FILED OCTOBER 31, 2006

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

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| In the Matter of<br><br>**STEVEN JEFFREY RIGGS**,<br><br>**Member No. 147745**,<br><br>A Member of the State Bar. | **Case No. 05-O-03913-PEM**<br><br>**DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER** |

## I. INTRODUCTION

In this disciplinary matter, Shari Sveningson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Steven Jeffrey Riggs did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

## II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on May 24, 2006, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section[1] 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

On June 1, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on July 17, 2006. This notice was returned as undeliverable by the United States Postal Service.

Respondent did not file a responsive pleading to the NDC. On June 29, 2006, a motion for

[1]Future references to section are to the Business and Professions Code.

entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

Respondent did not appear at the July 17 status conference. On July 18, 2006, he was properly served with a status conference order at his official address by first-class mail, postage prepaid, which advised him that the matter would proceed by default.

On July 19, 2006, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested.

The State Bar's and the court's efforts to contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <http://www.supremecourtus.gov/opinions/05slipopinion.html>.)

The matter was submitted for decision without hearing after the State Bar filed a brief on August 9, 2006.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar[2], rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

### A. Jurisdiction

Respondent was admitted to the practice of law in California on August 2, 1990, and has

[2]Future references to the Rules of Procedure are to this source

been a member of the State Bar at all times since.

**B. The Avaloz Matter**

**1. Facts**

On March 24, 2003, Ernie Avaloz retained respondent to represent him in a bond hearing in the matter entitled *USA v. Avaloz*, United States District Court of Appeals for the Ninth Circuit, case no. 03-50094. Avaloz' girlfriend, Jamie Thornton, paid respondent $500 on that date as legal fees.

On April 10, 2003, the court listed respondent as Avaloz's counsel of record on the bond matter. Respondent made no further appearances on Avaloz's behalf in this case.

On April 18, 2003, Avaloz retained respondent to represent him in *USA v. Avaloz* and Thornton paid him $5,000 to do so.

Respondent's opening brief in this case was due on June 9, 2003. On June 24, 2003, the court ordered respondent to file the opening brief within 14 days and to file a motion for relief from default. The court served respondent with this order but respondent did not comply with it.

On April 26, 2004, the court ordered respondent, within 14 days, to file the opening brief, excerpts from the record and a motion for relief from default. Alternatively, the court ordered respondent to file a motion to withdraw as counsel within 14 days if he was unable to prosecute the appeal. The court warned respondent that noncompliance might result in the imposition of sanctions on him. The court served the order on respondent again on May 21, 2004. As of May 24, 2006, respondent had not responded to the court's April 26, 2004, order.

On June 24, 2003, the court issued a notice of default in Avaloz's case.

On April 26, May 21 and June 17, 2004, the court served its orders on respondent at his former membership records address.

From April 21 through October 21, 2004, respondent was actually suspended from the practice of law for six months. (*In the Matter of Steven J. Riggs*, Supreme Court case no. S121880 (State Bar Court case nos. 01-O-5002; 02-O-11248; 02-O-12626 (Cons.)), filed March 22, 2004.)

On May 11, 2004, respondent filed a 955 Verification Form with the Office of Probation

in relation with the prior disciplinary matter, Supreme Court case no. S121880. Respondent declared on the form, in part, that he had notified client and co-counsel of his suspension; that he did not represent any clients in pending matters; and that he had complied with the requirements of rule 955 of the California Rules of Court (rule 955) as of April 30, 2004, with the exception of refunding an unearned flat fee in one case.

On July 2, 2004, the court appointed new counsel for Avaloz.

Respondent did not provide any services of value for Avaloz or earn any of the advanced fees Thornton paid him on Avaloz's behalf. Respondent did not return any of the $5,000 in fees.

Respondent did not inform Avaloz that he was not going to prosecute his appeal. He also did not inform Avaloz that he was suspended from the practice of law and, therefore, was unable to represent Avaloz.

On August 1, 2005, the State Bar opened an investigation pursuant to a complaint filed by Avaloz.

On September 1, 2005, the State Bar sent respondent a letter regarding the Avaloz complaint requesting a response by September 15, 2005. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was returned to the State Bar as undeliverable on September 13, 2005, bearing a stamp stating "Not at this address. Return to sender."

