

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

In the Matter of)	Case No. 05-O-01163-PEM
THOMAS R. MITCHELL,)	DECISION
Member No. 199953,)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this contested disciplinary matter, respondent Thomas R. Mitchell is charged with three counts of misconduct: (1) aiding another in the unauthorized practice of law; (2) assisting, soliciting, or inducing violations of the Rules of Professional Conduct or the State Bar Act; and (3) committing acts of moral turpitude.

This court finds, by clear and convincing evidence, that respondent is culpable of the three charged acts of misconduct. 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 he be placed on probation for two years with conditions, including an actual suspension of 90 days.

II. Pertinent Procedural History

On May 8, 2006, 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). Respondent filed a response. On August 14, 2006, the State Bar filed an amended NDC to which respondent filed a response. On December 12, 2006, the parties filed a stipulation as to certain facts.

A three-day trial was held on December 12, 13, and 15, 2006. The State Bar was represented

by Deputy Trial Counsel Robert A. Henderson. Respondent represented himself.

The court took this proceeding under submission at the end of trial on December 15, 2006.

III. Findings of Fact and Conclusions of Law

The following findings of fact are based on the evidence and testimony introduced at this proceeding and on the parties' stipulation, which was admitted into evidence.

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 21, 1998, and has been a member of the State Bar since that time.

B. Assisting a Suspended Attorney in the Practice of Law

William B. Peavey, Jr., was disciplined for professional misconduct. On July 23, 2003, the California Supreme Court ordered him suspended from the practice of law for three years, stayed, be placed on probation for three years and be actually suspended for two years and until he makes restitution and until he shows rehabilitation (Supreme Court case No. S114035). The order became effective August 22, 2003. Peavey has at all times thereafter remained ineligible to practice law.¹

In May 2003, respondent began observing trials in San Francisco County Superior Court. There, he became acquainted with Peavey. During the next two months Peavey called and sought respondent's legal advice. In late August Peavey met with respondent and offered him a job as an associate attorney. At that meeting Peavey told respondent he needed an associate because he had been suspended from the practice of law. Impressed with such honesty, respondent was not at all concerned about Peavey's suspension. Besides, he needed a job.

Soon, in September 2003, respondent agreed to work for Peavey as an associate attorney. He would be paid hourly and in cash. Respondent continued to work for Peavey until February 2004.

At the time, the firm's name – Peavey Law Firm, the telephone number and the stationery letterhead remained the same as before Peavey's suspension.

¹Peavey resigned with charges pending from the State Bar, effective June 9, 2006. (Evid. Code, § 452; Supreme Court case No. 143254.)

The stationery letterhead contained the following information:

- On the top left margin – “WILLIAM B. PEAVEY, JR., ATTORNEY AT LAW, CALIFORNIA STATE BAR LICENSE NO. 57985 (ORIGINAL ISSUE 1973)”;
- At the center – “PEAVEY LAW FIRM, 160 SPEAR STREET, SUITE 214, SAN FRANCISCO, CALIFORNIA 94105-1542”; and
- On the top right margin – “TELEPHONE (415) 543-8800, FACSIMILE (415) 543-8459, E-MAIL PEAVEYLAW@AOL.COM.”

The Peavey Law Firm letterhead did not in any way indicate that Peavey was suspended from the practice of law. Each time the letterhead was used after August 22, 2003, the effective date of Peavey's suspension, Peavey held himself out as entitled to practice law.

When respondent used the Peavey Law Firm stationery, he listed his name instead of Peavey's on the top left margin: “THOMAS R. MITCHELL, ESQ., ATTORNEY AT LAW, CALIFORNIA STATE BAR LICENSE NO. 199953.” But the other information remained the same, including the center heading – “PEAVEY LAW FIRM.”

The support staff at the Peavey Law Firm also remained the same as prior to Peavey's suspension. Respondent did not pay for office space, staff or utilities for the Peavey Law Firm at any time during his employment.

