

**State Bar Court of California
Hearing Department
San Francisco**

<p>Counsel For The State Bar</p> <p>Maria J. Oropeza Office of the Chief Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2569</p> <p>Bar # 182660</p>	<p>Case Number (s)</p> <p>05-O-02519 05-O-02984 06-O-10057 08-O-10521 08-O-11913 08-J-12807</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED <i>RW</i></p> <p>MAR 10 2009</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>James D. Hollister 566 South N Street Livermore, CA 94550 (925) 454-0690</p> <p>Bar # 44244</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: James D. Hollister</p> <p>Bar # 44244</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 26, 1969**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **32** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



(Do not write above this line.)

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case **90-O-14553**
 - (b) Date prior discipline effective **July 17, 1993**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Rules 3-110(A) and 3-700(A)(2), Business and Professions Code section 6068(m)**
 - (d) Degree of prior discipline **public reproof**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **Five years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **four years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of **three-years**.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (5) 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. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next 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 twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) 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, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(Do not write above this line.)

- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

- (5) **Other Conditions:**

Attachment language begins here (if any):

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW & DISPOSITION

IN THE MATTER OF: James D. Hollister (Bar No. 44244)

CASE NUMBERS: 05-O-02519
05-O-02984
06-O-10057
08-O-10521
08-O-11913
08-J-12807 et al.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Statement of Facts: Count One (A) (Case Number 05-O-02519)

1. James D. Hollister (hereinafter "respondent") was admitted to the practice of law in the State of California on June 26, 1969, was a member at all times pertinent to these charges and is currently a member of the State Bar of California.
2. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:
 3. Vinal Chand (hereinafter "Chand") is a native and citizen of Fiji.
 4. On September 15, 1998, Chand entered the U.S.A. using his passport and a valid non-immigrant visa.
 5. On September 13, 1999, Chand was advised by letter that he had not established to the satisfaction of the Immigration and Naturalization Service that he had suffered from "past persecution" nor that he had a fear of "future persecution." The letter informed Chand that his asylum petition would require a hearing.
 6. Chand filed an asylum petition within one-year of his arrival in the U.S.A.
 7. Subsequent to filing his asylum petition Chand retained the services of Albert A. Villela (hereinafter "Villela"), a non-attorney. Chand paid \$2,000 to Villela for representation before the Immigration Court.
 8. Chand believed Villela was an attorney.
 9. On September 21, 2001 an individual hearing was held in Chand's asylum claim.
 10. On January 30, 2003, an individual hearing was scheduled in Chand's immigration matter.
 11. On May 22, 2003, an individual hearing was held in Chand's immigration matter. Chand was ordered removed from the U.S.A. to Fiji. Chand's application for asylum was denied. Chand's application for withholding of removal was denied.
 12. Subsequent to Chand's asylum petition being denied, Chand was advised by Villela to file an

appeal in the case. Chand paid \$1,500 to Villela for the appeal.

13. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

14. On December 27, 2003, respondent signed the Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, on behalf of Chand. Prior to and including December 27, 2003, respondent had never met with nor spoken to Chand.

15. On January 27, 2004, respondent filed, on behalf of Chand, "Respondent's Brief in Support of Appeal" in the United States Department of Justice Executive Office of Immigration Review Board of Immigration Appeals, Falls Church, Virginia. Prior to and including January 27, 2004, respondent had never met with nor spoken to Chand.

16. On July 21, 2004, Chand's appeal of the decision denying him asylum and for withholding of removal was denied. Respondent received this notice. Respondent did not notify Chand of the decision or communicate with him in any way.

17. On August 7, 2004, Chand married a citizen of the U.S.A.

18. On August 12, 2004, respondent signed a Notice of Entry of Appearance as Attorney or Representative for Chand. Prior to and including August 12, 2004, respondent had never met with nor spoken to Chand.

19. On September 14, 2004, respondent filed an Alien Relative Petition, I-130, on behalf of Chand. Respondent in his cover letter stated that: "The beneficiary (Chand) is on BIA Appeal." In truth and in fact Chand's appeal to the BIA (Board of Immigration Appeals) had been denied on July 21, 2004. Prior to and including September 14, 2004, respondent had never met with nor spoken to Chand. In the filing, respondent included incorrect information on the Biographical Data Forms for Chand and his U.S.A. citizen wife.

20. On November 19, 2004, respondent was notified that Chand's request to adjust status based on his marriage to a citizen of the U.S.A. had been denied. The basis of the denial was inconsistent statements in the Biographical Data Form prepared by respondent. Respondent received this notice. Respondent did not inform Chand in any way of the denial of his marriage based request to adjust status.

21. In truth and in fact respondent never met with, consulted with or spoke with Chand during the time that he represented Chand.

22. In truth and in fact respondent took his direction in Chand's immigration matter directly from Villela, the non-attorney retained by Chand.

23. In truth and in fact respondent knew that Villela was not an attorney and was not entitled to practice law.

Conclusions of Law: Count One (A) (Case Number 05-O-02519)

24. By failing to properly prepare the Alien Relative Petition, I-130, on behalf of Chand, and by failing to ensure the Biographical Data Form was properly filled out, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, a willful violation of Rule 3-110(A).

Statement of Facts: Count One (B) (Case Number 05-O-02519)

25. Respondent willfully violated Business & Professions Code § 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

26. The allegations contained in Count One (A) are hereby incorporated by reference.

27. Respondent never informed Chand that Villela was not an attorney and could not practice law.

28. Respondent never met nor discussed the immigration matter with Chand, and never informed Chand of the denial of the appeal on the removal and asylum matter, and the denial of adjustment of status.

Conclusions of Law: Count One (B) (Case Number 05-O-02519)

29. By failing to inform Chand of the July 21, 2004, denial of his appeal, the November 19, 2004, denial of his I-130, Alien Relative Petition, and that Villela was a non-attorney that was not entitled to practice law, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, a willful violation of Business & Professions Code § 6068(m).

Statement of Facts: Count One (C) (Case Number 05-O-02519)

30. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

31. The allegations contained in Count One (A) are hereby incorporated by reference.

32. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

33. Subsequent to filing his asylum petition Chand retained the services of Villela a non-attorney. Chand paid \$2,000 to Villela for representation before the Immigration Court.

34. Subsequent to Chand's asylum petition being denied, Chand was advised by Villela to file an appeal in the case. Chand paid \$1,500 to Villela for the appeal.

35. Villela paid respondent \$400 for preparing the Brief in Chand's immigration matter.

Conclusions of Law: Count One (C) (Case Number 05-O-02519)

36. By being paid \$400 for the brief he prepared on behalf of Chand which was only a portion of the \$3,500 in legal fees paid by Chand to Villela, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A).

Statement of Facts: Count One (D) (Case Number 05-O-02519)

37. Respondent willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

38. The allegations contained in Count One (A) are hereby incorporated by reference.

39. The allegations contained in Count One (C) are hereby incorporated by reference.

40. Villela told Chand that he could represent Chand in the immigration proceedings.
41. Chand was advised by Villela as to what course of action to take in the immigration proceeding, including filing an appeal, filing an I-130 Alien Relative Petition and filing an appeal with the Ninth Circuit.
42. Chand believed that Villela was an attorney entitled to practice law in the immigration matter.
43. At all times relevant to the *Chand* matter, respondent knew that Villela was not an attorney.
44. Respondent entered into a business arrangement in which Villela was allowed to render legal advice to individuals, whom respondent represented in immigration matters.
45. Respondent knew that Villela was not entitled to practice law in the Chand immigration matter.
46. Respondent knew that Villela was giving legal advice and counsel to Chand.

Conclusions of Law: Count One (D) (Case Number 05-O-02519)

47. By allowing Villela to direct his work and by allowing Villela to advise Chand on how to pursue his immigration matter, respondent aided and abetted a person in the unauthorized practice of law, a willful violation of Rule 1-300(A).

Statement of Facts: Count Two (A) (Case Number 05-O-02984)

48. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

49. On December 8, 2001, Maria Lopez and Jesus Lopez (hereinafter "the Lopezes") retained the services of Villela a non-attorney. The Lopezes initially paid \$1,500 and ultimately paid a total of \$5,000 to Villela for representation before the Immigration Court. The Lopezes were told that Villela would provide them with attorney representation when needed in their matter at no extra cost.

50. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

51. Beginning in July 2004 and through February 2005, the Lopezes would telephone Villela twice a month asking to speak with their attorney. They were never permitted to speak with their attorney during this time period.

52. Beginning in March 2005 and through March 30, 2005, the Lopezes would telephone Villela every few days requesting to speak with their attorney. They were never permitted to speak with their attorney during this time period.

53. On March 31, 2005, respondent met the Lopezes for the first time. Prior to March 31, 2005, the Lopezes had never spoken with respondent.

54. On March 31, 2005, the Lopezes asked respondent about the fingerprints required for their immigration matter. Respondent informed the Lopezes that Villela's assistant would find out whether the Lopezes' fingerprints needed to be taken again. Subsequently the Lopezes asked the assistant whether new

fingerprints were needed. The assistant told them that she would telephone the court the following day.

55. On March 31, 2005, respondent knew that fingerprints used in immigration matters were only valid for fifteen months.

56. On March 31, 2005, respondent did not advise the Lopezes that the fingerprints they had earlier provided in the immigration matter were only valid for fifteen months. The fingerprints the Lopezes had obtained for the immigration matter were approximately twenty-four months old, and thus no longer valid.

57. On April 1, 2005, the Lopezes spoke with Villela's assistant. They were told that the court had not called back and that they should just go to court and see what the court would do.

58. On April 4, 2005, respondent and the Lopezes attended their Individual Calendar Hearing in the immigration matter.

59. On April 4, 2005, the Lopezes and respondent learned that the application for relief from removal was deemed abandoned due to the failure to submit new fingerprints to the Immigration Court and authorities.

60. On April 4, 2005, the Lopezes were ordered to leave the United States by June 3, 2005.

Conclusions of Law: Count Two (A) (Case Number 05-O-02984)

61. By failing to ask the Lopezes when their fingerprints had been taken, by failing to warn them that the fingerprints were only valid for fifteen months, and by failing to ensure either himself or through his assistant(s), that there were a valid set of fingerprints on file for the Lopezes, respondent, intentionally, recklessly and repeatedly failed to perform legal services with competence, a willful violation of Rule 3-110(A).

Statement of Facts: Count Two (B) (Case Number 05-O-02984)

62. Respondent willfully violated Business & Professions Code § 6068(m), by failing to respond promptly to reasonable status inquiries of a client, and by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

63. The allegations contained in Count Two (A) are hereby incorporated by reference.

64. At no time prior to the March 31, 2005 meeting did respondent respond to the reasonable status inquiries made by the Lopezes when they called Villela's business office and requested to speak with their attorney.

65. At no time while respondent was representing the Lopezes did he ever inform them that they needed to submit new fingerprints as part of their INS/DHS matter.

