather Wiley, also known as Heather Lee, signed a retainer agreement employing respondent to represent her in "seeking and securing a final judgment of dissolution of marriage by way of negotiated settlement and/or court intervention in re Marriage of Lee, before the Sacramento County Superior Court." Thereafter, Wiley's mother sent a cashier's check payable to respondent in the amount of $1,500[3] as advance fee and costs for his services.

On August 18, 2004, attorney Michael White, counsel for Wiley's ex-husband, filed a petition for dissolution of marriage in Sacramento County Superior Court entitled *In the Marriage of Lee v. Lee*, case number 04FL05554 (Wiley action). On September 1, 2004, respondent acknowledged receipt of a copy of the summons, the petition and a blank response in the Wiley action.

On August 18, 2004, Wiley sent respondent by facsimile her signed income and expense declaration with her schedule of assets and debts and advised him of her new telephone number.

On September 29, 2004, attorney White sent a letter to respondent, advising him that the notice and acknowledgment of receipt of the petition had not been received and requested respondent to also provide the necessary disclosure statements on behalf of Wiley.

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[3]Per respondent's retainer agreement, $900 was a nonrefundable fee and $600 to be placed in respondent's client trust account and applied to "the statements of any services, costs, expenses incurred by client."

On November 19, 2004, attorney White wrote to respondent and advised him that Wiley's response was long overdue and that if a response was not received in 10 days, attorney White would seek Wiley's default.

On November 30, 2004, respondent filed a response on behalf of Wiley, which Wiley and respondent had signed three months ago – September 1, 2004. He also filed an order on application for waiver of court fees and costs on behalf of Wiley. But he did not serve or file the income and expense declaration or the schedule of assets and debts executed by Wiley.

On January 6, 2005, Wiley sent a letter, by certified mail, to respondent advising him of her multiple attempts to reach respondent to determine the outcome of an alleged December 22, 2004 hearing that respondent attended. In her letter, Wiley stated that she tried to reach respondent without success between December 22 and 31, 2004, and that she could not leave a voice-mail message because the voice-mail box was full. And between January 1 and 5, 2005, after discovering respondent's new office telephone number, she left three messages for respondent and demanded that he respond to her by January 13, 2005.

Other than filing a notice of change of address and telephone number on January 10, 2005, respondent took no action in the Wiley matter since November 30, 2004.

Respondent did not respond to Wiley's January 6th letter by January 13, 2005, or thereafter.

On January 30, 2005, Wiley terminated respondent's employment by certified letter which respondent received the next day. Wiley requested a refund of the $600 and half of the $900 paid to respondent by February 12, 2005.

Respondent again did not respond to Wiley's letter or refund any portion of the $1,500.

On April 4, 2005, respondent was served with a notice of date of trial and settlement conference in the Wiley action, informing him that the mandatory settlement conference (MSC) was set for June 2, 2005, and the trial was set for June 9, 2005.

On June 2, 2005, respondent did not appear at the MSC. However, Wiley appeared by telephone because she did not have sufficient funds to travel from Tacoma, Washington, to attend the MSC in-person. At the MSC, Wiley informed the court that she had terminated respondent's employment in January 2005 but had not heard from him. Since respondent remained as Wiley's

attorney of record, the court confirmed the trial date and ordered that respondent to appear in-person on June 9, 2005.

On June 3, 2005, respondent sent a letter enclosing a substitution form to Wiley. In his letter, respondent stated, in part, "[u]pon return of the enclosed substitution of attorneys we will immediately file the same with the court and return an endorsed copy to you along with your refund check via Federal Express."

On June 6, 2005, respondent filed the substitution of attorney, but he did not send a filed endorsed copy of the substitution or a refund check to Wiley, as promised.

Without funds to travel from Tacoma to attend the June 9, 2005 trial or retain new counsel, Wiley did not appear at the trial and a judgment prepared by opposing counsel was filed with the court. On the same day, a notice of entry of judgment was served and filed by the court.

Count 6: Failure to Perform Competently (Rule 3-110(A))

Respondent recklessly and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) by failing to timely file Wiley's response, by failing to file the income and expense declaration, by failing to promptly substitute out of the case when he was terminated by Wiley, by failing to appear at the MSC when he remained Wiley's attorney of record, and by failing to take any action after November 30, 2004, to defend Wiley in the Wiley action.

