FILED AUGUST 1, 2006

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **JAMES D. GOING III**, **Member No. 123649**, A Member of the State Bar.	**Case No. 05-O-02415-RAH [05-O-03149; 05-O-03472; 05-O-05343]** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default disciplinary matter, respondent **James D. Going III** is charged with multiple acts of professional misconduct in four separate matters. The alleged misconduct includes: (1) failing to preserve the identity of funds in a trust account; (2) engaging in an act of moral turpitude; (3) failing to cooperate with the State Bar; (4) failing to communicate; (5) improperly withdrawing from employment;(6) failing to release a client file; and (7) failing to comply with conditions attached to a disciplinary probation.

For the reasons set forth below, the court finds, by clear and convincing evidence, that respondent is culpable of seven of the nine alleged counts of misconduct. In view of respondent's misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

On March 17, 2006, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing and properly serving a Notice of Disciplinary Charges (NDC) on respondent by certified mail, return receipt requested, at his official membership records address

(official address) under Business and Professions Code section 6002.1[1] The mailing was returned to the State Bar bearing the stamp "Unclaimed."

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

On April 17, 2006, the State Bar telephoned respondent at his official membership records telephone number and left a voice mail message requesting that he return the call. Respondent did not respond to the voice mail message. On that same date, the State Bar attempted to reach respondent at another telephone number contained in his case file. However, a recording advised that the number was disconnected.

On April 19, 2006, the State Bar called directory assistance for the area which includes respondent's official address and asked for all telephone listings for respondent. Directory assistance had no listings for respondent. The State Bar also checked Parker's Directory on April 19. However, it did not list any address of which the State Bar was not already aware.

On the State Bar's motion, respondent's default was entered on May 8, 2006, and respondent was enrolled as an inactive member on May 11, 2006, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official address by certified mail.

Respondent did not participate in the disciplinary proceedings. This matter was submitted for decision on May 12, 2006, following the filing of the State Bar's 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).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on May 5, 1986, and has since been a member of the State Bar of California.

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[1]References to section are to the California Business and Professions Code, unless otherwise noted.

B. The Client Trust Fund Matter (Case No. 05-O-02415)

Respondent maintained a client trust account (CTA) at U.S. Bank, account No. 1-638-0055-8005. On March 8, 2005, respondent had insufficient funds in his CTA to cover check No. 1385 for $600 (NSF check), made out to "Cash," thereby causing the balance in the account to drop to a negative $297.01.

On May 18, 2005, the State Bar opened an investigation regarding a notice of insufficient funds reported to it by U.S. Bank (the NSF check matter).

On June 20, 2005, the State Bar sent a letter to respondent, inquiring about the NSF check matter. The letter, which requested that respondent provide the State Bar with specified documents and a response by July 11, 2005, warned that respondent's failure to reply and provide the requested documents would be considered by the State Bar as a failure to cooperate with its investigation.

The State Bar sent respondent a second letter on July 12, 2005, requesting that he provide a written explanation regarding the allegations made in connection with the NSF check matter. The letter stated that a written response was required from respondent by July 26, 2005.

Both the June 20 and July 12, 2005 letters were received by respondent. However, respondent failed to respond to either of the letters, and failed to otherwise cooperate or participate in the State Bar's investigation of the allegations regarding the NSF check matter.

Count 1: Failure to Maintain Client Funds in Trust Account (Rules Prof. Conduct, Rule 4-100(A))[2]

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney will be deposited therein or otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." *Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

Although an attorney cannot be held responsible for every detail of office operations, the attorney violates the trust account rules if the attorney does not manage funds as required by the

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

rules, regardless of the attorney's intent or the absence of injury to anyone. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 26.)

By failing to maintain sufficient funds in his CTA to cover check No. 1385, thereby causing the CTA to have a negative balance of $297.01, respondent failed to properly administer a client trust account in wilful violation of rule 4-100(A).

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

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

The State Bar alleges that respondent violated section 6106 when an insufficiently funded check for $600 was issued from his CTA and when respondent knew or should have known that there were insufficient funds in his account to cover the check.