66. He failed to inform the Lopezes that the fingerprints previously submitted were no longer valid because they were more than fifteen months old.

Conclusions of Law: Count Two (B) (Case Number 05-O-02984)

67. By failing to inform the Lopezes of how long fingerprints were valid with the immigration authorities, by failing to inform the Lopezes of the result of not having valid fingerprints on file and by not responding to the Lopezes telephonic requests from July 2004 through March 30, 2005, respondent failed to keep a client reasonably informed of significant developments and failed to respond to reasonable status inquiries in a matter in which respondent had agreed to provide legal services, a willful violation of

Business & Professions Code § 6068(m).

Statement of Facts: Count Two (C) (Case Number 05-O-02984)

68. Respondent willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

69. The allegations contained in Count Two (A) are hereby incorporated by reference.

70. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

71. Respondent was fully aware that Villela was an immigration consultant and not entitled to render legal advice.

72. Respondent allowed Villela to render legal advice to his clients, the Lopezes.

73. The Lopezes were told by Villela that he would handle their immigration matter including obtaining an attorney to represent them in the immigration matter.

74. The Lopezes were advised by Villela as to what course of action to take in the immigration proceeding, including what documents to file and when to obtain fingerprints for the immigration authorities.

75. Respondent knew that Villela was not an attorney.

76. Respondent knew that Villela was not entitled to practice law in the immigration matter for the Lopezes.

77. Respondent knew that Villela was giving legal advice and counsel to the Lopezes.

Conclusions of Law: Count Two (C) (Case Number 05-O-02984)

78. By allowing Villela to direct his work and by allowing Villela to advise the Lopezes on how to pursue their immigration matter, respondent aided and abetted a person in the unauthorized practice of law, a willful violation of Rule 1-300(A).

Statement of Facts: Count Two (D) (Case Number 05-O-02984)

79. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

80. The allegations contained in Count Two (A) are hereby incorporated by reference.

81. The allegations contained in Count Two (C) are hereby incorporated by reference.

82. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

83. On December 8, 2001, the Lopezes retained the services of Villela a non-attorney. The Lopezes initially paid \$1,500 and ultimately a total of \$5,000 to Villela for representation before the

Immigration Court. The Lopezes were told that Villela would provide them with attorney representation when needed in their matter at no extra cost.

84. Respondent was paid \$560 by Villela for appearing at the Lopezes April 4, 2005, Individual Calendar Hearing in the immigration matter.

Conclusions of Law: Count Two (D) (Case Number 05-O-02984)

85. By being paid \$560 for the Individual Calendar Hearing he appeared at on behalf of the Lopezes, which was only a portion of the \$5,000 in legal fees paid by the Lopezes to Villela, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A).

Statement of Facts: Count Three (A) (Case Number 06-O-10057)

86. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

87. Abdul S. Shah and Tahira Shah ("The Shahs") are citizens of Fiji.

88. On December 30, 1989, the Shahs entered the United States of America.

89. The Shahs were acquainted with Villela a non-attorney. The Shahs paid \$1,500 to Villela for an asylum claim and representation before the Immigration Court.

90. In 1990 Abdul Shah through Villela filed an asylum claim.

91. On July 8, 1998, Aisha Bibi Mohammed (Tahira Shah's mother), became a legal permanent resident of the United States.

92. Since at least July 8, 1998, and continuing thereafter, Aisha Bibi Mohammed had been living with the Shahs. Tahira Shah has been taking care of Aisha Bibi Mohammed who is now a 76 year-old woman, who suffers from senility and is unable to take care of herself on her own.

93. Respondent never applied for relief of cancellation of removal under section 240A(b) for the Shahs.

94. The Shahs could have established a prima facie case for cancellation of removal due to the fact that they both had lived in the United States for more than fifteen years, had good moral character, had not been arrested for any crime and that deportation of Tahira Shah would cause Aisha Bibi Mohammed extreme and unusual hardship. Once Tahira Shah had been granted relief from removal Abdul Shah would have been eligible to adjust his status.

95. On September 10, 2003, the Shahs appeared at a Master Hearing. A member of the State Bar of California other than respondent represented them at that hearing.

96. In October 2003 and at all times relevant to this stipulation, Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

97. On May 3, 2004, respondent and the Shahs appeared at their Merits Hearing. Respondent met the Shahs for the first time approximately five minutes before the hearing. Respondent did not prepare the Shahs in any way prior to the hearing. The Shahs claims to asylum, restriction on removal and withholding on removal were denied. The Shahs request for voluntary departure was granted. Villela paid respondent

\$560 for attending the Merits Hearing.

98. On May 4, 2004, Villela informed the Shahs that they would have to pay Villela \$700 for the attorney present at the Merits Hearing. Thereafter the Shahs paid \$700 to Villela.

99. On May 4, 2004, Villela informed the Shahs that they needed to file an appeal. Villela informed the Shahs that the appeal would cost \$2,000. Thereafter the Shahs paid \$2,000 to Villela for the appeal.

100. On May 4, 2004 and thereafter, Villela handled the Shahs appeal to the BIA. Villela used respondent to file the actual appeal to the BIA.

101. On May 10, 2004, the Shahs paid \$1,200 to Villela for services on their immigration matter.

102. On May 26, 2004, respondent filed a Notice of Appeal to the BIA on behalf of the Shahs.

103. On June 1, 2004, the BIA acknowledged receipt of the Shahs Appeal. Notice was sent to respondent and he received the notice.

104. On December 14, 2004, respondent requested an Extension of Time to file his Brief in the BIA Appeal. The original due date for the Brief in the BIA Appeal was December 30, 2004. Respondent requested and was granted an extension to file the Brief until January 20, 2005.

105. On December 22, 2004, respondent received notice from the BIA that his request for an extension of time had been granted. The due date for the brief for the Shahs was set for January 20, 2005.

106. On January 24, 2005, respondent filed his "Brief on Appeal" for the Shahs. The brief was not timely filed. Respondent requested leave to file the brief late, but his request was denied. Respondent failed to notify the Shahs of these matters. Villela paid respondent \$400 for preparing and filing the appeal and opening brief on appeal.

107. On January 28, 2005, the BIA notified respondent that his request for "Late Filing of the Brief" had been denied. Respondent's Brief was returned. Respondent received this notification. Respondent failed to inform the Shahs that their "Brief on Appeal" would not be considered.

108. On April 1, 2005, respondent moved his office. Respondent failed to notify the BIA of the change in address.

109. On May 18, 2005, the Board of Immigration Appeals dismissed the Shahs appeal.

110. On May 18, 2005, the notice of dismissal from the BIA was mailed to respondent at the address respondent had provided to the BIA.

111. Subsequent to May 18, 2005, respondent failed to file an appeal with the Ninth Circuit on behalf of the Shahs.

112. Subsequent to May 18, 2005, respondent failed to communicate in any way with the Shahs.

113. On October 5, 2005, the ICE issued a "Bag and Baggage" letter to the Shahs. The letter notified the Shahs that they had been found deportable and ordered deported. The letter further stated that there did not appear to be any administrative relief available. Therefore their departure to Fiji had been arranged for October 24, 2005.

114. As of October 5, 2005, the Shahs were time barred from filing an appeal with the Ninth Circuit.

115. On October 12, 2005, respondent filed a Motion to Re-open the appeal based on the fact that he had moved to a new address and that the post office failed to forward his mail, specifically the dismissal of appeal notice by the Board of Immigration Appeals. Respondent filed the Motion to Re-open without communicating with the Shahs and without their authorization.

116. On October 18, 2005, respondent's Motion to Re-open the appeal was denied.

117. On November 7, 2005, the Shahs with successor counsel filed a Motion to Re-Open the Shahs' matter.

Conclusions of Law: Count Three (A) (Case Number 06-O-10057)

118. By failing to prepare the Shahs in advance of the Merit Hearing, by failing to file the Brief in the BIA appeal by January 20, 2005, and by filing the Motion to Re-open without consulting the Shahs, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, a willful violation of Rule 3-110(A).

Statement of Facts: Count Three (B) (Case Number 06-O-10057)

119. Respondent willfully violated Business & Professions Code § 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

120. The allegations contained in Count Three (A) are hereby incorporated by reference.

121. Respondent never explained to the Shahs what would happen during the merit hearing.

122. Respondent never informed the Shahs that he had not timely filed the brief in the BIA appeal.

123. Respondent never informed the Shahs that their appeal had been dismissed.

124. Respondent never discussed the filing of a motion to reopen with the Shahs and filed the motion without their knowledge.

Conclusions of Law: Count Three (B) (Case Number 06-O-10057)

125. By failing to inform the Shahs of what would happen during the Merit Hearing, by failing to inform them that he had not timely filed the Brief in the BIA appeal, by failing to inform them that their appeal had been dismissed, and by filing the Motion to Re-open without consulting with the Shahs, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, a willful violation of Business & Professions Code § 6068(m).

Statement of Facts: Count Three (C) (Case Number 06-O-10057)

126. Respondent willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

127. The allegations contained in Count Three (A) are hereby incorporated by reference.

128. The Shahs were told by Villela that he would handle their immigration matter including obtaining an attorney to represent them in the immigration matter.

129. The Shahs were advised by Villela as to what course of action to take in the immigration proceeding, including what documents to file and when to file an appeal.

130. Respondent knew that Villela was not an attorney.

131. Respondent knew that Villela was not entitled to practice law in the immigration matter for the Shahs.

132. Respondent knew that Villela was giving legal advice and counsel to the Shahs.

Conclusions of Law: Count Three (C) (Case Number 06-O-10057)

133. By allowing Villela to direct his work and by allowing Villela to advise the Shahs on how to pursue their immigration matter, respondent aided and abetted a person in the unauthorized practice of law, a willful violation of Rule 1-300(A).

Statement of Facts: Count Three (D) (Case Number 06-O-10057)

134. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

135. The allegations contained in Count Three (A) are hereby incorporated by reference.

136. The allegations contained in Count Three (C) are hereby incorporated by reference.

137. The Shahs were acquainted with Villela, a non-attorney. The Shahs paid \$1,500 to Villela for an asylum claim and representation before the Immigration Court.

138. On May 4, 2004, Villela informed the Shahs that they would have to pay Villela \$700 for the attorney present at the Merits Hearing. Thereafter the Shahs paid \$700 to Villela.

139. On May 4, 2004, Villela informed the Shahs that they needed to file an appeal. Villela informed the Shahs that the appeal would cost \$2,000. Thereafter the Shahs paid \$2,000 to Villela for the appeal.

140. On May 10, 2004, the Shahs paid \$1,200 to Villela for services on their immigration matter.

141. Villela paid respondent \$560 for appearing at the Shahs May 3, 2004 Merits Hearing in the immigration matter.

142. Respondent was paid \$400 for filing the Brief in the BIA Appeal, which was due on January 20, 2005 and was filed on January 24, 2005.