Count 7: Improper Withdrawal From Employment (Rule 3-700(A)(2))

Rule 3-700(A)(2) provides that a member must not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

By performing no services of value to Wiley after November 30, 2004, and by failing to communicate with Wiley from December 22, 2004 through June 3, 2005 – six days before trial, respondent effectively terminated his employment with Wiley without notifying the client. Although the client terminated his employment in January 2005, he remained as attorney of record until his substitution of attorney was filed three days before trial. As a result, Wiley was without representation at trial and the judgment was prepared by opposing counsel. Thus, respondent

improperly withdrew from employment with a client and failed to take steps to avoid reasonably foreseeable prejudice to the rights of his client, in wilful violation of rule 3-700(A)(2).

Count 8: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Upon the client's termination of respondent's employment on January 30, 2005, respondent was obligated to refund any unearned portion of the $1,500 advance fees and costs. His failure to do so, despite his promise to refund the funds, was a wilful violation of rule 3-700(D)(2).

Count 9: Failure to Communicate (§ 6068, Subd. (m))

By failing to respond to Wiley's telephone messages and letters, respondent wilfully failed to respond to client inquiries and failed to inform his client of significant developments, in wilful violation of section 6068, subdivision (m).

3. The Hoyer Matter

On February 5, 2004, Dellena Hoyer petitioned to dissolve her marriage in *Hoyer-Johnson v. Johnson* in Sacramento County Superior Court, case number 04FL00779 (Johnson action).

On June 23, 2004, Hoyer signed an attorney's retainer agreement employing respondent to represent her in the Johnson action. She paid respondent $1,500 by three separate $500 checks postdated for July 5, July 20, and August 5, 2004, respectively, as an advance fee for services as agreed in the retainer agreement.

Having received no correspondence or telephone calls from respondent, on August 4, 2004, Hoyer began leaving telephone messages for respondent regarding her case. From August 3 through September 22, 2004, she attempted to reach respondent by telephone approximately 10 times but to no avail.

Finally, on September 23, 2004, respondent called Hoyer to meet on September 28, 2004. At the meeting, respondent informed Hoyer that he had not yet done anything on her case due to "personal problems." However, respondent assured Hoyer that he would arrange for a court date and told her that it could take up to 90 days.

In December 2004, Hoyer went to the Sacramento County Superior Court and discovered that respondent had not done anything on her case, including not filing a substitution of attorney.

On December 20, 2004, Hoyer went to respondent's office and discovered through the receptionist that respondent had moved, leaving no forwarding address but only a telephone number. Hoyer then called respondent and left messages that she was terminating his employment and requested the return of the advance fee. Respondent did not return her calls.

Between January 5 and 25, 2005, Hoyer called respondent three times a week leaving messages and requesting the return of the advance fee.

On January 26, 2005, respondent left a message for Hoyer, stating that he had been trying to contact Hoyer's husband, that respondent had moved, that he would be sending Hoyer his new office address and that he would inform her of a court date. Hoyer returned respondent's call and left messages stating that she no longer wanted respondent to represent her and requested the return of the advance fee.

Respondent provided no services of value to Hoyer. He had not returned any portion of the advance fee.

On July 19, 2005, Hoyer attended a fee arbitration hearing but respondent failed to appear. The arbitrator awarded Hoyer $1,500 plus $75 for filing fees. But he had not paid the fee arbitration award.

Count 10: Failure to Perform Competently (Rule 3-110(A))

By failing to arrange a court date or provide any services of value to Hoyer, respondent recklessly and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 11: Improper Withdrawal From Employment (Rule 3-700(A)(2))

By moving his office in December 2004 without informing Hoyer, respondent effectively terminated his employment with Hoyer. Respondent did not inform Hoyer of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Hoyer. Thus, by not giving Hoyer notice of his termination of employment, respondent improperly withdrew from employment in wilful violation of rule 3-700(A)(2).

Count 12: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to refund the $1,500 advance fee upon termination of his employment, as demanded by his client on December 20, 2004, respondent wilfully violated rule 3-700(D)(2).

Count 13: Failure to Communicate (§ 6068, Subd. (m))

By failing to respond to Hoyer's letters and telephone messages, respondent failed to respond to reasonable status inquires of a client with regard to which respondent had agreed to provide legal services, in wilful violation of section 6068, subdivision (m).

4. The Wells Matter

On April 1, 2005, Marjo Wells signed an attorney's retainer agreement employing respondent to represent her in "seeking modification of child custody, visitation and support orders in re the Marriage of Wells before the Sacramento County Superior Court." Wells paid $300 initially against the $1,500 advance fee at $200 per hour with additional payments monthly.