On September 11, 2003, respondent signed an "Addendum to Certificate of Authority" on Peavey's client trust account (CTA), Wells Fargo Bank account number 23076011. This addendum gave respondent joint signature authority on Peavey's CTA along with Peavey. Respondent knew that he, as the only person entitled to practice law at the Peavey Law Firm, was responsible for the CTA.

Subsequent to Peavey's suspension, respondent assisted Peavey in his holding himself out as entitled to practice law and practicing law for existing and prospective clients as follows:²

²Although the amended NDC charges that respondent worked on the Charmeon Anthony matter, there is no clear and convincing evidence that he did so and Anthony did not testify in this proceeding.

1. *Pascale Araya-Jara*

In July 2003, Pascale Araya-Jara signed a contingent fee contract with Peavey. She was a client of Peavey and the Peavey Law Firm on the date of Peavey's suspension.

On October 10, 2003, respondent sent a demand letter on the Peavey Law Firm letterhead on behalf of Araya-Jara to State Farm Insurance Companies. On November 11, 2003, respondent sent a letter, again on the Peavey Law Firm letterhead, to Tim Spellman, a State Farm Mutual Automobile Insurance Company claim representative, and requested that he call respondent to discuss settlement.

On December 3, 2003, Spellman sent Araya-Jara a letter notifying her that State Farm had sent her attorney Peavey a release and settlement draft in the amount of \$7,000. Peavey did not notify Araya-Jara of his receipt of the \$7,000 settlement draft. Araya never received her share of the settlement from the Peavey Law Firm.³

Before this hearing Araya-Jara never met respondent. At no time after he was suspended did Peavey notify Araya-Jara, the court, opposing counsel or anyone else associated with the Araya-Jara matter, that he was suspended from the practice of law or not entitled to practice law. Likewise, respondent never informed Araya-Jara, the court, opposing counsel or anyone else associated with the Araya-Jara matter, that Peavey was suspended from the practice of law.

2. *Margaret Leis*

In 2002 Margaret Leis was rear-ended in an automobile accident. In January 2004, Leis telephoned the Peavey Law Firm inquiring about extending the statute of limitations on her potential personal injury lawsuit. Respondent told Leis that he would get back to her on the issue and that she should come in so that Peavey and he could evaluate her case.

On February 16, 2004, Leis met with Peavey in the office. The meeting was to be with respondent, but respondent left the meeting after introducing Leis to Peavey. Peavey asked about her accident and medical treatment, reviewed papers and had Leis sign medical release forms.

On February 17, Leis spoke with respondent who apologized for missing the meeting. On

³Araya-Jara was reimbursed for her losses from the Client Security Fund of the State Bar.

February 26, Peavey advised her that she should file a lawsuit. A couple of days later, Peavey went to her home and gave her the documents with which to file the lawsuit. On March 3, Peavey told Leis to file the lawsuit. Finally, on March 10, 2004, Leis left a message for Peavey asking if he was going to represent her. Leis later settled the matter without Peavey's assistance.

At no time did Peavey notify Leis that he was suspended from the practice of law or not entitled to practice law. Likewise, at no time did respondent ever inform Leis that Peavey was suspended from the practice of law or not entitled to practice law.

3. *Suzane Lim*

Suzane Lim signed a retainer agreement for the legal services of Peavey and the Peavey Law Firm in August 2002. On October 15, 2003, respondent signed a Release in Full of All Claims and Rights in the Lim matter for the sum of \$12,000. Furthermore, on October 16 and November 5, 2003, respondent signed and sent letters to opposing counsel Cheryl Seitz, regarding settlement and confirming receipt of the settlement funds. The letters were written on Peavey Law Firm letterhead. Between October and November 2003, Peavey presented a settlement document to Lim which she signed and told her that she should receive approximately \$6,000 to \$7,000 in settlement. But Lim never received any money in connection with her case from the Peavey Law Firm.⁴

The first time Lim met respondent was at the hearing on this matter. Peavey never informed Lim of his suspension. Nor did Peavey notify the court, opposing counsel, or anyone else associated with the Lim matter that he was suspended from the practice of law or not entitled to practice law. Likewise, at no time did respondent ever inform Lim, the court, opposing counsel or anyone else associated with the Lim matter that Peavey was suspended from the practice of law or not entitled to practice law.