Conclusions of Law: Count Three (D) (Case Number 06-O-10057)

143. By being paid \$560 for the Merits Hearing he appeared at on behalf of the Shahs, and \$400 for the late Brief in the BIA Appeal, which was only a portion of the \$5,400 in legal fees paid by the Shahs to Villela, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A).

Statement of Facts: Count Four (A) (Case Number 05-O-02519; 05-O-02984; 06-O-10057)

144. Respondent willfully violated Business & Professions Code § 6106, by committing an act involving moral turpitude, dishonesty and corruption, as follows:

145. The allegations contained in Count One (A) are hereby incorporated by reference.

146. The allegations contained in Count One (C) are hereby incorporated by reference.

147. The allegations contained in Count One (D) are hereby incorporated by reference.

148. The allegations contained in Count Two (A) are hereby incorporated by reference.

- 149. The allegations contained in Count Two (C) are hereby incorporated by reference.
- 150. The allegations contained in Count Two (D) are hereby incorporated by reference.
- 151. The allegations contained in Count Three (A) are hereby incorporated by reference.
- 152. The allegations contained in Count Three (C) are hereby incorporated by reference.
- 153. The allegations contained in Count Three (D) are hereby incorporated by reference.

Conclusions of Law: Count Four (A) (Case Number 05-O-02519; 05-O-02984; 06-O-10057)

154. By aiding and abetting Villela in the unauthorized practice of law and by dividing fees with Villela, respondent has committed an act, or acts, involving moral turpitude, dishonesty and corruption, a willful violation of Business & Professions Code § 6106.

Statement of Facts: Count One (A) Case Number 08-O-10521)

155. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

156. In 1992, Miguel Pedroza ("Pedroza") a citizen and native of Mexico entered the United States.

157. In March 1994, Pedroza left the United States to go to Mexico to get married. Thereafter Pedroza re-entered the United States in June 1994. His absence from the United States was for less than 90-days.

158. In 2002, Pedroza hired an immigration consultant, Villela to help him obtain legal residency in the United States. Over the course of the relationship Pedroza paid Villela as follows for representation in his immigration matter:

May 20, 2003	\$1,500
October 8, 2005	\$750
October 22, 2005	\$600
March 8, 2006	\$1,000
May 20, 2006	\$500
July 1, 2006	\$75
August 12, 2006	\$500
October 13, 2006	\$500
December 16, 2006	\$1,000
December 16, 2006-September 21, 2007	\$1,700
September 21, 2007	\$1,300
Total	\$9,425

159. Villela caused to be filed on behalf of Pedroza, among other things, an Application for Asylum and Cancellation of Removal. In the immigration materials prepared by Villela, Pedroza's 1994

exit from the United States was inaccurately listed as from March 10, 1994 until July 25, 1994. At no time prior to or at the time of filing was Pedroza advised of why his absence from the United States in 1994 might be important. Specifically Pedroza was not advised that an absence in excess of 90-days from the United States would create a gap in the ten-years of continuous presence necessary to qualify for cancellation of removal and would statutorily bar him from qualifying for cancellation of removal.

160. In 1994, Pedroza was employed by Jesus Servin. Pedroza's employer would have been able to competently testify as to his physical presence in the United States in June 1994.

161. In 1994, Pedroza rented a residence from Martha Carrera. Pedroza's landlord would have been able to competently testify as to his physical presence in the United States in June 1994.

162. Between 2002 and July 24, 2004, Villela provided Pedroza with a series of attorneys, each of whom would continue the immigration matter to another date. Starting on July 24, 2004, respondent was the only attorney Villela used on Pedroza's immigration matter. Subsequent to July 24, 2004, Pedroza paid Villela a total of \$7,925 of which respondent received a total of \$960 from Villela.

163. On July 24, 2004, respondent filed a "Notice of Entry of Appearance as Attorney" in Pedroza's immigration matter. As of this date respondent had never spoken with Pedroza, nor had he communicated with Pedroza in any way.

164. On July 27, 2004, respondent formally substituted into Pedroza's immigration matter. As of the date of his formally entering the case respondent had never spoken with Pedroza, nor had he communicated with Pedroza in any way. Also on this date respondent requested additional time to prepare for Pedroza's matter.

165. On July 30, 2004, the court served on respondent notice of a hearing in Pedroza's immigration matter set for August 5, 2004. Respondent received this notice.

166. On August 5, 2004, Pedroza had a hearing in the immigration matter. At that hearing respondent appeared. Prior to appearing at the hearing on behalf of Pedroza, respondent had never met with, spoken with, nor communicated with Pedroza in any way. At the hearing the immigration matter was continued, ultimately to December 10, 2004.

167. On October 26, 2004, respondent was notified of Pedroza's next hearing scheduled for December 10, 2004. Respondent received notice by personal service.

168. On November 30, 2004, respondent filed a Motion to Continue the hearing scheduled for December 10, 2004.

169. On December 10, 2004, Pedroza had a hearing in the immigration matter. At that hearing respondent appeared. Prior to appearing at the hearing on behalf of Pedroza, respondent had not met with, spoken with or communicated with Pedroza in any way since the August 5, 2004 hearing. At the hearing, the immigration matter was continued to May 23, 2005.

170. On May 23, 2005, Pedroza had a hearing in the immigration matter. At that hearing respondent appeared. Prior to appearing at the hearing on behalf of Pedroza, respondent had not met with, spoken with or communicated with Pedroza in any way since the December 10, 2004 hearing. At the hearing the court warned respondent that Pedroza had a problem in his application due to his absence from the United States during a relevant period of time. Specifically the court stated: "I've also given counsel a heads up that there's distinctly an issue as to continuous physical presence here for several reasons: One, we have limited documentation on that issue and accordingly, Mr. Hollister will work with the respondent to

obtain such documentation and/or corroborating witnesses. Also with regard to continuous physical presence, there are two absences from the United States which need to be accounted for." Respondent did not communicate the issue of continuous presence to Pedroza. At the hearing, the immigration matter was continued to October 19, 2005.

171. On October 19, 2005, Pedroza had a hearing in the immigration matter. At that hearing respondent appeared. Prior to appearing at the hearing on behalf of Pedroza, respondent had not met with, spoken with or communicated with Pedroza in any way since the May 23, 2005 hearing. At the hearing the issue was once again Pedroza's physical absence from the United States during a relevant period of time. Although respondent attempted to communicate with Pedroza regarding the issue, as respondent spoke no Spanish and Pedroza did not understand English well enough the issue was still unexplained to Pedroza. Respondent did not call any witness on behalf of Pedroza to testify regarding his presence in the United States in June 1994. Specifically respondent did not call Martha Carrera or Jesus Servin to testify.

172. On October 19, 2005, the Immigration Court issued its Oral Decision and Order regarding Pedroza's application for Cancellation of Removal. The court denied Pedroza's Application for Cancellation of Removal, granted voluntary departure if it occurred prior to December 19, 2005 and required a \$500 bond, which would be forfeited if Pedroza failed to depart voluntarily prior to December 19, 2005.

173. On November 14, 2005, respondent timely appealed the Immigration Court's decision to the Board of Immigration Appeals. Pedroza's brief was due originally on June 26, 2006, but respondent's request for additional time postponed the date it was due until July 18, 2006.

174. On July 10, 2006, respondent filed Pedroza's "Brief in Support of Appeal." In preparing the brief respondent did not speak with or otherwise communicate with Pedroza. Respondent failed to explain to Pedroza the importance of the gap in absence from the United States in 1994. Respondent did not submit any evidence showing that Pedroza had made a mistake in his original application when listing dates of absence.

175. On November 27, 2006, the Board of Immigration Appeals affirmed the Immigration Judge's decision denying Cancellation of Removal based on Pedroza's failure to prove ten-years of continuous physical presence in the United States.

176. On December 26, 2006, respondent filed a Petition for Review and Motion for Stay, with the Ninth Circuit on behalf of Pedroza. Thereafter respondent failed to oppose the Government's motion for summary affirmance. The Petition was dismissed on May 14, 2007.

177. On March 20, 2007, the government filed a Motion for Summary Affirmance and Opposition to Pedroza's December 26, 2006 Petition. Thereafter respondent took no action on Pedroza's matter.

178. On May 14, 2007, the court granted the government's March 20, 2007 Motion for Summary Affirmance and denied all relief requested by respondent. Respondent received the court's order.

179. From August 5, 2004 through July 2007, respondent failed to communicate directly with Pedroza except at the actual hearings they both attended. Respondent did not maintain possession of Pedroza's file, nor did he review the file prior to the various hearing dates. Moreover respondent spoke no Spanish while his client spoke little English.

180. In November 2007, Pedroza learned that the reason his Application for Cancellation of Removal had been denied was his inaccurately reported absence from the United States in 1994.

Conclusions of Law: Count One (A) (Case Number 08-O-10521)

181. By failing to prepare for the issue of Pedroza's absence from the United States in 1994, by failing to call as witnesses Martha Carrera and Jesus Servin, and by not opposing the government's Motion for Summary Affirmance at the Ninth Circuit, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, a willful violation of Rule 3-110(A) of the Rules of Professional Conduct.

Statement of Facts: Count One (B) (Case Number 08-O-10521)

182. Respondent willfully violated Business & Professions Code § 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

183. The allegations contained in Count One (A) are hereby incorporated by reference.

Conclusions of Law: Count One (B) (Case Number 08-O-10521)

184. By failing to advise Pedroza that the crucial issue in his Cancellation of Removal immigration matter was the absence from the United States in 1994, by failing to advise Pedroza that the government was pointing to the absence at the May 23, 2005, hearing and by failing to advise Pedroza that the reason his Application for Cancellation of Removal was denied was that he had been absent from the United States for a period in excess of 90-days in 1994, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, a willful violation of Business & Professions Code § 6068(m).

Statement of Facts: Count One (C) (Case Number 08-O-10521)

185. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

186. The allegations contained in Count One (A) are hereby incorporated by reference.

Conclusions of Law: Count One (C) (Case Number 08-O-10521)

187. By being paid \$960 for the immigration matter from Villela while Pedroza during the same time period paid Villela at least \$7,925 for the legal work, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A) of the Rules of Professional Conduct.

Statement of Facts: Count Two (A) (Case Number 08-O-11913)

188. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, and repeatedly failing to perform legal services with competence, as follows:

189. Kishore Singh, Kusmir Singh, Jaggeet Singh and Dishaal Singh ("the Singhs") are natives and citizens of Fiji, all of Indian decent. Jaggeet Singh and Dishaal Singh are the adult sons of Kishore and Kusmir Singh.

190. On July 3, 1989, the Singhs entered the United States as non-immigrant visitors with a departure date of not later than January 3, 1990. The Singhs did not leave the United States prior to or on January 3, 1990.

191. On January 16 1990, the Singhs filed for asylum. Their initial asylum interview did not take place until June 3, 2003. The Singhs did not attend the interview and were placed in deportation proceedings.