It is well settled that the "conduct of issuing numerous checks with insufficient funds 'manifests an abiding disregard of the fundamental rule of ethics–that of common honesty–without which the profession is less than valueless in the place it holds in the administration of justice.'" (*Bambic v. State Bar* (1985) 40 Cal.3d 314, 324, citing *Tomlinson v. State Bar* (1975) 13 Cal.3d 567, 577.)

In order for the court to find the respondent culpable of violating section 6106, there must be clear and convincing evidence of respondent's deliberate dishonesty or corruption or an act involving moral turpitude. Here, the alleged facts demonstrate that one bounced check was issued from respondent's CTA and not numerous checks with insufficient funds. There is no evidence of deception or dishonesty. The issuance of one bad check from respondent's CTA does not provide clear and convincing evidence of corruption or dishonesty. Such an error does not rise to the level of moral turpitude in violation of section 6106.

Count 3: 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.

By failing to provide a response to the State Bar's letters, respondent failed to cooperate with a State Bar investigation in wilful violation of section 6068, subdivision (i).

C. The Mills Matter (Case No. 05-O-03149)

On January 12, 2004, the Supreme Court ordered that respondent be suspended from the practice of law for 30 days, effective February 11, 2004. (Supreme Court case No. S120131; State Bar Court case No. 01-O-04941.)

On February 2, 2004, Lisa Mills (Mills) retained respondent to represent her in a child support/custody matter, and paid him $1,500 in advanced fees. Respondent, however, did not inform Mills of his suspension. In addition, while he was suspended, respondent requested, without notification to Mills, that attorney George Woodworth (attorney Woodworth) file a petition and order to show cause in the child support/custody matter on Mills' behalf.

On March 24, 2004, respondent associated attorney Woodworth as counsel in Mills' case. On that same date, respondent informed Mills that Family Court Services had scheduled a mediation appointment for April 6, 2004. Mills attended the April 6, 2004 mediation hearing without respondent appearing as her attorney.

On April 26, 2004, respondent and Mills attended a court hearing in the child support/custody matter. Respondent had not conferred with Mills about her case since he was retained on February 2, 2004. The court scheduled a second hearing for May 18, 2004.

On May 18, 2004, respondent and Mills attended the second court hearing in the child support/custody matter. Other than speaking to Mills briefly in the hallway prior to the second hearing, respondent had not communicated with her at any time since the April 26, 2006 hearing.

On July 11, 2004, respondent wrote a letter to Mills enclosing an "Application for Order and Supporting Declaration; Income and Expense Declaration; and a Child Support Case Registry Form." Respondent requested that Mills sign and return the documents to him, and pay $189.10 for filing fees. On July 15, 2004, Mills returned the documents and the filing fees as respondent had requested.

On August 30, 2004, respondent filed an "Order to Show Cause for Modification of Child Support." Thereafter, another hearing in the child custody/support matter was scheduled for November 22, 2004.

On September 28, 2004, Mills telephoned respondent to inquire as to the status of her case

and to request a change to the proposed child custody order. Mills left a message on respondent's telephone answering machine asking that he call her back. However, respondent did not return Mills' telephone call. On September 30 and October 4, 2004, Mills again tried to reach respondent to inquire as to the status of her case. But, on both occasions, respondent's message machine answered with a beeping sound, which Mills understood to mean that respondent's voice mail was full.

Being unable to contact respondent by telephone, Mills wrote a letter to respondent on October 4, 2004, requesting information regarding the status of her case. In her letter, Mills also specified that she wanted the proposed child custody order changed from joint legal and physical custody to full physical custody. Respondent did not respond to Mills' letter.

On November 22, 2004, respondent and Mills attended the scheduled hearing. During the hearing, the court requested that respondent prepare a *Dissomaster* financial statement regarding the ability of Mills' spouse to pay child support and present it that day to the court. Because respondent advised Mills that she did not need to stay, she left the courthouse. Respondent, however, did not prepare the *Dissomaster* financial statement as requested by the court and did not return to the courtroom. Mills' case was taken off calendar. Later that same day, Mills wrote a letter to respondent, requesting that he contact her as soon as possible to inform her about the outcome of the November 22 hearing. However, respondent did not contact Mills after the court hearing.