4. *Henry Loo*

On May 16, 2003, Henry Loo became a client of Peavey and the Peavey Law Firm when

⁴Lim was reimbursed for her losses from the Client Security Fund of the State Bar.

Peavey came to Loo's house to discuss his case.⁵ On October 28, 2003, respondent signed and filed a notice of hearing and a petition for order compelling arbitration and for appointment of arbitrator in the Loo matter, naming himself as the attorney of record in the Peavey Law Firm. On November 20 and December 11, respondent consulted with Peavey on the Loo matter. On February 10, 2004, respondent spoke with Peavey and Mark Carbone, an attorney representing Loo's insurance company, regarding the Loo matter. Loo believed that Peavey was his attorney and that respondent was never his attorney. At no time did respondent ever inform Loo, the court, opposing counsel or anyone else involved in the case that Peavey was suspended from the practice of law or not entitled to practice law.

5. Michael K. McAdoo

In June 2002, Michael K. McAdoo was mauled by a pit bull. On June 27 or 28, McAdoo retained Peavey to represent him in a lawsuit against the pit bull owners, Nelly G. and Emile Totah. McAdoo was still a client of Peavey and the Peavey Law Firm on the date of Peavey's suspension. David Green, opposing counsel, believed that Peavey was the attorney in the *McAdoo* matter.

On November 19, 2003, McAdoo and respondent signed a release of all claims in the McAdoo matter. The release contained a declaration with language stating that Peavey was the attorney for McAdoo. The name "William B. Peavey, Jr." was typed on the signature line over which respondent signed his name. On November 26, 2003, a request for dismissal was filed with the court in the *McAdoo* matter. The request bore Peavey's name as McAdoo's attorney and respondent's signature on behalf of Peavey.

On December 3, 2003, Nelly Totah sent Peavey and McAdoo a check for \$17,500 in settlement of the lawsuit. Peavey cashed the check by forging McAdoo's name on the check. McAdoo never received any money from the Peavey Law firm. McAdoo first learned of Peavey's suspension in June 2004.

At no time did respondent ever inform McAdoo, the court, opposing counsel or anyone else

⁵Loo testified that he became a client of Peavey and Peavey law firm on May 16, 2003. However, exhibit 46 (copy of fee agreement between Loo and Peavey) indicates he may have been Peavey's client as far back as December 3, 2002.

involved in the case that Peavey was suspended from the practice of law and not entitled to practice law.

6. *Derrick O'Guinn*

Derrick O'Guinn was a client of Peavey and the Peavey Law Firm on the date of Peavey's suspension. O'Guinn did not testify at trial. However, the parties at trial stipulated that respondent worked on the O'Guinn matter as follows:

On October 24, 2003, respondent reviewed the jury instructions in the O'Guinn matter. On October 27, 29, 30, 31, and November 3 and 4, 2003, respondent worked on the motions in limine and submitted the final draft to Peavey for his review. On October 28 and 29, respondent worked on the trial preparations. On October 28, 2003, respondent met with Peavey about the O'Guinn matter. On November 3, 2003, respondent researched the issue of witness unavailability.

C. *Conclusions of Law*

1. *Count One: Aiding the Unauthorized Practice of Law (Rules of Prof. Conduct, Rule 1-300(A))*⁶

Respondent is charged in count one of the amended NDC with a violation of rule 1-300(A) of the Rules of Professional Conduct, which provides that a member must not aid any person or entity in the unauthorized practice of law. There is clear and convincing evidence that respondent violated rule 1-300(A) by assisting Peavey, a lawyer who had been suspended from the practice of law, in practicing law and holding himself out as entitled to practice law.

During his employment in the Peavey Law Firm from September 2003 through February 2004, respondent admitted that he did not tell at least five clients that Peavey was suspended from the practice of law (Araya-Jara, Leis, Lim, Loo, and McAdoo). When respondent was hired, he was fully aware that Peavey was not entitled to practice law. Instead of declining the job offer, respondent was impressed with Peavey's "honesty" and went to work for him as an associate.