192. On August 4, 2003, the Singhs Asylum application was administratively closed for failure to attend the interview on June 3, 2003.
193. On November 15, 2003, the Singhs hired Villela, a non-attorney, doing business as Indo-Fijian Immigration Services, to file their application for Cancellation of Removal and update their Asylum application. The contract called for Villela to provide the Singhs with a staff attorney for court proceedings. The contract provided for a flat fee of \$5,000, which the Singhs paid in full.
194. On December 19, 2003, a hearing was held in the Singhs' immigration matter. Respondent was present at the hearing with the Singhs. Prior to December 19, 2003, respondent had never met with or spoken with any of the Singhs, nor had he communicated with the Singhs in any way.
195. On March 22, 2004, respondent filed an Application for Cancellation of Removal, E-42(b) on behalf of the Singhs. Although the Application is signed by respondent it was filed from Redwood City, which is the location of Villela's business.
196. On September 30, 2004, respondent filed the Supporting Documents for the Cancellation of Removal, E-42(b) on behalf of the Singhs. They were filed from Redwood City, which is the location of Villela's business.
197. On April 18, 2005, respondent filed Hardship Documents in the Application for Cancellation of Removal, E-42(b) on behalf of the Singhs. They were filed from Redwood City, which is the location of Villela's business.
198. On April 18, 2005, the Immigration Court issued its Notice of Hearing in Removal Proceedings to the Singhs. The Notice was personally served on respondent. The Notice scheduled the Individual Hearing for the Singhs for July 5, 2005.
199. Prior to and including July 5, 2005, respondent failed to update the Singhs' asylum application, failed to discuss the Asylum application with the Singhs, failed to prepare the Singhs for their Individual Merits Hearing, failed to call witnesses in support of the Singhs Cancellation of Removal application and otherwise generally failed to prepare the Singhs immigration matter in any way.
200. On July 5, 2005, a hearing was held in the Singhs' immigration matter. Respondent was present at the hearing with the Singhs. Prior to the hearing, respondent had not met with, spoken with or communicated with the Singhs in any way since the December 19, 2003 hearing.
201. On July 5, 2005, the Immigration Judge denied the Singhs Application for Asylum and Application for Cancellation of Removal.
202. On July 9, 2005, the Singhs hired Villela to handle their Appeal of the Immigration Court's denial of their Asylum Application and Cancellation of Removal. The contract called for Villela to provide the Singhs with a staff attorney for court proceedings. The contract called for a flat fee of \$1,200, which the Singhs paid in full.
203. On July 26, 2005, respondent filed a Notice of Appeal from Decision of an Immigration Judge on the Singhs Immigration matter. The Notice of Appeal stated that: "the respondent's appeal will be fully briefed upon receipt of the transcript of the hearing."
204. On August 10, 2005, respondent forwarded to the Board of Immigration Appeals the Record of Proceeding for an Appeal of the Immigration Judge decision.
205. On February 13, 2006, respondent filed an Extension Request with the Board of Immigration

Appeals in the Singhs Immigration matter. Pursuant to respondent's request the Board of Immigration Appeals extended the time for respondent to submit his Brief in the appeal to March 17, 2006. Thereafter respondent took no action on behalf of the Singhs in their appeal to the Board of Immigration Appeals.

206. On August 11, 2006, the Board of Immigration Appeals summarily dismissed the Singhs' appeal. The appeal was dismissed for failure to provide statements on the Notice of Appeal that meaningfully apprised the Board of the specific reasons underlying the challenge to the Immigration Judge's decision. Also, respondent checked the block indicating that a separate written brief or statement would be filed in support of the appeal. However, respondent never filed a written brief or statement on behalf of the Singhs.

207. On September 8, 2006, respondent filed a Petition for Review with the Ninth Circuit Court of Appeals on behalf of the Singhs.

208. On September 29, 2006, the Singhs hired Villela to handle their Ninth Circuit Court of Appeals Petition for Review of the BIA denial of appeal. The contract called for respondent or another "staff attorney" to be attorney of record on appeal and further authorized Villela to pay attorney fees. The contract provided for a flat fee of \$4,000, which the Singhs paid in full.

209. On April 3, 2007, the Ninth Circuit issued its Order in the Singhs matter. The Order stated that the Singhs had failed to perfect the petition. The petition was therefore dismissed for failure to file the opening brief on appeal. Respondent was directed by the Order to notify the Singhs immediately in writing regarding the dismissal. Respondent received this Order, but failed to communicate the reason for dismissal to the Singhs.

210. On April 11, 2007, respondent filed a Motion to Reinstate Petition for Review on behalf of the Singhs.

211. On April 23, 2007, the Ninth Circuit reinstated the Singhs' Petition for Review. The opening brief was due May 24, 2007.

212. On July 18, 2007, the Ninth Circuit issued its Order in the Singhs' matter. The Order stated that the Singhs had failed to perfect the petition. The petition was therefore dismissed for failure to file the opening brief on appeal. Respondent was directed by the Order to notify the Singhs immediately in writing regarding the dismissal. Respondent received this Order, but failed to communicate the reason for dismissal to the Singhs. Thereafter respondent failed to communicate with the Singhs in any way.

Conclusions of Law: Count Two (A) (Case Number 08-O-11913)

213. By failing to file the brief for the Singhs in the Board of Immigration Appeals and by failing to file the brief in the Ninth Circuit Court of Appeals, and by failing to prepare in any way for the Individual Merit Hearing, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, a willful violation of Rule 3-110(A) of the Rules of Professional Conduct.

Statement of Facts: Count Two (B) (Case Number 08-O-11913)

214. Respondent willfully violated Business & Professions Code § 6068(m), by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, as follows:

215. The allegations contained in Count Two (A) are hereby incorporated by reference.

Conclusions of Law: Count Two (B) (Case Number 08-O-11913)

216. By failing to advise the Singhs that their appeal to the Board of Immigration Appeals was dismissed for failure to file a brief and by failing to advise the Singhs that their appeal to Ninth Circuit Court of Appeals was dismissed for failure to file a brief, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, a willful violation of Business & Professions Code § 6068(m).

Statement of Facts: Count Two (C) (Case Number 08-O-11913)

217. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

218. The allegations contained in Count Two (A) are hereby incorporated by reference.

219. Respondent received \$560 from Villela for the Singhs' Merit Hearing.

220. Respondent received \$400 from Villela for the Singhs' appeal to the Board of Immigration Appeals.

221. Respondent received some payment from Villela for the Singhs appeal to the Ninth Circuit Court of Appeals.

Conclusions of Law: Count Two (C) (Case Number 08-O-11913)

222. By being paid at least \$960 for the Singhs' immigration matter from Villela while the Singhs during the same time period paid Villela at least \$10,200 for the legal work, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A) of the Rules of Professional Conduct.

Statement of Facts: Count Two (D) (Case Number 08-O-11913)

223. Respondent willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

224. The allegations contained in Count Two (A) are hereby incorporated by reference.

225. The allegations contained in Count Two (C) are hereby incorporated by reference.

226. Villela told the Singhs that he could handle all aspects of their immigration matter including providing an attorney for any actual court appearances and filings as required.

227. In truth and in fact the Singhs were represented by Villela throughout their immigration matter, except when a court appearance was required or an attorney signature was required on a court filing.

228. In truth and in fact Villela through Indo-Fijian Immigration Services filed the Cancellation of Removal Application and other legal documents without the input or guidance of respondent.

229. Respondent knew that Villela was not an attorney.

230. Respondent knew that Villela was not entitled to practice law in the immigration matter for the Singhs.

231. Respondent knew that Villela was giving legal advice and counsel to the Singhs.

Conclusions of Law: Count Two (D) (Case Number 08-O-11913)

232. By allowing Villela to direct his work and by allowing Villela to advise the Singhs on how to

pursue their immigration matter, respondent aided and abetted a person in the unauthorized practice of law, a willful violation of Rule 1-300(A) of the Rules of Professional Conduct.

Statement of Facts: Count Two (E) (Case Number 08-O-11913)

233. Respondent willfully violated Business & Professions Code § 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against respondent, as follows:

234. On April 3, 2008, the State Bar opened an investigation, Case Number 08-O-11913, pursuant to a complaint filed by Kishore Singh ("the *Singh* matter").

235. On June 11, 2008, State Bar Investigator Crystal Velazco wrote to respondent regarding the *Singh* matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

236. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the *Singh* matter. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

237. On July 17, 2008, State Bar Investigator Crystal Velazco wrote to respondent regarding the *Singh* matter and enclosed a copy of her June 11, 2008 letter. The letter informed respondent that it was the investigator's last good faith effort at communication and that failure to respond in writing could lead to charges being filed for violation of Business & Professions Code § 6068(i). Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

Conclusions of Law: Count Two (E) (Case Number 08-O-11913)

238. By not providing a written response to the allegations in the *Singh* matter or otherwise cooperating in the investigation of the *Singh* matter, respondent failed to cooperate in a disciplinary investigation, a willful violation of Business & Professions Code § 6068(i).

General Statement of Facts: Case Number 08-J-12807

239. On March 13, 2008, the United States Court of Appeals for the Ninth Circuit ordered that respondent be disciplined upon findings that respondent had committed professional misconduct in that jurisdiction as set forth in the order of March 13, 2008. Thereafter, the decision of the foreign jurisdiction became final on July 10, 2008.

240. Respondent's culpability as determined by the foreign jurisdiction indicates that the following California statutes or rules have been violated. Rules of Professional Conduct 1-400(c), 1-600, 3-110(A), 1-300(A), 1-320(A), 1-320(B) and 3-310(F); Business & Professions Code §§ 6103, 6105 and 6106.

241. Respondent was suspended from the practice of law before the Ninth Circuit Court of Appeals, for a period of thirty-months.

242. Attached to this stipulation are the report and recommendation, and the order imposing discipline.

Statement of Facts: Count One (Case Number 08-J-12807)

243. Respondent willfully violated Rules of Professional Conduct, rule 1-400(C), by making or causing to be made, with a significant motive of pecuniary gain, a communication in person of his availability for professional employment to a prospective client with whom respondent had no family and no prior professional relationship, as follows:

244. Respondent stated in his response to the Order to Show Cause issued by the Ninth Circuit Court of Appeals, that he obtains his clients from Mr. Villela.

245. Respondent admitted to accepting referrals of multiple clients, as well as fees, from Villela, a non-attorney, for appearing before the Ninth Circuit without any written fee agreement.

246. Villela and respondent were in a business relationship. Villela would obtain clients with matters relating to immigration law and thereafter he would utilize respondent's services when a hearing needed to be attended or a brief needed to be written and submitted. Respondent was to receive \$225 for attending a Master Hearing, \$560 for attending an Individual Hearing and \$400 for filing an appeal and opening brief on appeal.

247. Respondent's business relationship as previously set forth in this stipulation, demonstrates, that respondent knowingly allowed and authorized Villela to make solicitations to prospective clients on his behalf.

Conclusions of Law: Count One (Case Number 08-J-12807)

248. By allowing Villela to make referrals and allowing Villela to make or cause to be made communications, regarding respondent's availability for professional employment, respondent willfully violated Rule 1-400(C) of the Rules of Professional Conduct.