On April 6, 2005, Wells met with respondent to discuss her case and to fill out documents. At the meeting, respondent represented to Wells that in the following week he would call her to discuss her declaration and then proceed to file her petition in court.

Following their meeting, Wells did not receive any correspondence or telephone calls from respondent.

From April 1 through May 1, 2005, Wells paid respondent a total of $954.20. On June 1, 2005, Wells stopped the monthly payments to respondent.

From April 8 through May 1, 2005, Wells called respondent multiple times but respondent did not respond to any of her telephone messages.

In May 2005, Wells went to respondent's office on two occasions and discovered that the office was locked and no one was there.

On June 2, 2005, Wells sent her complaint to the State Bar and a copy of her complaint to respondent requesting a return of the $954.20.

Respondent provided no services of value to Wells. He had not returned the $954.20 to Wells.

On September 14 and 29, 2005, the State Bar wrote to respondent and requested a response regarding the Wells matter. The United States Postal Service did not return the letters as undeliverable or for any other reason. Respondent did not respond to the letters or otherwise communicate with the State Bar.

Count 14: Failure to Perform Competently (Rule 3-110(A))

By failing to take any action in the Wells matter, respondent recklessly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 15: Failure to Communicate (§ 6068, Subd. (m))

By failing to respond to Wells' telephone messages and June 2, 2005 letter, respondent failed to respond to client inquiries, in wilful violation of section 6068, subdivision (m).

Count 16: Failure to Return Unearned Fees (Rule 3-700(D)(2))

By failing to refund the $954 advance fee, as demanded by his client on June 2, 2005, respondent wilfully violated rule 3-700(D)(2).

Count 17: Improper Withdrawal From Employment (Rule 3-700(A)(2))

By not communicating with Wells after April 6, 2005, and by not taking any action in her case, respondent constructively terminated his employment with Wells. Respondent did not inform Wells of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Wells.

Thus, by not giving Wells notice of his termination of employment, respondent improperly withdrew from employment in wilful violation of rule 3-700(A)(2).

Count 18: 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. Respondent failed to cooperate with the State Bar in wilful violation of section 6068, subdivision (i), by failing to respond to the State Bar's September 2005 letters or participate in the investigation of the Wells matter.

B. Second Notice of Disciplinary Charges (Case No. 05-O-03658)

1. The Mahon Matter

On March 7, 2005, William Mahon employed respondent to represent him in his marital dissolution matter in *In the Matter of Mahon v. Mahon*, Sacramento County Superior Court, case number 05 FL 01263. He paid respondent a flat fee of $1,500 to handle the dissolution matter until completion.

Between March 7 and June 16, 2005, Mahon provided respondent with original documentation and personal papers necessary to complete the dissolution proceeding.

On June 13, 2005, respondent represented Mahon at a law and motion hearing regarding support.

On June 16, 2005, respondent wrote to opposing counsel, requesting that Mrs. Mahon comply with the court's law and motion order of June 13, 2005.

Thereafter, respondent ceased performing any services for Mahon and abandoned his law office. Respondent did not inform Mahon that he no longer was performing any services on his behalf.

Between June 16 and July 4, 2005, Mahon telephoned respondent several times at his office and on his cell phone. Mahon was unable to leave a message for respondent because his office and cell voice mails were full and not accepting any further messages.

On July 4, 2005, Mahon wrote respondent a letter informing respondent that he had been unsuccessful in contacting respondent for several weeks. He requested that respondent provide him with an outline finalizing the divorce and that respondent communicate with him by July 8, 2005, or he would file a complaint with the State Bar. He also sent a copy of the letter by facsimile to respondent. Respondent received the faxed letter.

But respondent did not respond to the letter and did not provide Mahon with a status update.

On July 18, 2005, Mahon employed another attorney, Diane Kaer, to represent him in the dissolution proceeding.

On the same day, attorney Kaer sent a letter to respondent requesting that he sign the enclosed substitution of counsel and that he notify her when she could pick up Mahon's file. The letter was not returned as undeliverable or for any other reason.

Respondent did not respond to attorney Kaer's letter, execute the substitution of attorney or return Mahon's file.

On August 9, 2005, attorney Kaer filed a motion for attorney fees and costs and substitution of counsel, requesting an order that respondent be relieved of counsel and attorney Kaer be substituted in place of respondent. The hearing on the motion was set for September 19, 2005. The motion also requested that respondent pay Mahon $900 in attorney fees and $46 in costs, which were the costs Mahon incurred in bringing the motion.

