

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	<b>Case No. 05-O-04810-RAH</b>
	)	<b>(06-O-11204; 06-O-11489)</b>
<b>LAWRENCE ALAN HEISLER,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND</b>
<b>Member No. 110657,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT ORDER</b>
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this disciplinary matter, Eric H. Hsu appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent LAWRENCE ALAN HEISLER 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 and ordered to make restitution.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed on October 26, 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<sup>1</sup> 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.) A copy was also served by certified mail, return receipt requested, on respondent at an alternate address. Neither of these copies of the NDC were returned as undeliverable.

On October 27, 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 November 22, 2006.

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<sup>1</sup>Future references to section are to the Business and Professions Code.

Respondent did not appear at the November 22 status conference. On December 5, 2006, he was properly served with a status conference order at his official address by first-class mail, postage prepaid. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d)(1) which indicate that this correspondence was not returned as undeliverable.

Respondent did not file a responsive pleading to the NDC. On December 1, 2006, a motion for entry of default was filed and properly served on respondent at his official and alternate addresses by certified mail, return receipt requested. The motion advised him that his disbarment would be sought if he was found culpable. He did not respond to the motion.

On December 21, 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 court judicially notices its records which indicate that this correspondence was returned unclaimed.

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 January 5, 2007.

### **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<sup>2</sup>, 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.

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<sup>2</sup>Future references to the Rules of Procedure are to this source

163, 171.)

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 12, 1983, and has been a member of the State Bar at all times since.

**B. Facts Applicable to All Matters**

Respondent has two prior instances of discipline.

By order filed on June 10, 2004 in case no. S123422 (State Bar Court case no. 03-O-376), the Supreme Court imposed discipline on respondent consisting of six months' stayed suspension and one year of probation on conditions including successful completion of State Bar Ethics School and providing proof thereof to the State Bar Office of Probation (OP) within one year of the effective date of the June 10 order. It became effective on July 10, 2004.

On June 10, 2004, the Clerk of the Supreme Court served respondent with a copy of the June 10 order which he received in the ordinary course of mail.

By order filed on April 28, 2005 in case no. S131363 (State Bar Court case no. 03-O-2599), the Supreme Court imposed discipline on respondent consisting of one year's stayed suspension and five years of probation on conditions including 90 days' actual suspension, restitution and submission of quarterly reports and proof of restitution to the OP. The order also required him to comply with rule 955(a) and (c) of the California Rules of Court (rule 955)<sup>3</sup> within 30 and 40 days, respectively, of the effective date of the order. The order became effective on May 28, 2005.

On April 28, 2005, the Clerk of the Supreme Court served respondent with a copy of the April 28 order at his official address, which he received. The actual suspension ended on August 26, 2005.<sup>4</sup>

On August 26, 2005, the State Bar's Member Billing Services (MBS) served and

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<sup>3</sup>This rule has now been renumbered as rule 9.20.

<sup>4</sup>On its own motion pursuant to Evidence Code section 452, subdivision (h), the court judicially notices the State Bar's membership records information which indicates that this, not August 28, 2005 as set forth in the NDC, was the date that the actual suspension terminated.

respondent received a notice informing him that he was delinquent in payment of his membership fees, penalties or costs and that he would be suspended from practice effective September 16, 2005 pursuant to Supreme Court order no. S136220, filed August 24, 2005.

In mid-September 2005, respondent issued a personal check to MBS for payment of his 2005 membership fees. On September 16, 2005, MBS sent and respondent received a letter informing him that he was suspended from practice effective September 16 because membership fees could only be paid by certified funds or credit cards effective August 15, 2005.

On September 28, 2005, respondent sent MBS a money order for his 2005 membership fees. On October 5, 2005, MBS sent and respondent received a letter informing him that he continued to owe late fees from 2004 as well as the costs associated with his disciplinary proceedings, all of which would have to be paid in full before he could return to practice. The suspension was terminated on November 1, 2005, after respondent paid these outstanding amounts.

Respondent was not entitled to practice law from May 28 through August 26, 2005, and from September 16 through November 1, 2005.

**C. Case no. 05-O-04810 (QT5 Matter)**

**1. Facts**

In the spring of 2005, respondent represented defendants in *Reder v. QT5, et al.*, Los Angeles Superior Court case no. BC326875 (QT5 case).

On July 26, 2005, respondent signed his rule 955 compliance declaration, stating under penalty of perjury that he had notified all of his clients and opposing counsel by certified or registered mail of his suspension. When respondent signed this declaration, he knew that it was false because he had not notified plaintiff's counsel or his clients in the QT5 case about his suspension. On July 27, 2005, respondent filed his rule 955 declaration with the State Bar Court and served a copy on the OP.

On July 28, 2005, during his disciplinary suspension, respondent appeared at a case management conference in superior court in which the QT5 case was ordered to mediation.

On October 10, 2005, respondent filed a quarterly report with the OP indicating under

penalty of perjury that he had complied with the provisions of the State Bar Act and the Rules of Professional Conduct during the preceding quarter. At the time, however, he knew that the quarterly report was false because he had not complied with the rule 955(a).

Respondent appeared at the mediation on October 25, 2005 but the case did not settle.

On October 27, 2005, respondent sent plaintiff's counsel a settlement offer.

On October 28, 2005, respondent appeared at a post-mediation status conference in superior court.

At the time respondent made these appearances and conveyed the settlement offer, he knew that he was not entitled to practice law. He did not inform the court or his clients about his suspension.