Statement of Facts: Count Two (Case Number 08-J-12807)

249. Respondent willfully violated Rules of Professional Conduct, rule 1-600, by participating in a non governmental program, activity or organization which furnished, recommended, or paid for legal services, and which allowed another person or organization to interfere with respondent's independence of professional judgment, or with the client-lawyer relationship, which allowed an unlicensed person to practice law, which allowed a third person or organization to receive directly or indirectly any part of the consideration paid to respondent, as follows:

250. Respondent's own characterization of the business relationship he had with Villela, establishes that he allowed Villela to make legal decisions in the matters that Villela referred to respondent. In the response to the Order to Show Cause, respondent stated "the initial problem for me was, at the beginning Mr. Villela knew more about immigration law than did I and it's taken a while for me to feel comfortable giving the directions."

251. As previously set forth in this stipulation, respondent received fees from Villela to make appearances and file briefs for matters that Villela referred to him.

252. Respondent never actually received any fees from the clients he represented in the immigration matters, rather he received fees from Villela for court appearances and the drafting and submission of briefs, appeals, motions etc.

Conclusions of Law: Count Two (Case Number 08-J-12807)

253. By accepting fees from Villela, allowing Villela to make decisions and give directions to him

on how to proceed in the immigration matters, respondent allowed another person or organization to interfere with respondent's independence of professional judgment, or with the client-lawyer relationship, which allowed an unlicensed person to practice law, which allowed a third person or organization to receive directly or indirectly any part of the consideration paid to respondent, willful violation of Rule 1-600 of the Rules of Professional Conduct.

Statement of Facts: Count Three (Case Number 08-J-12807)

254. Respondent willfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

255. The December 11, 2007 Order to Show Cause alleged that respondent was the attorney of record for at least eight petitions for review that were dismissed for failure to prosecute.

256. Respondent's response to the Order to Show Cause did not address why there was a failure to prosecute the petitions on review. However, respondent offered in his motions to reinstate proceedings in three of the eight cases the following explanations: (1) a postal service and (2) that he overlooked the briefing schedule that he had received.

257. In the other five matters, it was impossible to determine whether it was respondent's carelessness or client choices that resulted in the dismissals. However, the Ninth Circuit opined, that even if a client was unavailable or no longer wished to pursue the petition for review, the proper action pursuant to the court's rules was to file a motion to withdraw as counsel or to dismiss the petition for review.

258. The Ninth Circuit found that respondent's violation of the court's rules and lack of diligence interfered with the judicial process and was thus a violation of Rule 3-110(A).

259. Respondent was scrupulous about filing a motion for stay of removal in conjunction with the petition for review, however, the vast majority of the stay motions were perfunctory and they failed to satisfy the standards for such motions set forth in *Abbassi v. INS*, (9th Cir. 1998) 143 F.3d 513, 514.

260. As a result of filing perfunctory motions for stay of removal, those request were all denied and thus ended the stay of the voluntary departure period.

261. The Ninth Circuit found that respondent's conduct with respect to the stay motions demonstrated a lack of competence that harmed his clients.

262. Respondent did not dispute the charge by the Ninth Circuit that his briefs were inadequate and that he regularly failed to meet the requirements set forth in the Federal Rule of Appellate Procedure 28(a).

263. The Ninth Circuit found that respondent's practice with respect to briefing demonstrated a lack of competence that harmed his clients.

Conclusions of Law: Count Three (Case Number 08-J-12807)

264. By failing to prosecute the eight petitions for review, filing perfunctory stay motions, filing inadequate briefs, respondent intentionally, recklessly, or repeatedly failing to perform legal services with competence, a willful violation of Rule 3-110(A) of the Rules of Professional Conduct.

Statement of Facts: Count Four (Case Number 08-J-12807)

265. Respondent willfully violated Rules of Professional Conduct, rule 3-310(F), by accepting compensation for representing a client from one other than the client without complying with the

requirement(s) that there was no interference with respondent's independence of professional judgment or with the client-lawyer relationship; and information relating to representation of the client was protected as required by Business & Professions Code § 6068(e); and respondent obtained the client's informed written consent, as follows:

266. Respondent's relationship with Villela a non-attorney and respondent's admission to his practice of accepting referrals and receiving fees from Villela for services demonstrates that he has accepted fees from someone other than his client, without obtaining written consent.

267. The Ninth Circuit found that respondent deferred to Villela's judgment, admitted that he had no written fee agreements, and never obtained written consent from his clients to accept fees from Villela for his services, violated Rule 3-310(F) of the Rules of Professional Conduct.

Conclusions of Law: Count Four (Case Number 08-J-12807)

268. By accepting fees from Villela, deferring to Villela to make decisions in several of the cases, and failing to obtain written consent from his clients to accept fees from Villela, respondent willfully violated Rule 3-310(F) of the Rules of Professional Conduct.

Statement of Facts: Count Five (Case Number 08-J-12807)

269. Respondent willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person or entity in the unauthorized practice of law, as follows:

270. The Ninth Circuit Court found that respondent's business relationship with Villela involved Villela rendering legal advice to respondent's clients.

271. The Ninth Circuit Court noted that respondent's immigration practice and his own characterization of his practice demonstrated that respondent was allowing Villela to render legal advice and direct respondent's work on the immigration matters.

272. Respondent was fully aware that Villela was not an attorney, and as such was not entitled to provide legal advice to the clients. Despite, being fully aware of this fact, respondent allowed Villela to provide legal advice and respondent often deferred to Villela's decisions in the immigration matters.

Conclusions of Law: Count Five (Case Number 08-J-12807)

273. By allowing Villela to direct his work and by allowing Villela to advise several clients on how to pursue their immigration matters, respondent aided and abetted a person in the unauthorized practice of law.

Statement of Facts: Count Six (Case Number 08-J-12807)

274. Respondent willfully violated Rules of Professional Conduct, rule 1-320(A), by sharing legal fees with a person who is not a lawyer, as follows:

275. The Ninth Circuit found that respondent had violated rule 1-320(A) because respondent in his response to the Order to Show Cause, admitted that he shared legal fees with Villela. As set forth in this stipulation, respondent's business relationship with Villela consisted of referrals he received from Villela where Villela had already charged and received fees from the clients. Villela would then pay respondent a set sum for court appearances, motions, briefs in each of the matters that respondent performed legal work.

276. Respondent stated that on trial matters he would be paid a set sum of \$500 to \$700 depending on the type of case. BIA and Ninth Circuit Appeals were also paid on a set sum, which he received once he

had completed the briefs and turned them over to Villela for filing.

Conclusions of Law Count Six (Case Number 08-J-12807)

277. By being paid a set sum for all the immigration matters from Villela for the legal work he performed after Villela had received funds from the clients, respondent shared legal fees with a person who is not a lawyer, a willful violation of Rule 1-320(A) of the Rules of Professional Conduct.

Statement of Facts: Count Seven (Case Number 08-J-12807)

278. Respondent willfully violated Rules of Professional Conduct, rule 1-320(B), by compensating, giving, and promising something of value to a person for the purpose of recommending or securing employment.

279. The Ninth Circuit found that respondent's own characterization of his immigration practice and business relationship with Villela, demonstrated that respondent violated rule 1-320(B) of the Rules of Professional Conduct.

280. As previously described respondent accepted referrals from Villela, allowed Villela to render legal advice, split fees with Villela, and in essence allowed Villela to keep the majority of the fees in the immigration matters.

281. Respondent allowed Villela to refer the clients, with the understanding that Villela would retain most if not all of the fees paid the clients to Villela.

Conclusions of Law: Count Seven (Case Number 08-J-12807)

282. By allowing Villela to retain most if not all of the fees paid by the clients, respondent compensated and secured employment by giving Villela something of value, a willful violation of Rule 1-320(B).

Statement of Facts: Count Eight (Case Number 08-J-12807)

283. Respondent willfully violated Business & Professions Code § 6103, by willfully disobeying or violating an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, as follows:

284. Respondent was ordered to respond to the Order to Show Cause and address each allegation fully.

285. After obtaining a timely extension to file a response to the Order to Show Cause, respondent filed a response. Respondent failed to respond to many of allegations in the Order to Show Cause, instead he generally described the nature of his immigration practice.

Conclusions of Law: Count Eight (Case Number 08-J-12807)

286. By failing to respond to each and every allegation set forth in the Order to Show Cause, respondent failed to obey a court order, a willful violation of Business & Professions Code § 6103.

Statement of Facts: Count Nine (Case Number 08-J-12807)

287. Respondent willfully violated Business & Professions Code § 6105, by lending his name to be used as attorney by another person who was not an attorney, as follows:

288. The Ninth Circuit noted that its concerns were magnified by its prior experience with attorneys working for Villela and the similarity between respondent's briefs and those submitted by other

attorneys working for Villela.

289. In addition, a number of the pleadings in respondent's cases contained block signatures that appeared to be initialed by Villela's employees. The Court found that those motions violated Federal Rule of Appellate Procedure 32(d), which requires that every brief, motion, or other paper filed with the court by represented parties to be signed by counsel. The Court noted that the fact that many of respondent's pleadings had this signature block and initials of Villela's employees raised serious questions about the extent of respondent's involvement in the prosecution of those matters.

290. The Court found that the aforementioned conduct violated Business & Professions Code § 6105.

Conclusions of Law: Count Nine (Case Number 08-J-12807)

291. By allowing Villela's employees to sign or initial his pleadings, and utilize his name in the submission of those pleadings, respondent willfully violated Business & Professions Code § 6105.

Statement of Facts: Count Ten (Case Number 08-J-12807)

292. Respondent willfully violated Business & Professions Code § 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

293. The Ninth Circuit found that respondent had violated Business & Professions Code § 6106 based on his own characterization of his immigration practice. Specifically, the fact that respondent aided and abetted the unauthorized practice of law, repeatedly and deliberately permitting a Villela to refer clients to him, and allowing Villela to pay the fees.

294. At all times during his business relationship with Villela respondent was fully aware of that Villela was rendering legal services and advice, accepting fees for the services, splitting fees with respondent and often times directing respondent's legal work.

295. At no time did respondent seek to end the business relationship, in fact respondent's response to the Order to Show Cause demonstrated that he was reluctant to terminate the relationship, because it would end his own immigration practice.

Conclusions of Law: Count Ten (Case Number 08-J-12807)

296. By allowing Villela to accept fees, render legal advice, split fees, direct his legal work, in complete disregard to his client's interests, and by deliberately and repeatedly accepting referrals from Villela, respondent willfully violated Business & Professions Code § 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was February 5, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 5, 2009, the costs in this matter are \$16,299.40. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.3 states culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty

toward a court, client or another person or of concealment or a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

Standard 2.4 (b) states culpability of a member willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending the extent of the misconduct and the degree of the harm to the client.