On January 4, 2005, Mills wrote a letter to respondent regarding her attempts to communicate with him and his failure to respond. In her letter, Mills also complained that the only time respondent had ever discussed the child support/custody case with her was on the day that she had employed him. Respondent did not respond to Mills' January 4, 2005 letter, nor did he communicate with her about her case thereafter.

On three separate occasions between January 4 and May 6, 2005, Mills requested by telephone that respondent turn over her file so that she could employ new counsel. Respondent, however, did not provide the file to Mills.

On March 7, 2005, in Supreme Court case No. S120131, the California Supreme Court ordered that respondent be suspended from the practice of law, effective March 29, 2005, for failure

to pass the Multistate Professional Responsibility Examination as required by the court's earlier January 12, 2004 order (Supreme Court case No. S12013; State Bar Court case No. 01-O-04941). Respondent did not inform Mills that he was again suspended from the practice of law.

On May 20, 2005, Mills employed attorney Sara E. Wasserstrom (Wasserstrom) to complete her child custody/support matter. Because, respondent could not be located by Wasserstrom to sign the substitution of attorney form, Wasserstrom had to copy Mills' court file in order to proceed with her case.

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 respond to Mills' numerous telephone messages and letters requesting status information; by failing to explain to Mills the importance of the court's instructions on November 22, 2004; by failing to notify Mills of his suspension from practice, commencing in February 2004,[3] and of his suspension in March 2005; and by failing to notify Mills that he had associated another attorney, Woodworth, in her case, respondent clearly and convincingly failed to respond to reasonable status inquiries of a client and failed to inform his client of significant developments in a matter with regard to which he had agreed to provide legal services, in wilful violation of section 6068, subdivision (m) .

Count 5: Improper Withdrawal from Employment (Rue 3-700(A)(2))

Rule 3-700(A)(2) states that "a member shall 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 all applicable laws and rules." Rule 3-700(D)

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[3]It is incorrectly alleged in paragraph 34 of the NDC that respondent was suspended from practice "commencing in March 2004." However, it was correctly alleged in paragraph 16 of the NDC that respondent was suspended from the practice of law "[b]eginning on or about February 11, 2004 and ending on or about March 12, 2004." Thus, the court finds the error in paragraph 34 to be harmless.

requires an attorney, upon termination of employment, to promptly return client papers and refund unearned fees.

By failing to file the *Dissomaster* financial report on November 22, 2004, and by ceasing to perform legal services and prosecute Mills' case after November 22, 2004, respondent effectively withdrew from his representation of Mills. However, at no time did respondent provide any notice to Mills that he was withdrawing from employment. He also failed to promptly release Mills' file to her, as she had requested by telephone on three separate occasions between January 4 and May 6, 2005. Moreover, by failing to make himself available to Mills' new attorney, Wasserstrom, respondent impeded the efforts of attorney Wasserstrom to substitute in as counsel on Mills' case. Thus, respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client in wilful violation of rule 3-700(A)(2).

Count 6: Failure to Release File (Rule 3-700(D)(1))

As the court has already found respondent culpable of wilfully violating rule 3-700(A)(2), it declines to find respondent also culpable of wilfully violating rule 3-700(D)(1). Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all of 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 prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers or property may be a portion of the conduct subject to discipline as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*) Because respondent's failure to return Mills' file is relied on as part of the basis for finding that respondent violated the rule prohibiting prejudicial withdrawal, the court rejects a separate finding of culpability under rule 3-700(D)(1), and therefore, this count is dismissed with prejudice.

D. The Santiago Matter (Case No. 05-O-03472)

On March 13, 2003, respondent was retained by Luis Santiago (Santiago) to assist Santiago in a paternity matter, and was paid $750 at that time, by Santiago's mother, Marta Castro (Castro)

on her son's behalf. Specifically, respondent was retained to establish visitation rights for Santiago regarding Santiago's son. Santiago agreed that respondent could communicate with Castro about his case.