Consequently, respondent assisted Peavey in the unauthorized practice of law in six client matters by:

- Sending letters to State Farm on Peavey Law Firm stationery letterhead, accepting

⁶ References to "rule(s)" are to the Rules of Professional Conduct.

- settlement and signing the release in the Araya-Jara matter;
- Setting up interviews between Peavey and Leis, taking telephone calls and giving legal advice in the Leis matter;
 - Signing a release in full of all claims and rights and sending letters to opposing counsel on Peavey Law Firm stationery letterhead in the Lim matter;
 - Signing the petition for arbitration, speaking with an insurance adjustor and conferencing with Peavey in the Loo matter;
 - Signing a request for dismissal and the release of all claims in the McAdoo matter; and
 - Conferencing with Peavey, reviewing the jury instructions, drafting the motions in limine and working on the trial preparations in the O'Guinn matter.

Respondent's assistance allowed Peavey and the Peavey Law Firm to continue to serve the clients' interests, which Peavey nor his law firm would have been able to do without respondent. Respondent never disclosed to clients, potential clients, the court, opposing counsel, insurance claim representatives or others associated with the clients' matters that Peavey was suspended from the practice of law effective August 2003 and was thus not entitled to practice law.

Therefore, respondent, by clear and convincing evidence, wilfully violated rule 1-300(A) by aiding Peavey in the unauthorized practice of law.

2. *Count Two: Assisting, Soliciting or Inducing Violations (Rules of Prof. Conduct, Rule 1-120)*

Respondent is charged in count two of the amended NDC with a violation of rule 1-120, which provides that a member must not knowingly assist in, solicit, or induce any violation of these rules or the State Bar Act.

The State Bar charges that by knowingly allowing Peavey to collect legal fees for work performed while he was suspended, respondent knowingly assisted Peavey in collecting an illegal fee in violation of rule 4-200. (Rule 4-200 provides that an attorney must not enter into an agreement for, charge, or collect an illegal or unconscionable fee.)

While Peavey was actually suspended from the practice of law, he was legally precluded from

practicing law and, therefore, his performance of legal services in exchange for a fee was illegal. He was not entitled to charge or collect his fees for those services that constituted the unauthorized practice of law. (*Birbrower, Montalbana, Condon and Frank v. Superior Court* (1998) 17 Cal.4th 119, 136.) “Permitting [an attorney] to have earned any of the money paid him by [his client], even a reasonable fee under a quantum meruit theory, would condone his unauthorized practice of law.” (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574.)

Thus, the fees that Peavey charged and collected from the settlement funds were illegal under rule 4-200(A). By signing the releases in the Lim matter for \$12,000 and in the McAdoo matter for \$17,500, respondent knew or should have known that the legal fees collected from those settlement funds were illegal. Hence, respondent knowingly assisted Peavey in collecting the settlement funds and the illegal fees for those services that constituted unauthorized practice of law in wilful violation of rule 1-120.

As to the other client deposits charged in the amended NDC, there is no clear and convincing evidence that respondent knowingly assisted Peavey in collecting and depositing them in the client trust account.⁷

3. Count Three: Moral Turpitude (Bus. & Prof. Code, § 6106)⁸

Respondent is charged with violating section 6106, which provides that the member’s commission of an act involving moral turpitude, dishonesty or corruption constitutes ground for suspension or disbarment.

The State Bar charges that by aiding Peavey in the unauthorized practice of law and assisting Peavey in holding himself out as entitled to practice law, assisting Peavey in the collection of illegal fees, and permitting the misappropriation of client money, respondent committed acts involving moral turpitude, dishonesty and corruption.

⁷The court finds that respondent did not receive any portion of those illegal fees and that respondent did not know Peavey was misappropriating client funds. In fact, he testified that because Peavey did not pay him on a regular basis, respondent left his employ after about six months.

⁸References to section (§) are to the provisions of Business and Professions Code, unless otherwise noted.