Standard 2.10 states culpability of a member of a violation of any provision of the Business & Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

In the Matter of Valinoti (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, imposed a three-year actual suspension for 18 counts of misconduct arising from his aiding and abetting the unauthorized practice of law, failing to perform with competence, abandonment, failing to communicate with clients, misleading a judge, receiving funds from someone other than his client, and failing to maintain a valid state bar address. Valinoti's immigration practice consisted of referrals from immigration service providers who then paid Valinoti a set sum, the clients never actually paid him.

In the Matter of Anderson (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208 addressed the issue of what conduct constitutes moral turpitude. The Anderson court stated the following: "Moral turpitude determinations are a matter of law. (*In re Higbie* (1972) 6 Cal 3d 562, 569.) Moral turpitude is not a concept that fits a precise definition (*Chadwick v. State Bar* (1989) 49 Cal. 3d 103, 110), but has been consistently described as an "act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Craig*, (1938) 12 Cal. 2d 93, 97) The Court has characterized the moral turpitude prohibition as a flexible "commonsense" standard (*In re Mostman* (1989) 47 Cal. 3d 725, 738) with its purpose not the punishment of attorneys, but the protection of the public and legal community against unsuitable practitioners.

In the Matter of Steele (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708, the Review Department disbarred Steele for forming a partnership and splitting fees with a non-lawyer and recklessly failing to control his law practice for more than two years. The court found that respondent's failure to control his law practice amounted to moral turpitude where he let a non-lawyer take over much of his practice, sign client trust account checks, and handle all financial records without proper supervision.

Kitsis v. State Bar (1979) 23 Cal. 3d 857, the Supreme Court disbarred Kitsis for employing three lay persons to solicit professional employment for him and offering to pay three others for referrals of personal injury claims, this solicitation practice continued for nearly three years. One of the employees was equipped with a police radio, she would listen to the radio and go out to accident scenes, she would then refer the persons involved in the accident to respondent. The employee believed that she had gone out to at least 200 accident scenes, and that out of the 200 accident scenes at least 150 people became Kitsis' clients. The other employees referred clients from an auto body shop and hospitals.

In Re Arnoff (1978) 22 Cal.3d 740, the Supreme Court imposed a two-year actual suspension in the matter, Arnoff had plead guilty to a violation of Penal Code § 182(a)(1) conspiracy to commit the crime of capping.

Arnoff was admitted in 1962 and had no prior record of discipline. There was a fee-splitting agreement between Arnoff and a non-lawyer, which was in place for approximately two years. The situation was exacerbated by the non-lawyer paying kickbacks to doctors and others, although the evidence was unclear whether Arnoff knew of the kickbacks. The non-lawyer maintained the books and records of the office, and disbursements were made without the control of Arnoff. There was strong evidence that fraudulent medical reports were used and there was a question as to whether Arnoff knew of that fraud. The Supreme Court found that Arnoff's conduct involved moral turpitude.

In the Matter of Jones (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411, the Review Department imposed a two-year actual suspension on Jones, for his inexcusable ignorance of the law and recklessness or gross negligence, for allowing a non-lawyer to operate a large scale personal injury practice involving capping, forgery, and other illegal and fraudulent practices. Jones set up a law corporation with a non-lawyer to split fees, while he was full-time employ of another firm. Jones delegated to the non-lawyer, without proper supervision all aspects of the personal injury practice, for over a two-year period. The non-lawyer used illegal means to solicit clients, engaged in acts constituting the practice of law in Jones' name, handled millions of dollars, collected over \$600,000.00 in attorney's fees in Jones' name.

In the Matter of Bragg (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, the Review Department imposed a one-year actual suspension on Bragg for violation of rule 1-320(A), 3-110(A), Business & Professions Code §§ 6068(1), 6103, and 6106, and in aggravation a violation of rule 1-300. Bragg entered into an agreement with a non-lawyer in which pre-litigation matters were turned over to the non-lawyer who allowed his own employees to evaluate the cases, set a demand value and negotiate the resolution with the opposing party or with the insurance carrier. The non-lawyer's staff would then create a disbursement sheet, including all medical liens and other charges to be paid and present it to the client for approval. Bragg did discuss the cases with the non-lawyer on a daily basis, however most if not all the settlement negotiations were conducted by the non-lawyer and office staff. The arrangement with the non-lawyer went on for approximately nine months. The court found that respondent's conduct involved moral turpitude, because Bragg knew that he was abdicating his responsibilities as an attorney and acted purposefully in allowing the non-lawyer to engage in activities which constituted the practice of law. The court noted that the clients engaged the services of an attorney, and they expected and were entitled to have the services of the attorney in evaluating and settling their personal injury claims. Instead they received the services of an adjuster and his negotiation team, housed in offices bearing Bragg's name, with phones answered in Bragg's name and correspondence and negotiations conducted in Bragg's name, with little or no input from Bragg. Bragg had been admitted to practice law in 1963.

MAR 13 2008

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

In re: JAMES D. HOLLISTER, Esq.,
Admitted to the bar of the Ninth Circuit:
June 26, 1969,

No. 07-80199

Respondent,

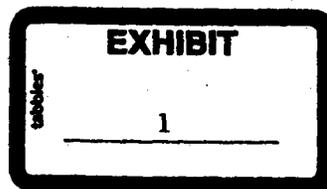
REPORT AND
RECOMMENDATION

Before: Peter L. Shaw, Appellate Commissioner

I
Background

A. Order To Show Cause

On December 6, 2007, the court ordered respondent James D. Hollister, Esquire, to show cause in writing why he should not be sanctioned in an amount not less than \$5,000, suspended, or disbarred for repeated violations of the court's rules and orders and the rules of professional conduct, and for conduct unbecoming a member of this court's bar in many of the cases in which he has appeared before the court. See Fed. R. App. P. 46(b)(1)(B) & (c); 9th Cir. R. 46-2; Cir. Adv. Comm. N. to R. 46-2; see also Cal. Prof'l Conduct R. 3-110(A) (Failing To Act Competently); Cal. Bus. & Prof. Code § 6068 (Duties of Attorney); § 6103 (Sanctions for Violation of Court Order or Attorney's Duties); *In re Snyder*, 472



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U.S. 634, 645-46 & n.7 (1985) (court may consider codes of professional conduct in determining whether an attorney's conduct falls below the standards of the profession).

The order to show cause stated that Hollister had appeared in 18 immigration cases before the court since 2004, and eight of those cases were dismissed because he failed to file an opening brief. In an additional three cases, Hollister failed to file a response to the government's motion for summary disposition.

The order to show cause also stated that the motions for stay of removal that Hollister filed in the 18 immigration cases were perfunctory and failed to meet well-established standards. The order noted that in five cases, the denial of Hollister's perfunctory stay motion also ended the stay of the voluntary departure period, threatening the loss of an important benefit Hollister's clients had obtained during immigration proceedings.

The order to show cause also described how the briefs Hollister has filed in this court have been characterized by references to outdated law and a failure to cite specific evidence in the administrative record. As a result, those briefs have appeared generic and recycled.

Finally, the order to show cause set forth the court's more general concern that Hollister has not competently managed his appellate practice, repeatedly missing deadlines and misreading important documents. The order noted that in three cases where Hollister filed a motion to file a late brief, the briefs were already, respectively, ten, eight, and four months late, and the postal difficulties cited as an explanation were at least partially attributable to his failure to change his address with the court. In a subsequent motion to reinstate a case dismissed for failure to file a brief, Hollister again blamed the postal service, although he conceded in two other reinstatement motions that he had simply overlooked the briefing schedule sent to him by the court.

B. Hollister's Response to the Order to Show Cause

After obtaining a timely extension of time to file a response to the order to show cause, Hollister filed a detailed response, but did not request a hearing.¹ See Fed. R. App. P. 46(b)(3), (c); 9th Cir. R. 46-2(e). Hollister's response does not address the specifics of the order to show cause, but instead generally describes the

¹ In his request for an extension of time, Hollister specifically stated that he did not want a hearing.

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nature of his immigration practice. In doing so, Hollister implicates himself in practices that may be even more serious than those identified in the order to show cause.

In an overview of his practice, Hollister explained that he was new to both the Ninth Circuit and immigration law when he “was approached by an immigration consultant named Albert Villela who asked me if I would be interested in trying immigration cases on a case-by-case basis.” These engagements would also include representation before the Board of Immigration Appeal and the Ninth Circuit. Hollister explained that he received a set sum for representing Villela’s clients at trial, and “BIA and Ninth Circuit Appeals were also paid on a set sum which I receive[d] when I complete[d] the briefs and turn[ed] them over to Mr. Villela for filing.”

In response to the court’s order that he produce the retainer agreements he executed with his clients, Hollister wrote: “Under the above arrangement there are no retainer agreements between the Respondents and myself. There is a letter between Mr. Villela and me regarding fees.” Hollister acknowledged that “it may appear, given the background, that I may have received compensation without performing the work,” but he assured the court that that has never been the case.

Hollister also acknowledged there was a "mail problem" that resulted in late briefs: "I had asked Mr. Villela to make sure that I notified all appropriate parties of my new address when I moved here in April, 2005. Apparently this was not done correctly and my immigration and Ninth Circuit mail was not consistent." Hollister emphasized that when problems were discovered, he "tried to take immediate steps to correct the situation."

Hollister noted the court's concern that he recycled his briefs, and responded: "This is true to an extent but I usually tried to make changes or additions at the Ninth (*sic*) level, while still using the base language I earlier prepared on the same issues."

Hollister acknowledged that Mr. Villela is "held in disfavor" by the Immigration Court in San Francisco, and expressed his belief that he has suffered from the "repercussions" of this situation. Hollister conceded that severing his ties to Villela would be one option, but dislikes that option because it would effectively end his own immigration practice, and because he believes his own involvement in the cases has led to "improvement" in Villela's practices. Hollister readily admits he knew less about immigration law than Villela did when they began their association, "and it's taken a while for me to feel comfortable giving the

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directions.” Hollister proposed that the situation would continue to improve if he were allowed to “embark on my own program of improving my appellate skills through education and any other resource I can find.”

Hollister concluded his response to the court’s order to show cause by informing the court that he is 68 years old, in need of hip surgery, and uses his practice income to supplement his social security benefits.

C. Additional Conduct

Hollister has filed no new cases since the court issued its order to show cause. He filed a five-page opening brief in *Komal v. Keisler*, No. 07-70316 that contained a single reference to the record below and no discussion of relevant case law.

II. Discussion

A. Applicable Legal Standards

“A member of the court’s bar is subject to suspension or disbarment by the court if the member . . . is guilty of conduct unbecoming a member of the court’s bar.” Fed. R. App. P. 46(b)(1)(B); see *Gadda v. Ashcroft*, 377 F.3d 934, 947 (9th

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Cir. 2004) (court also has inherent authority to suspend or disbar attorneys who perform incompetently in immigration proceedings). Furthermore, the court “may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule.” Fed. R. App. P. 46(c). A court need not find intentional conduct to discipline an attorney for conduct unbecoming a member of the bar pursuant to Federal Rule of Appellate Procedure 46; lack of diligence that impairs the deliberations of the court is sufficient.