On May 13, 2003, respondent sent Santiago a letter which contained enclosures, consisting of three forms. Respondent's letter requested that Santiago sign and return the enclosed forms to respondent after reviewing them for accuracy. The forms were a "Petition to Establish Parental Relationship," a "Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act," and an "Income and Expense Declaration" (I & E). (Respondent's letter requested that Santiago, himself, fill out the I & E and attach to it his W2 forms and pay stubs for the year 2002.)

In May 2003, Santiago returned the completed forms and provided the requested documents to respondent as directed.

In early June 2003, Castro telephoned respondent to inquire whether he had received the documents Santiago had sent to him. Respondent confirmed that he had received the documents. However, respondent did not file Santiago's documents or otherwise initiate proceedings regarding Santiago's visitation rights.

Between June 2003 and January 2004, Castro telephoned respondent approximately 75 times, each time leaving a voice mail message inquiring as to the status of Santiago's case. During this time period, Castro was able to speak directly to respondent on approximately three occasions. On each of these occasions, respondent indicated to Castro that the legal process was slow and that he would check to see what was happening and get back to her. However, respondent did not call Castro back; nor did respondent initiate any communication with Castro or Santiago between June 2003 and January 2004.

After January 2004, respondent failed to return Castro's telephone voice-mail messages inquiring into the status of Santiago's case. For nearly 17 months, between January 2004 and May 18, 2005, respondent did not communicate with Castro and Santiago. However, Castro, who learned that respondent had been suspended by the California Supreme Court from February 11 to March 12, 2004, sent him a letter on May 18, 2005, requesting a refund of the $750 she had paid respondent to represent Santiago.

Respondent failed to contact Castro or Santiago at all until July 5, 2005, when he wrote Castro a letter advising her of his actual suspension from the practice of law. In his letter, respondent also stated that Castro's (i.e., Santiago's) file was available to be picked up.

Count 7: Improper Withdrawal from Employment (Rue 3-700(A)(2))

By failing to file Santiago's "Petition to Establish Parental Relationship" and Santiago's declarations regarding custody and income, and by failing to initiate proceedings to establish visitation rights for Santiago, respondent abandoned the case he had agreed to prosecute on Santiago's behalf, and effectively withdrew from representation of Santiago without notice and without taking steps to protect his client's interests in wilful violation of rule 3-700(A)(2).

Count 8: Failure to Communicate (Bus. & Prof. Code, §6068, Subd. (m))

By failing to respond to Castro's telephone messages inquiring into the status of Santiago's case, by failing to initiate any communication with Santiago or Castro, and by failing to communicate at all for 17 months between January 2004 and May 18, 2005, respondent failed to respond to a client's reasonable status inquiries and failed to keep his client informed of a significant development (e.g., that respondent had been suspended from the practice of law from February 11 to March 12, 2004) in a matter with regard to which he had agreed to provide legal services, in wilful violation of section 6068, subdivision (m).

E. The Probation Conditions Matter (Case No. 05-O-05343)

On January 12, 2004, the California Supreme Court ordered respondent suspended from the practice of law for 12 months, that execution of the suspension be stayed, and that respondent be placed on probation for 24 months subject to the conditions of probation, including 30 days actual suspension, as recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed April 10, 2003. (Supreme Court case No. S120131, State Bar Court case No. 01-O-04941; 01-O-04944.)

Pursuant to the Supreme Court Order (SCO), effective February 11, 2004, respondent was to comply with certain terms and conditions of probation, including, but not limited to:

1. Abiding by the provisions of the State Bar Act and Rules of Professional Conduct; and

2. Submitting written quarterly reports to the Office of Probation (formerly known as the Probation Unit) on each January 10, April 10, July 10, and October 10 of the period of probation, as well as stating, under penalty of perjury, whether he complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter.