On August 10, 2005, attorney Kaer served the motion on respondent. On September 19, 2005, attorney Kaer and Mahon appeared at the hearing, but respondent did not appear. At the conclusion of the hearing, the court relieved respondent as counsel and substituted attorney Kaer in his place and ordered respondent to release Mahon's files "ASAP." The requested attorney fees was not awarded because respondent must be personally served with an order to show cause (OSC) why sanctions should not be imposed.

On October 19, 2005, the court filed the orders made at the September 19, 2005 hearing.

Between October 2005 and January 2006, attorney Kaer made several attempts to serve respondent personally at his office with the October 19, 2005 orders and the OSC, but no one was there. Thus, she was unable to serve respondent.

Respondent did not return Mahon's file.

On September 15 and 29, 2005, the State Bar wrote to respondent regarding the Mahon matter and requested a response. The letters were not returned as undeliverable or for any other reason. Respondent did not respond to the letters or otherwise communicate with the State Bar.

Count 1: Failure to Perform Competently (Rule 3-110(A))

Although respondent was hired to handle Mahon's marital dissolution until its completion, respondent recklessly and repeatedly failed to perform with competence by failing to perform any services for Mahon after June 16, 2005, in wilful violation of rule 3-110(A).

Count 2: Failure to Communicate (§ 6068, Subd. (m))

By failing to inform Mahon that he no longer was performing any services on his behalf, return the client's numerous telephone calls or respond to Mahon's July 4, 2005 letter, respondent failed to respond to Mahon's reasonable status inquiries, in wilful violation of section 6068, subdivision (m).

Counts 3 and 5: Improper Withdrawal From Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2) in count 5.

Respondent constructively terminated his services when he took no action on behalf of Mahon after June 16, 2005. He failed to give notice to Mahon of his intent to withdraw and failed to return Mahon's papers, despite the client's request. The client had to subsequently hire another attorney to take over the matter since he had completely lost contact with respondent. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in wilful violation of rule 3-700(A)(2).

However, as the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of wilfully violating rule 3-700(D)(1) as alleged in count 3. Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property.

The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than rule 3-700(D)(1). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring the prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to return client file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1). The court therefore dismisses count 3 with prejudice.

Count 4: Failure to Return Unearned Fees (Rule 3-700(D)(2))

Respondent's agreement with Mahon was to complete the marital dissolution for a flat fee of $1,500. He neither completed the work nor returned any portion of the unearned fee to Macon.

Therefore, by failing to return any portion of the $1,500 advance fee by July 8, 2005, respondent failed to refund promptly any part of a fee that has not been earned in wilful violation of rule 3-700(D)(2).

Count 6: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in wilful violation of section 6068, subdivision (i), by failing to respond to the State Bar's September 2005 letters or participate in the investigation of the Mahon matter.

2. The Kwong Matter

Prior to July 13, 2004, Stanley Kwong employed respondent to represent him in his marital dissolution matter and paid respondent an advance fee of $1,500.[4]

On April 15, 2005, respondent filed on behalf of Kwong a petition for dissolution in *In the Matter of Kwong v. Nguyen,* Sacramento County Superior Court, case number 05 FL 02674.

Prior to July 12, 2005, Kwong provided respondent with original documentation and personal papers necessary to complete the dissolution proceeding.

On July 12, 2005, respondent and Kwong spoke about the dissolution matter.

Thereafter, respondent ceased performing any services for Kwong.[5] Sometime soon after June 16, 2005, respondent abandoned his law office. Respondent did not inform Kwong that he no longer was performing any services on Kwong's behalf.

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[4]The second NDC alleged that "Mahon paid [respondent] an advanced fee of $1,500" in the Kwong matter. (Second NDC, 8:10.) The court considers "Mahon" as a harmless, typographical error.

[5]The second NDC alleged that "[p]rior to July 12, 2005, respondent ceased performing any services for Kwong." (Second NDC, 8:17.) However, since respondent spoke with Kwong on July 12, which would be considered as performance of services, the factual allegations are contradictory in that respondent did not cease work prior to July 12. Accordingly, the court finds that respondent ceased work *after* July 12, and not before. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Between July 13 and 27, 2005, Kwong telephoned respondent every day requesting a status update. Respondent did not respond to the telephone calls or provide a status update.