Gadda, 377 F.3d at 947.

“Conduct unbecoming a member of the court’s bar” means “conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice.” *In re Snyder*, 472 U.S. 634, 645 (1985); *Gadda*, 377 F.3d at 946. In addition to case law and applicable court rules, the court may consider codes of professional conduct in determining whether an attorney’s conduct falls below the standards of the profession. *See In re Snyder*, 472 U.S. at 645, 646 n.7 (referring to state rules of professional conduct, and the American Bar Association’s Model Rules of Professional Conduct and Model Code of Professional Responsibility); *United States v. Swanson*, 943 F.2d 1070, 1076 (9th Cir. 1991).

In assessing the appropriateness of a particular sanction, the court may consider the American Bar Association's Standards for Imposing Lawyer Sanctions, which were promulgated to aid enforcement of the ABA's Model Rules of Professional Conduct. *See Swanson*, 943 F.2d at 1076; *see also* ABA Joint Comm. on Prof'l Standards, *Standards for Imposing Lawyer Sanctions* (1984, rev. 1992), available at http://www.abanet.org/cpr/regulation/standards_sanctions.pdf ("*Standards*"). Under these standards, a court should generally consider: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *See Standards* § 3.0. The *Standards* also set out various forms of suggested discipline based on the type of misconduct involved. *See id.* §§ 4.0-8.4.

B. Failure to Prosecute

The December 11, 2007 order to show cause alleged that Hollister was the attorney of record for the following eight petitions for review that were dismissed for failure to prosecute: *Lualala v. Gonzales*, No. 04-75431; *Ali v. Gonzales*, No. 05-70814; *Vilash v. Gonzales*, No. 05-71615; *Rajiv Govind v. Gonzales*, No. 06-71812; *Ravinesh Govind v. Gonzales*, No. 06-72378;

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Rodriguez Montoya v. Gonzales, No. 06-72508; *Kishore Singh v. Gonzales*, No. 06-74394; *Prasad v. Gonzales*, No. 07-70322.

Hollister does not explain, or even address, these dismissals in his response to the order to show cause, making it difficult to determine whether the failure to prosecute these cases was the result of the clients' decisions or Hollister's own lack of diligence. The explanations Hollister offered in his motions to reinstate proceedings in three of these cases point to the latter. In *Ali v. Gonzales*, No. 05-70814, Hollister's motion blamed the postal service for his failure to receive the administrative record but, as the court's order noted, Hollister was already on notice that some of his court mail was not reaching him, a circumstance attributable in large part to his failure to notify the court of his change his address in violation of Ninth Circuit Rule 46-3. In the other two reinstatement motions, for *Rajiv Govind v. Gonzales*, No. 06-71812 and *Kishore Singh v. Gonzales*, No. 06-74394, Hollister admitted he overlooked the briefing schedule that he had received.

It is impossible to determine whether Hollister's carelessness or client choices resulted in the remaining five dismissals. Even if a client is unavailable or no longer wishes to pursue a petition for review, the proper action pursuant to

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the court's rules is to file a motion to withdraw as counsel or to dismiss the petition for review. *See* Fed. R. App. P. 42(b); Ninth Circuit R. 42-1.

Hollister's violation of the court's rules and lack of diligence interfered with the judicial process. *See* Cal. R. Prof. Cond. 3-110; *Standards*, §§ 4.4, 6.2.

C. Perfunctory stay motions

Hollister's response to the order to show cause does not address the court's concerns about the quality of his stay motions. As noted in the order, Hollister is scrupulous about filing a motion for stay of removal in conjunction with the petition for review, but the vast majority of the stay motions are perfunctory, and they fail to satisfy the standards for such motions set forth in *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998). As a result, stays have been denied in half of Hollister's cases. Moreover, the denial of Hollister's perfunctory stay motion also ended the stay of the voluntary departure period in five cases. *See Jasbeer Singh v. Gonzales*, No. 04-73125; *Raj v. Gonzales*, No. 04-74754; *Lualala v. Gonzales*, No. 04-75431; *Pedroza v. Gonzales*, No. 06-75782; *Prasad v. Gonzales*, No. 07-70322. Hollister's conduct with respect to stay motions has

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demonstrated a lack of competence that has harmed his clients. *See* Cal. R. Prof. Cond. 3-110; *Standards*, §§ 4.5.

D. Inadequate Briefs

Hollister’s response to the court’s order to show cause does not specifically address the two chronic failings of his briefs: the failure to cite the record, and the invocation of outdated law. Instead, Hollister refers generally to his relative ignorance of immigration law. He does not dispute the charge that his briefs regularly fail to meet the requirements set forth in Federal Rule of Appellate Procedure 28(a). Hollister’s practice with respect to briefing has demonstrated a lack of competence that has harmed his clients. *See* Cal. R. Prof. Cond. 3-110; *Standards*, §§ 4.5.

E. Concerns About Hollister’s Practice

In response to the court’s concern that his practice is marked by carelessness and disorganization, Hollister acknowledges “several missed deadlines,” but emphasizes that he has always taken “immediate steps to correct the situation” once a problem was discovered. Apart from a reference to a now-

resolved "mail problem," however, Hollister fails to explain whether and how he has taken steps to ensure that such problems do not arise.

Hollister's response to the court's order implies that many of his difficulties are the result of his relationship with Mr. Villela, the immigration consultant, but his response raises troubling concerns about that relationship. By his own admission, Hollister accepted the referral of multiple clients, as well as fees, from Villela, a non-attorney, for appearing before this court in cases without a written fee agreement. Yet California Rule of Professional Conduct 3-310(F) provides that "a member [of the State Bar of California] shall not accept compensation for representing a client from one other than the client unless:

- (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
- (2) Information relating to representation of the client is protected as required by Business and Professions Code 6068, subdivision (e);
and
- (3) The member obtains the client's informed written consent,
provided that no disclosure or consent is required if:
 - (a) such nondisclosure is otherwise authorized by law; or

(b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.”

Hollister’s admission that he deferred to Mr. Villela’s judgment shows that condition (1) was violated and, by admitting that he has no written agreements with his clients, Hollister has conceded that he violated condition (3) as well.²

The ethical problems with Hollister’s arrangement with Villela extend beyond the rules involving referrals. At one point in his response to the court’s order, Hollister explains that “[t]he initial problem for me was, at the beginning, Mr. Villela knew more about immigration law than did I and it’s taken a while for me to feel comfortable giving the directions.” This explanation is both vague and disturbing, because it is not clear in what sense Mr. Villela, a non-attorney,

² In addition, California Business & Professions Code § 6148 provides that, in non-contingency-fee cases, the contract for legal services “shall be in writing” where “it is reasonably foreseeable that total expense to a client, including attorney fees, will exceed one thousand dollars (\$1,000).” Hollister indicates that “[o]n trial matters I would be paid a set sum between \$500 and \$700 depending on the type of case. . . . BIA and Ninth Circuit Appeals were also paid on a set sum which I receive[d] when I complete[d] the briefs and turn[ed] them over to Mr. Villela for filing.” Because Hollister frequently represented the same clients at trial, before the BIA, and in the Ninth Circuit, it is likely that his representation frequently triggered the requirements of § 6148. Moreover, it is unknown how much more Villela charged the client.

No. 07-80199

might have been "giving the directions" at any point in their professional relationship.

Hollister also writes: "I appreciate the Court's concern that it may appear, given the background, that I may have received compensation without performing the work, but I must stress that I have not, and never, ever, would do that." This statement is not responsive to any charge made in the order to show cause, but it correctly anticipates the court's concern that Hollister may be assisting in the unauthorized practice of law to the degree he is lending his name to legal work product that has actually been prepared by a non-lawyer.

The court's concerns here are magnified by its prior experience with attorneys working for Mr. Villela, *see In re Stevens*, No. 03-80015, and the similarity between Hollister's briefs and those submitted by other attorneys working for Mr. Villela. In addition, a number of pleadings in Hollister's cases contain block signatures that appear to be initialed by Villela's employees. *See Vidya Dhar Singh v. Gonzales*, No. 05-76582 (motion for extension of time to file petition for rehearing); *Lal v. Gonzales*, No. 06-73775 (motion to file late brief); *Komal v. Mukasey*, No. 07-70316 (motions for extension of time). These motions violate Federal Rule of Appellate Procedure 32(d), which requires

“every brief, motion, or other paper filed with the court” by represented parties to be signed by counsel, and they raise serious questions about the extent of Hollister’s involvement in the prosecution of his cases.

In view of the concerns raised by Hollister’s own characterization of his immigration practice, he also has violated or may have violated one or more of the following additional ethical rules:

(1) California Rule of Professional Conduct 1-300(A), which provides that “[a] member [of the State Bar of California] shall not aid any person or entity in the unauthorized practice of law;”³

(2) California Rule of Professional Conduct 1-320(A), which provides that “[n]either a member [of the State Bar of California] nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer,” subject to certain exceptions not applicable here;

³ Business & Professions Code §6126 governs the unauthorized practice of law, and applies to Villela’s conduct here. *See In re Valinoti*, 2002 WL 31907316, at *13 (“the preparation and filing of immigration applications, pleadings, and documents by the nonattorney [immigration services] providers in this proceeding fall[s] within California’s definition of the unauthorized practice of law”). Section 6126 provides that “any person . . . practicing law who is not an active member of the State Bar . . . is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to one thousand dollars (\$1,000), or by both that fine and imprisonment.”

(3) California Rule of Professional Conduct 1-320(B), which provides in part that “[a] member [of the State Bar of California] shall not compensate, give, or promise anything of value to any person or entity for the purpose of recommending or securing employment of the member or the member’s law firm by a client or as a reward for having made a recommendation resulting in the employment of the member or the member’s law firm by a client,”

(4) California Rule of Professional Conduct 1-400(C), which provides in part that “[a] solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California;”

(5) California Rule of Professional Conduct 1-600, which provides that “[a] member [of the State Bar of California] shall not participate in a nongovernmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member’s independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows

any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by [the Rules of Professional Conduct], or otherwise violates the State Bar Act or [the] rules;”

(6) California Business & Professions Code § 6105, which provides that “[l]ending his name to be used as attorney by another person who is not an attorney constitutes a cause for disbarment or suspension;” and

(7) California Business & Professions Code § 6106, which provides that “[t]he commission of any act involving moral turpitude, dishonesty, or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension.” *See In re Valinoti*, 2002 WL 31907316, at *12, *53 (respondent’s willful violation of rule 1-300(A), deliberately aiding and abetting the unauthorized practice of law, and rule 3-310(F), repeatedly and deliberately permitting non-attorney immigration service providers who referred clients to him to pay his fees, rose to a level involving moral turpitude in violation of section 6106).