However, in its August 29, 2005 order, effective September 28, 2005, the Supreme Court ordered that respondent's probation, previously ordered by the court on January 12, 2004, be revoked and reinstated on the same terms and conditions as previously imposed in Supreme Court case No. S120131, State Bar Court case No. 01-O-04941; 01-O-04944; that the stay of execution of suspension, which the court had ordered in its January 12, 2004 SCO be lifted; and that respondent be actively suspended from the practice of law for 90 days and ordered to comply with rule 955 of the California Rules of Court. (Supreme Court case No. S120131; State Bar Court case No. 05-PM-01000.)[4]

While on probation, respondent failed to do the following:

1. Properly administer and maintain his CTA;
2. Cooperate in a State Bar investigation;
3. Communicate with client Mills;
4. Perform in Mills' case;
5. Perform in client Santiago's case;
6. Communicate with Santiago; and
7. Submit written quarterly reports to the Office of Probation on April 10, 2005, July 10, 2005, October 10, 2005, and January 10, 2006.

Count 9: Failure to Comply with Probation Conditions (Bus. & Prof. Code, §6068, Subd. (k))

The State Bar alleges that respondent violated section 6068, subdivision (k), by failing to

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[4]In paragraph 60 of the NDC, the State Bar incorrectly alleged that the matter underlying the August 29, 2005 SCO is State Bar Court case No. 01-O-04941 et al. However, it is State Bar Court case No. 05-PM-01000 that is the underlying case upon which the Supreme Court's August 29, 2005 order is based.

comply with the conditions attached to a disciplinary probation, as set forth above.

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

The State Bar has shown by clear and convincing evidence that respondent wilfully violated section 6068, subdivision (k), by failing to comply with the provisions of the State Bar Act and Rules of Professional Conduct and by failing to submit written quarterly reports to the Office of Probation on April 10, 2005, July 10, 2005, October 10, 2005, and January 10, 2006.

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).)[5]

B. Aggravation

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

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. On June 12, 2004, upon stipulation, respondent was suspended from the practice of law for 12 months, stayed, placed on probation for 24 months and actually suspended for 30 days. Respondent was found culpable of two counts of failure to perform legal services with competence. (Supreme Court case No. S120131; State Bar Court case No. 01-O-04941; 01-O-04944.)

2. On August 29, 2005, upon stipulation, respondent's probation was revoked and reinstated on the same terms and conditions as previously imposed in Supreme Court case No. S120131; State Bar Court case No. 01-O-04941; 01-O-04944; the stay of execution of suspension, which the court ordered in its January 12, 2004 order was lifted; and respondent was actively suspended from the practice of law for 90 days. (Supreme Court case No. S120131; State Bar Court case No. 05-PM-01000.) Respondent was found culpable of violating the terms and conditions of the

[5]All further references to standards or std. are to this source.

probation imposed by the Supreme Court in its June 12, 2005 order by failing to: (1) submit written quarterly reports on October 10, 2004 and January 10, 2005; (2) submit proof of attendance at a session of Ethics School, and passage of the test given at the end of the session by February 11, 2005; and (3) submit proof of having completed his MCLE requirement by February 11, 2005.

Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii) including, failing to preserve the identity of funds in a client trust account, failing to cooperate with the State Bar, failing to communicate, improperly withdrawing from employment, and failing to comply with probation conditions.

The State Bar argues that respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).) It is the contention of the State Bar that respondent's misconduct caused Mills' child custody matter and Santiago's paternity matter to be delayed by over one year and that such delay constitutes "significant harm." However, the State Bar's contention is not supported by clear and convincing evidence. The allegation that respondent's misconduct caused his clients' child custody and paternity matters to be delayed by "over one year" was not included in the NDC. Thus the allegation raised for the first time in the State Bar's brief on culpability and discipline can not be considered as an aggravating circumstance. (See *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 589.) Moreover, a delay, standing alone, does not warrant the conclusion that the client was "significantly harmed." Thus, without more facts being alleged, there can be no finding by clear and convincing evidence that respondent's misconduct significantly harmed his clients. (See *Young v. State Bar* (1990) 50 Cal.3d 1204, 1217.)