On July 27, 2005, Kwong sent respondent a letter by certified mail, return receipt requested, to his official membership records address requesting that respondent provide Kwong with a status update. However, the letter was returned with a notation "return to sender – unclaimed."

On September 1, 2005, Kwong hand-delivered a letter to respondent's official membership records address requesting that respondent provide him with a status update regarding his dissolution case immediately. The letter also requested that respondent inform Kwong whether respondent still intended to represent Kwong. If not, Kwong requested that respondent return his original documents.

Respondent did not respond to the September 1, 2005 letter, provide Kwong with a status update or return Kwong's original documents.

On September 8, 2005, Kwong employed another attorney, Kim Ryan, to represent him in his dissolution proceeding. On the same day, he hand-delivered a letter to respondent, terminating his employment and substituting in attorney Ryan. The letter also requested that respondent return Kwong's original documents.

Between September 8 and 21, 2005, attorney Ryan telephoned respondent several times regarding the substitution of counsel. But there was no answer.

On September 12, 15 and 26, 2005, attorney Ryan sent a staff member to respondent's office in an attempt to obtain respondent's signature on the substitution of counsel. Again, no one was at respondent's office.

On September 15 and 28, 2005, the State Bar wrote to respondent regarding the Kwong matter and requested a response. The letters were not returned as undeliverable or for any other reason. Respondent did not respond to the letters or otherwise communicate with the State Bar.

Count 7: Failure to Perform Competently (Rule 3-110(A))

Respondent recklessly and repeatedly failed to perform with competence by failing to perform any services for Kwong after July 12, 2005, in wilful violation of rule 3-110(A).

Count 8: Failure to Communicate (§ 6068, Subd. (m))

By failing to inform Kwong that he no longer was performing any services on his behalf and by failing to respond to Kwong's telephone messages and September letters regarding a status update, respondent failed to respond to Kwong's reasonable status inquiries, in wilful violation of section 6068, subdivision (m).

Counts 9 and 10: Improper Withdrawal From Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))

Respondent failed to give notice to Kwong of his intent to withdraw, failed to return Kwong's original documents, and failed to take any steps to avoid reasonably foreseeable prejudice to Kwong, in wilful violation of rule 3-700(A)(2) in count 10.

As discussed above in counts 3 and 5 in the Mahon matter, because respondent's failure to return client file is encompassed in respondent's improper withdrawal from employment (see *In the Matter of Dahlz, supra,* 4 Cal. State Bar Ct. Rptr. 269, 280), the court likewise rejects a separate finding of culpability under rule 3-700(D)(1) in this matter. Therefore, the court dismisses count 9 with prejudice in the Kwong matter.

Count 11: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))

Respondent failed to cooperate with the State Bar in wilful violation of section 6068, subdivision (i), by failing to respond to the State Bar's September 2005 letters or participate in the investigation of the Kwong matter.

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).)[6]

B. Aggravation

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

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

Respondent's professional malfeasance demonstrates a pattern of misconduct. (Std. 1.2(b)(ii).) Three years after he was admitted to the practice of law, respondent began his misconduct in May 2004. Within 14 months, he failed to perform services competently, failed to communicate with his clients, failed to return unearned fees, and improperly withdrew from employment in six client matters.

Respondent's misconduct caused his clients substantial harm. Respondent's failure to return unearned fees deprived his clients of their funds. Several of them had to incur additional legal fees to hire another attorney to substitute in his place. Furthermore, even though respondent knew that time was of the essence, his failure to timely file the QDRO caused Engleman to lose some of her pension benefits. And since respondent withdrew from employment three days before trial, Wiley was without representation at her marital dissolution trial. (Std. 1.2(b)(iv).)

Respondent's failure to return unearned fees of more than $6,200 to five clients demonstrates indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Although Engleman filed a small claims action against respondent, he defaulted and a judgment was entered against him.

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 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.)

Respondent's misconduct involved six client matters. The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. The standards applicable to this case are standards 1.6, 2.3, 2.4(a), 2.6, and 2.10.

Standard 2.4(a) provides that culpability of a member's pattern of wilful failure to perform services demonstrating the attorney's abandonment of the causes in which he was

retained must result in disbarment. Here, there is clear and convincing evidence that respondent had engaged in a pattern of abandoning his clients without performing the legal services for which he was employed.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept., August 24, 2006, No. 99-O-12923) __ Cal. State Bar Ct. Rptr. ___.) It has been long-held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment and restitution. In support of its recommended discipline, the State Bar cited several cases, including *Cooper v. State Bar* (1987) 43 Cal.3d 1016 and *Bowles v. State Bar* (1989) 48 Cal.3d 100.