F. Aggravating and Mitigating Factors

Because the original charging document in this proceeding did not order Hollister to show cause why he should not be disciplined for a relationship with a non-attorney that violated one or more rules of professional conduct, that relationship cannot serve as an independent ground of discipline, absent an amended order to show cause and further investigation. Such uncharged conduct may, however, be considered an aggravating factor, *see Edwards v. State Bar*, 801 P.2d 396, 400-01 (Cal. 1990). As noted above, Hollister's own description of his relationship with Mr. Villela establishes, at a minimum, a violation of California Rule of Professional Conduct 3-310(F).

In addition, the ABA "Standards" set out aggravating and mitigating factors that justify an increase or reduction in the degree of discipline to be imposed. *See Standards* §§ 9.2, 9.3. The relevant aggravating factors here are:

(1) *Pattern of misconduct and multiple offenses* (*Standards* §§ 9.22(c), (d)) -- Hollister's conduct described in the court's order to show cause -- the failure to prosecute cases, the filing of perfunctory stay motions and inadequate briefs -- was not confined to a few cases, but occurred in virtually all of the 18 cases in which Hollister has appeared before this court since 2004;

(2) *Refusal to acknowledge the wrongful nature of his conduct* (*Standards* § 9.22(g)) -- Hollister's response to the court's order to show cause takes responsibility in the most general terms, but the complete lack of specificity in the response can only be explained by a lack of familiarity with his own cases, or a lack of familiarity with the substantive issues detailed in the order to show cause. In addition, by explaining his conduct in terms of his relationship to Mr. Villela, Hollister's response fails to acknowledge the real and potential improprieties of that relationship; and

(3) *Vulnerability of the victim* (*Standards* §§ 9.22(h)) -- Incompetent representation in asylum and immigration cases can have devastating consequences, namely deportation or removal; in addition, clients who have been deported or removed are often not in a position to file claims with the State Bar or other agencies regarding their attorneys' unethical conduct and therefore the misconduct is not easily remedied.

Hollister appears to make three arguments in mitigation: (1) that he was new to immigration practice when he began representing clients in the Ninth Circuit in 2004, and he has subsequently improved; (2) that he has been able to

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effect positive change in the way in which the appeals of Mr. Villela's clients are handled; and (3) that he is 68 and in poor health.

Hollister's first argument is unavailing because an attorney's duty to represent his clients competently applies under all circumstances. California Rule of Professional Conduct 3-110(C) specifically provides:

If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with, or, where applicable, professionally consulting *another lawyer* reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required. (emphasis added)

Furthermore, Hollister's attempt to argue that the problems with his representations are limited to his earlier cases is belied by the order to show cause, which demonstrates problems in virtually every case he has filed in the Ninth Circuit. Hollister does not support his vague claim of "improvement" with reference to any case.

Hollister's second argument is also unavailing because the asserted mitigating factor—his alleged good influence on Mr. Villela's practice—is based on

a professional relationship that itself violates one or more rules of professional conduct. Moreover, Hollister offers no specifics about the alleged “improvement.”

The ABA standards do recognize “personal or emotional problems,” and “physical disability” as mitigating factors that may justify a reduction in the degree of discipline to be imposed. *See Standards* §§ 9.32(c), (h). Hollister does not, however, offer his current health situation as an explanation for his past actions, only as a general equitable consideration. Hollister’s appeal to his personal circumstances is of minimal value as a mitigating factor.

G. Appropriate Level Of Discipline

Hollister’s response to the court’s order concedes that he engaged in an area of law in which he knew he was not competent. In view of the pervasive lack of diligence and competence that Hollister has displayed, his conduct is subject to suspension, at a minimum. *See Standards* §§ 4.41-42, 4.51-52. Because the aggravating factors are numerous and serious, even disbarment would not be inappropriate.

Hollister proposes that he embark on a process of education, but he opposes severing his relationship with Mr. Villela. Hollister’s failure to

appreciate the problems with that relationship demonstrates why he should be suspended from practice before the Ninth Circuit, and required to engage in comprehensive ethical and appellate practice training as a condition for reinstatement.

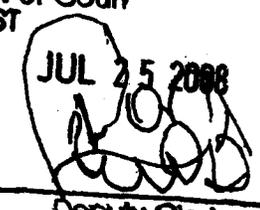
III Recommendation

Hollister should be suspended from the practice of law before this court for thirty months, effective immediately upon entry of an order by the court adopting this report and recommendation. Hollister should be required, within 14 days after the court's order, to serve the order on his clients in all pending cases, inform the clients that they must obtain new counsel, and turn over all client files and materials to the clients. Also within 14 days, Hollister should be required to file proof with the court that he has completed the above requirements. The court may wish to consider substituting pro bono counsel for Hollister in his pending cases.

Hollister's reinstatement to practice before this court should be conditioned on a showing that he is in good standing before all courts in which he is admitted, with no disciplinary proceedings pending, and that he is familiar with, willing to

comply with, and capable of complying promptly and diligently with all applicable court and ethical rules and this court's orders. Hollister's reinstatement should also be conditioned upon the successful completion of no fewer than 12 hour-units of continuing legal education, certified by the State Bar of California, in the areas of ethics, immigration law, appellate practice, and law office management, in addition to those hour-units required of all active attorneys.

The court's order and this report and recommendation should be served on the California State Bar, the United States Attorney for the Northern District of California, the Office of the Attorney General for the State of California, and the Alameda County District Attorney, for further investigation of Hollister's and Villela's conduct, as appropriate.

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUL 25 2008
by: 
Deputy Clerk

UNITED STATES COURT OF APPEALS

MAR 13 2008

FOR THE NINTH CIRCUIT

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

In re:

No. 07-80199

JAMES D. HOLLISTER, Esq., Admitted
to the bar of the Ninth Circuit: June 26,
1969,

ORDER

Respondent,

Before: Peter L. Shaw, Appellate Commissioner

The Clerk shall serve on respondent by certified mail, return receipt requested, a copy of the Report and Recommendation filed contemporaneously with this order.

Within 21 days after this order is filed, respondent may file objections to the Report and Recommendation. See 9th Cir. R. 46-2(f). The Clerk shall forward respondent's objections, if any, to the Appellate Commissioner.

ES\AppellateCommissioner

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUL 25 2008
by: 
Deputy Clerk

UNITED STATES COURT OF APPEALS

JUL 10 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: JAMES D. HOLLISTER, Esq.,
Admitted to the bar of the Ninth Circuit:
June 26, 1969,

No. 07-80199

Respondent,

ORDER

Before: REINHARDT, BERZON, and M. SMITH, Circuit Judges

On March 13, 2008, the Appellate Commissioner filed a report and recommendation regarding the proposed discipline of respondent James D. Hollister, Esq. Respondent Hollister was allowed 21 days to object to the report and recommendation. After three attempts, the report and recommendation was successfully served on Hollister, and he has not filed objections.

The report and recommendation is adopted in full. For his violations of the court's rules and orders and ethical rules set forth in the Report and Recommendation, respondent James D. Hollister, Esq., is suspended from the practice of law in this court for 30 months, effective on the filing date of this order. Fed. R. App. P. 46(c).

Respondent Hollister may file a petition for reinstatement after the period of suspension pursuant to Ninth Circuit Rule 46-2(h). Hollister shall file the petition

using this docket number and include: (1) this order; (2) a written showing that Hollister is familiar with, willing to comply with, and capable of complying promptly and diligently with the Federal Rules of Appellate Procedure, Ninth Circuit Rules, and this court's orders; (3) evidence that he is in good standing, with no discipline pending, in all courts and bars in which he is admitted; and (4) proof that he has successfully completed no fewer than 12 hour-units of continuing legal education, certified by the State Bar of California, in the areas of ethics, immigration law, appellate practice, and law office management, in addition to those hour-units required of all active attorneys.

Within 14 days after the date of this order, respondent Hollister shall file notices of withdrawal in all pending cases in which he is counsel of record, serve this order on his clients in all pending cases, and turn over all client files and materials to the clients. The term "pending cases" includes cases where the briefing has been concluded, but there has been no final decision by this court. According to the court's records, respondent Hollister appears as the counsel of record in the following pending cases: *Razak v. Mukasey*, No. 04-71908; *Rajiv Govind v. Mukasey*, No. 06-71812; *Komal v. Mukasey*, No. 07-70316; *Ali v. Mukasey*; No. 07-70655.

Additionally, respondent Hollister shall inform his clients in the pending cases that they must: (1) obtain new counsel; or (2) notify the court that they wish to represent themselves; or (3) request that the court appoint counsel for them. He shall further notify them that he can no longer provide any legal assistance for them or collect fees for future services in this court. Also within 14 days after the date of this order, respondent Hollister shall file proof with the court that he has completed the above requirements and send to the court the addresses of his clients in all pending cases.

Failure to comply with this order within the time permitted may result in the imposition of monetary sanctions of \$1,000 or more, without further notice, for each case in which respondent Hollister fails to fulfill the requirements of this order.

The Clerk shall change this court's records to reflect that respondent Hollister has been suspended and is no longer eligible to practice before the Ninth Circuit.

The Clerk shall serve this order and the Appellate Commissioner's March 13, 2008 report and recommendation on the United States Department of Justice

No. 06-80000

Executive Office for Immigration Review and the State Bar of California for appropriate further investigation.

The Clerk also shall serve this order on respondent Hollister by certified mail, return receipt requested.

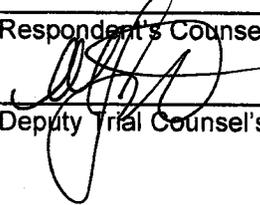
A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUL 25 2008
by: 
Deputy Clerk

(Do not write above this line.)

In the Matter of James D. Hollister	Case number(s): 05-O-02519 05-O-02984 06-O-10057 08-O-10521 08-O-11913 08-J-12807
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>2-17-09</u> Date	 Respondent's Signature	<u>James D. Hollister</u> Print Name
Date	Respondent's Counsel Signature	Print Name
<u>2/25/09</u> Date	 Deputy Trial Counsel's Signature	<u>Maria J. Oropeza</u> Print Name

(Do not write above this line.)

In the Matter Of James D. Hollister	Case Number(s): 05-O-02519 05-O-02984 06-O-10057 08-O-10521 08-O-11913 08-J-12807
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

March 10, 2009
Date

Pat McElroy
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 10, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**JAMES DAVID HOLLISTER
566 S N ST
LIVERMORE, CA 94550**

by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

by overnight mail at , California, addressed as follows:

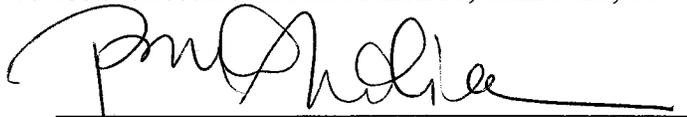
by fax transmission, at fax number . No error was reported by the fax machine that I used.

By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MARIA OROPEZA, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 10, 2009.



Bernadette C.O. Molina
Case Administrator
State Bar Court