Respondent's failure to fully participate in this proceeding is also an aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating and aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Respondent's misconduct in four matters included failure to properly administer and manage a client trust fund, failure to cooperate with a State Bar investigation, failure to communicate, improper withdrawal from employment, and failure to comply with probation conditions. 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 victims. (Stds. 1.6, 1.7, 2.2, 2.4, and 2.6.)

Standard 1.7(b) provides that if a member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate. Respondent has two prior records of discipline and no mitigation.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (Id. at p. 251.) The court will look to the applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.) The Supreme Court will reject a recommendation consistent with the standards only when the court entertains "grave doubts" as to its propriety. (*Ibid*; *In re Naney* (1990) 51 Cal.3d 186, 190.) Even though the standards are merely guidelines for imposing discipline, there is "no reason to depart from them in the absence of a compelling reason to do so. [Citation.]" (*Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

The State Bar urges disbarment, given standard 1.7(b), respondent's two prior records of discipline, his current misconduct, and the case law. The court agrees.

The court finds *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 instructive. In *Taylor*, the attorney committed serious misconduct in three client matters. He also

had a prior record of discipline. The court found that the attorney was not a good candidate for suspension and/or probation because of his disdain for the orderly process and rule of law. Finding the risk of future misconduct by the attorney to be great, the court found disbarment necessary. (*Id.* at p. 581.)

As in *Taylor*, here, the respondent has committed serious misconduct. While on probation, respondent failed to properly administer his client trust account and cooperate in a State Bar investigation in one matter. In two matters he failed to respond to reasonable status inquiries from his clients, failed to inform his clients of significant developments relevant to their cases, and improperly withdrew from employment. He violated his probation conditions by failing to comply with the provisions of the State Bar Act and the Rules of Professional Conduct and by failing to submit written quarterly reports to the Office of Probation.

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.) Here, respondent, has clearly demonstrated indifference to the importance of his discipline. He has had two prior records of discipline within the past two years. Disbarment is particularly appropriate when a respondent repeatedly demonstrates indifference to successive disciplinary orders of the Supreme Court. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.)

In *Barnum v. State Bar* (1990) 52 Cal.3d 104, the Supreme Court disbarred the attorney for collecting an unconscionable fee and disobeying court orders to return the fee and refusing to participate in the disciplinary proceeding. The court concluded that Barnum was "not a good candidate for suspension and/or probation. He has breached two separate terms of our prior disciplinary order, leading to the imposition of additional sanctions. He also defaulted before the State Bar here and in one other proceeding." (*Id.* at p. 106.)

Similarly, respondent here is not a candidate for suspension and/or probation. He has twice failed to comply with his probation conditions and has failed to participate in this disciplinary proceeding. These facts reflect respondent's disdain and contempt for the orderly process and rule of law and demonstrate that the risk of future misconduct is great.

Moreover, respondent's failure to comply with successive orders of the Supreme Court has

burdened the resources of this court and the State Bar disciplinary system, also a matter of great concern to the court. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508 [contemptuous attitude toward disciplinary proceedings is relevant to determination of appropriate sanction].) Respondent has had opportunity to conform his conduct to the ethical requirements of the profession, but has failed or refused to do so. He has shown himself unable to comply with court orders. Probation and suspension have proven inadequate to prevent continued misconduct. (Cf., *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646.)

Respondent has displayed total indifference and lack of remorse by ignoring this disciplinary proceeding. Such failure to participate leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding the misconduct. His lack of participation indicates that far more severe discipline than that which has been imposed is required to achieve the purposes of attorney discipline set forth in standard 1.3.

Accordingly, lesser discipline than disbarment is not warranted. In view of respondent's misconduct, the aggravating circumstances and the lack of any mitigating factor, the court recommends disbarment as the only adequate means of protecting the public and the integrity of the legal profession.

VI. Discipline Recommendation

It is hereby recommended that respondent **James D. Going III** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

VII. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6068.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VIII. Order Regarding Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment will become effective three calendar days from the date of service of this order.

Dated: July ___, 2006

RICHARD A. HONN
Judge of the State Bar Court