In *Bowles v. State Bar* (1989) 48 Cal.3d 100, the attorney abandoned five clients, issued a bad check, falsely promised that he would "make good" the check, and failed to forward an arbitration award to a client. The Supreme Court found that such misconduct was the functional equivalent of issuing "numerous" bad checks, which supported a conclusion of deceit. In addition, the record was completely devoid of mitigating factors and demonstrated the attorney's complete disinterest in the practice of law. His misconduct began six years after he was admitted to the practice of law. Therefore, his habitual disregard of clients' interests combined with failure to communicate with clients constituted acts of moral turpitude justifying disbarment.

The Supreme Court has often stated that habitual disregard of client interests is ground for disbarment. "Even when such neglect is grossly negligent or careless, rather than wilful and dishonest, it is an act of moral turpitude and professional misconduct justifying disbarment." (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 566.)

The court also finds these cases instructive.

In *In the Matter of Collins* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 1, the attorney was disbarred for committing professional misconduct in 14 matters over a six-year period. He

engaged in a pattern of client abandonment and failed to refund more than $17,500 in unearned fees and costs in nine matters.

In *Farnham v. State Bar* (1988) 47 Cal.3d 429, the Supreme Court disbarred the attorney and found that his 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." (*Farnham v. State Bar* (1976) 17 Cal.3d 605, 612.)

Here, respondent had abruptly abandoned six clients in less than two years. He recklessly failed to perform services, failed to communicate, improperly withdrew from employment, and failed to reimburse more than $6,200 in unearned fees to clients. The enormous harm to clients and to the public weigh heavily in assessing the appropriate level of discipline.

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.) There is a great likelihood that respondent will engage in misconduct in the future.

Failing to appear and participate in this 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* (1991) 53 Cal.3d 495, 507-508.) Respondent may have indicated to his client that he had personal problems and that his brother was ill. Also, respondent's former attorney and friend, Dani G. Williams, declared that respondent had medical problems and believed that he was in need of medical help. While the court sympathizes with respondent's personal difficulties, 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.

Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Therefore, based on the severity of the offense, the serious aggravating circumstances and the lack of mitigating factors, the court finds that disbarment is warranted to protect the public and to preserve public confidence in the profession.

The State Bar further requests that respondent be ordered to make restitution to six clients. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.) Here, respondent failed to return unearned fees to five clients. In the Kwong matter, since there was no charge of unearned fees, it is not recommended that respondent pay restitution to the client.

Furthermore, the Supreme Court does not "approve imposition of restitution as a means of compensating the victim of wrongdoing." (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044.) In the Engleman matter, the client's lost pension benefits of $2,481 involved tort damages. And for that, the court would not recommend extending restitution to cover tort damages.

Under rule 291 of the Rules of Procedure, effective January 1, 2007, (1) respondent must reimburse the Client Security Fund (CSF) to the extent that the misconduct found results in the payment of funds pursuant to section 6140.5; and (2) unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.

Therefore, the court recommends that respondent be ordered to make restitution as follows:

	Payee	*Amount*
1.	Sharon Engleman	$ 750
2.	Heather Wiley	$1,500
3.	Dellena Hoyer	$1,500

4. Marjo Wells $ 954

5. William Mahon $1,500

VI. Recommended Discipline

Accordingly, the court recommends that respondent **Randall D. Mason** 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.

It is recommended that respondent make restitution to the following clients within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291):

1. to Sharon Engleman in the amount of $750 plus 10% interest per annum from March 21, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Sharon Engleman, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
2. to Heather Wiley in the amount of $1,500 plus 10% interest per annum from January 30, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Heather Wiley, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
3. to Dellena Hoyer in the amount of $1,500 plus 10% interest per annum from December 20, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Dellena Hoyer, plus interest and costs, in accordance with Business and Professions Code section 6140.5);
4. to Marjo Wells in the amount of $954 plus 10% interest per annum from June 2, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Marjo Wells, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
5. to William Mahon in the amount of $1,500 plus 10% interest per annum from July 8, 2005 (or to the Client Security Fund to the extent of any payment from the fund

to William Mahon, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.

VII. Costs

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.

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: February ___, 2007

PAT McELROY
Judge of the State Bar Court