Respondent argues that he did not knowingly allow Peavey to withdraw client money from CTA nor was his conduct meant to give clients the impression that Peavey was still allowed to practice law. In other word, he contends that he did not have the intent or knowledge that he was committing an act of moral turpitude. This court rejects respondent’s argument.

Moral turpitude has been defined as “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general [Citations.] Moral turpitude has also been described as any crime and misconduct committed without excuse [citations] or as any ‘dishonest or immoral’ act, not necessarily a crime. [Citations.] The concept of moral turpitude depends upon the state of public morals . . . as well as on the degree of public harm produced by the act in question.” (*In re Higbie* (1972) 6 Cal.3d 562, 569-570.)

In the instant matter, respondent knew that Peavey was practicing law while suspended from the practice of law. Respondent had a legal, fiduciary and moral obligation to inform Peavey’s clients, opposing counsel, the court and others involved in the clients’ matters. But instead, he worked as Peavey’s associate attorney, used Peavey Law Firm stationery letterhead in his correspondence, and signed settlement contracts on behalf of Peavey. Respondent’s failure to disclose Peavey’s suspension was inexcusable. Thus, by assisting Peavey in the unauthorized practice of law and in collecting illegal fees as found in counts one and two, respondent committed acts involving dishonesty and moral turpitude in wilful violation of section 6106.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁹

Respondent’s four and a half years of trouble-free law practice at the time of his misconduct in 2003 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*

⁹All further references to standards are to this source.

(Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456; std. 1.2(e)(i).)

Respondent was extremely remorseful for his conduct. He acknowledged at trial the wrongfulness of his conduct and accepted responsibility for what he had done. His misconduct is unlikely to be repeated. (Std. 1.2(e)(vii).)

B. Aggravation

There are aggravating factors in this case. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).) He assisted his employer in the unauthorized practice of law and in the collection of illegal fees and committed acts of dishonesty.

Respondent's aid in the unauthorized practice of law harmed significantly the public and the administration of justice and his assistance in the collection of illegal fees harmed the clients. (Std. 1.2(b)(iv).) Some of the clients have not received their share of the settlement proceeds from Peavey and some have been paid by the State Bar's Client Security Fund.

Although respondent displayed a certain degree of lack of cooperation to the State Bar during disciplinary investigation by leaving voice mail messages on three occasions that were denigrating and abusive to a State Bar deputy trial counsel and investigator, respondent was not deemed entirely uncooperative since he did participate during the investigation and in the proceedings. (Std. 1.2(b)(vi).) Thereafter, he stipulated to certain facts and was contrite and very cooperative at trial. Therefore, the court finds that his unprofessional outbursts during the initial stage of this matter are somewhat discounted by his subsequent remorseful conduct with the State Bar and before the court.

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 reproof 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, and 2.10.

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 recommends a minimum of six months actual suspension, citing *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178 and *In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411 in support of its recommendation.

These two cases involved capping activities, fee splitting with non-lawyers and illegal solicitation and are, therefore, distinguishable from the instant matter.

In *Nelson*, an inexperienced attorney formed a partnership for the practice of law with a non-lawyer, divided legal fees with the non-lawyer and used the non-lawyer as a “runner” and “capper.” His law practice for about six months was built entirely on illegal payments to third parties for referral of cases and he was found to have violated a criminal provision under Business and Professions Code sections 6152 (prohibition of solicitation). He was also found culpable of failing to pay client funds and improperly withdrawing from employment without taking steps to avoid foreseeable prejudice to clients. But because of his compelling mitigation including remorse, restitution, rehabilitation and extreme candor, the attorney was actually suspended for six months, with two years stayed suspension and two years probation.

In *Jones*, another relatively inexperienced attorney allowed a non-lawyer to operate a large scale personal injury practice involving capping, forgery and other illegal and fraudulent practices for more than two years. The non-lawyer handled millions of dollars and collected more than \$600,000 in attorney fees in the attorney’s name. To the attorney’s credit, he turned the non-lawyer in to the police which resulted in a felony conviction for forgery and also turned himself in to the State Bar. However, he had not established that he had taken adequate steps to avoid a recurrence

of the misconduct. The attorney was actually suspended for two years with a three-year stayed suspension and a three-year probation.