On February 28, 2006, the State Bar sent respondent a letter regarding the Avaloz complaint requesting a response by March 20, 2006. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was returned to the State Bar as undeliverable on March 13, 2005, bearing a stamp stating "Return to sender. Attempted not known."

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**2. Conclusions of Law**

**a. Count One - Rule of Professional Conduct[3] 3-700(D)(2) (Failure to Return Unearned Fees)**

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

By not performing legal services of value to Avaloz and not returning the $5,000 paid to him as advanced legal fees, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

**b. Count Two - Section 6068, subdivision (m) (Failure to Communicate)**

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not informing Avaloz that he was not going to prosecute his appeal or telling him about his suspension from the practice of law, respondent did not keep Avaloz reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

**c. Count Three - Section 6106 (Moral Turpitude)**

Section 6106 makes it a cause for disbarment or suspension to commit 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.

There is clear and convincing evidence that respondent violated section 6106 by misrepresenting that he had notified clients about his actual suspension. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

**d. Count Four - Section 6068, subdivision (j) (Failure to Maintain Address)**

Section 6068, subdivision (j) requires an attorney to comply with the requirements of

[3]Future references to rule are to this source.

section 6002.1, which, among other things, requires him to maintain a current address and telephone number with the State Bar and to notify the State Bar within 30 days of any change in same.

By not maintaining a current address and telephone number with the State Bar, respondent wilfully violated section 6068, subdivision (j).

## IV. LEVEL OF DISCIPLINE

### A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct[4], std. 1.2(b).)

Respondent has three prior instances of discipline. (Std. 1.2(b)(i).) In State Bar Court case no. 01-J-615, a public reproval was imposed effective November 24, 2001. Respondent was found culpable of violating rule 3-110(A) and section 6103 in four client matters pending in the United States Court of Appeal for the Seventh Circuit. The Seventh Circuit disbarred him. No aggravating factors were found. Respondent and the State Bar stipulated to mitigating factors including no prior instances of discipline, candor and cooperation and severe financial stress.

In Supreme Court case no. S121880 (State Bar Court case nos. 01-O-5002; 02-O-11248; 02-O-12626; 02-O-13024; 03-H-00306(Cons.)), filed March 22, 2004, discipline was imposed consisting of a stayed suspension for two years and three years' probation on conditions including six months' actual suspension and restitution, among other things. Respondent and the State Bar stipulated that he was culpable, in four client matters, of violating rules 1-110, 3-110(A), 3-700(D)(1) (two counts), 3-700(D)(2) (two counts) and 4-100(B)(3) and section 6068, subdivision (i). Aggravating factors were one prior instance of discipline and multiple acts of misconduct. Family problems were recognized as mitigation.

In Supreme Court case no. S121880 (State Bar Court case no. 06-PM-10321), filed June 2, 2006, discipline was imposed consisting of actual suspension for two years and until

[4]Future references to standard or std. are to this source.

respondent complied with standard 1.4(c)(ii). He was given credit for the period of inactive enrollment that commenced on March 18, 2006. Respondent was found culpable of violating the previously-imposed and agreed-to probation conditions, including untimely or not filing of quarterly reports; not paying pay the filing fee for a fee arbitration and be available to receive a request for binding fee arbitration and pay its filing fee; submit proof of successful completion of Ethics School; and report a change in his current office address to the State Bar's Membership Records office and to the Office of Probation. No mitigating circumstances were found. In aggravation, there were two prior records of discipline and respondent did not participate in the instant proceedings.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

**B. Mitigating Circumstances**

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

**C. Discussion**

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

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

sanctions. (Std. 1.6(a).)

Standards 2.3, 2.6 and 2.10 apply in this matter. The most severe sanctions are found at standards 2.3 and 2.6. Standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on 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 attorney's acts within the practice of law. The most severe sanction is found at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

Standard 1.7(b) also applies. It provides that, if an attorney has two prior records of discipline, the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of violating rule 3-700(D)(2), and sections 6068, subdivisions (j) and (m) and 6106.

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted because there are no extenuating circumstances that clearly predominate in this case. (Std. 1.7(b).) The serious and unexplained nature of the misconduct and the lack of participation in these proceedings suggest that he is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Moreover, it is evident that the three prior instances of discipline have not served to rehabilitate respondent or to deter him from

further misconduct. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

## V. DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that respondent STEVEN JEFFREY RIGGS be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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

## VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: October 31, 2006

PAT McELROY
Judge of the State Bar Court