Like the attorneys in *Nelson* and *Jones*, respondent was inexperienced and knew that he was aiding another in the unauthorized practice of law. But unlike those attorneys, respondent was not involved in unlawful solicitation, capping activities or forgery – which are far more egregious than respondent’s misconduct.

There are several cases regarding the unauthorized practice of law that provide some guidance to the court.

In *Chasteen v. State Bar* (1985) 40 Cal.3d 586, the attorney was found culpable of the unauthorized practice of law for over a year as well as deceit of clients, commingling and failure to return fees. The bulk of his misconduct was attributable to his long history of alcoholism. In light of his prior record of discipline and mitigation, the Supreme Court imposed a two-month actual suspension and until he made restitution. Here, respondent did not gain any direct financial benefit from his misconduct and he had no prior record of discipline.

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 this instant matter, while respondent participated in the proceedings, he also misled his clients, opposing counsel, insurance company and the court that Peavey was entitled to practice law while he was suspended.

In *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, the attorney made a court appearance and signed and served a trial brief while suspended by the Supreme Court for misconduct in a prior discipline. He did not inform either the court or opposing counsel that he was suspended from the practice of law. He was found culpable of moral turpitude in practicing law while suspended. As a result, he was actually suspended for 90 days with a three-year stayed

suspension and a three-year probation. Similarly, here, respondent did not inform the clients, court or opposing counsel that Peavey was suspended from the practice of law. Unlike the attorney in *Mason*, respondent did not have a prior record of discipline.

In *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 *Jones, Nelson*, or *Farnham*. Moreover, respondent now recognizes the impropriety of his actions. The gravamen of his misconduct is his assisting another in the unauthorized practice of law and the concealment of his employer's inactive status to the court, opposing counsel and his clients. He knew that Peavey was not entitled to practice law; but his desperate need for a job and his inexperience and naivete trumped his professional judgment, resulting in a blatant disregard of professional and ethical responsibilities. Since then, he has demonstrated full candor and acknowledgment of responsibility for his misconduct before the court. Respondent has shown extreme remorse and shame. In his closing argument in this proceeding, respondent tearfully stated that he "ought to pay for this case" and deserved to be suspended from the practice of law.

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.) However, the court finds that the State Bar's recommendation of at least six months actual suspension is excessive in light of the foregoing case law and standards. Respondent's misconduct warrants a less severe level of discipline than the six-month actual suspension imposed in *Nelson* and *Farnham* but more than the 60-day actual suspension imposed in *Chasteen* and *Johnston*. After balancing all relevant facts and circumstances, including the underlying misconduct and the mitigating and

aggravating circumstances, to reach the appropriate recommendation of degree of discipline, the court determines that a 90-day actual suspension, similar to *Mason*, would be appropriate to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Thomas R. Mitchell** be suspended from the practice of law for one year, that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 90 days of probation;
2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;
3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period;

Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

4. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed

to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

5. Within 10 days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1;
6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School,¹⁰ given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201);
7. The period of probation must commence on the effective date of the order of the Supreme Court imposing discipline in this matter; and
8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year that is stayed, will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional

¹⁰At the time of trial, respondent was residing in Utah. Rule 290(b) of the Rules of Procedure provides that if an attorney resides in another jurisdiction and is unable to attend State Bar Ethics School, the attorney may seek authorization to attend a comparable remedial education course offered through a certified provider in the other jurisdiction by obtaining the prior approval of the Office of the Chief Trial Counsel of the State Bar of California and final approval of the State Bar Court.

Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year of the effective date of the discipline herein. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

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. Wilful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.¹¹

VII. Costs

The court recommends that costs be awarded to the State Bar pursuant to section 6086.10 and are enforceable both as provided in section 6140.7 and as a money judgment.

Dated: March 6, 2007

PAT McELROY
Judge of the State Bar Court

¹¹Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)