On March 3 and April 12, 2006, the State Bar sent respondent letters asking that respondent answer in writing specific allegations of misconduct in this case. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. Respondent received but did not answer the letters or otherwise communicate with the State Bar.

## **2. Conclusions of Law**

### **a. Count 1 - Section 6068, subdivision (a) (Unauthorized Practice of Law)**

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By appearing in superior court and at the mediation of the QT5 case and by conveying a settlement offer to plaintiff's counsel, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and

6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

**b. Counts 2, 3, 5 and 6 - 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:

1. Practicing law while suspended when he knew he was not entitled to do so;<sup>5</sup>
2. Misrepresenting his State Bar membership status to the superior court by not informing it about his suspension;
3. Preparing, filing and serving a false rule 955 declaration; and
4. Preparing and filing a false quarterly report on October 10, 2005.

Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

**c. Count 4 - Section 6068, subdivision (m) (Not Communicating)**

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 his clients about his suspension from practice, respondent did not keep them reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

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<sup>5</sup>Respondent has already been found culpable of violating section 6068, subdivision (a) on the basis of these same facts. It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice.

**d. Count 7 - Section 6068, subdivision (i) (Not Participating in Disciplinary Investigation)**

Section 6068, subdivision (i) requires an attorney to participate and cooperate in any disciplinary investigation or other disciplinary or regulatory proceeding pending against him- or herself.

By not responding to the State Bar's letters dated March 3 and April 12, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the QT5 case in wilful violation of 6068, subdivision (i).

**D. Case no. 06-O-11204 (Noncompliance with S123422)**

**1. Facts**

On June 17, 2004, the OP wrote respondent a letter reminding him of the terms and conditions of probation imposed in S123422, including successful completion of Ethics School by July 10, 2005, and enclosing a copy of the Supreme Court's order and the relevant portion of the State Bar Court's decision. The letter was sent to respondent's official address and was not returned as undeliverable. He received it.

On July 28, 2005, the State Bar Court granted a motion extending the time for respondent to complete Ethics School and submit proof thereof to the OP as required in S123422 until December 31, 2005.

On February 1, 2006, the State Bar Court filed an order denying respondent's motion for further modification of the 2004 order imposing the Ethics School requirement.

As of October 26, 2006, respondent has not provided the OP with proof that he completed Ethics School.

**2. Conclusions of Law**

**Count 8 - Section 6068, subdivision (k) (Noncompliance with Probation Condition)**

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

By not providing proof to the OP that he completed Ethics School, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k).

**E. Case no. 06-O-11489 (Noncompliance with S13163)**

**1. Facts**

As previously noted, pursuant to Supreme Court order no. S13163, respondent was suspended and placed on probation, subject to conditions, effective May 28, 2005. This order adopted the State Bar Court's disciplinary recommendations as set forth in its order approving stipulation filed on November 12, 2004, and modified on December 21, 2004.

The probation conditions included submitting quarterly reports to the OP and making specified restitution and submitting proof thereof to the OP. Respondent was ordered to make restitution to F. Patricia Mudie in the sum of \$2,500 plus interest accruing from October 29, 2002; and to Frank Piazza in the sum of \$28,507.40 plus 10% interest accruing from March 29, 2004, or to the Client Security Fund (CSF) if appropriate. Payments to Piazza were to be made at a minimum of \$500 per month and respondent was to provide the OP with evidence of these monthly payments to Piazza.

Based on the restitution order, on March 15, 2005, CSF paid Mudie the principal amount of \$2,500. Respondent, therefore, was to pay CSF \$2,500 plus interest (\$407.53) and processing costs (\$147) pursuant to the restitution order.

On May 19, 2005, the OP wrote to respondent, reminding him of the terms of his probation, including paying at least \$500 per month in restitution beginning on July 15, 2005. Respondent received the letter.

As of October 26, 2006, the OP has not received from respondent the quarterly reports due on the tenth of January, April and July of 2006.

As of October 26, 2006, Mudie had not received payment from respondent for the interest accrued on the \$2,500 between October 29, 2002 and March 15, 2005.<sup>6</sup> As of that same date,



CSF had not received from respondent any repayment of the amounts it paid in the Mudie case.

As of October 26, 2006, Piazza has not received any monthly payments from respondent for the period July 2005 through September 2006 and the OP has not received proof that respondent made any such payments to Piazza during that period.

## **2. Conclusions of Law**

### **a. Counts 9 to 11 - Section 6068, subdivision (k) (Noncompliance with Probation Conditions)**

Respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k) by:

1. Not submitting to the OP the quarterly reports due on the tenth of January, April and July of 2006;
2. Not reimbursing CSF for the amounts paid in connection with the Mudie case and by not making payments to Piazza between July 2005 through September 2006; and
3. Not providing the OP with proof of payments made to Piazza between July 2005 through September 2006.

## **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<sup>7</sup>, std. 1.2(b).)

As previously noted, respondent has two prior instances of discipline. (Std. 1.2(b)(i).) By order filed on June 10, 2004 in case no. S123422, the Supreme Court imposed discipline on respondent consisting of six months' stayed suspension and one year of probation for violating rule 3-700(D)(1) and section 6068, subdivision (i) in one client matter. Respondent had no discipline in 19 years of practice, a significant mitigating factor. In aggravation, the court found that respondent was indifferent toward rectification of or atoning for his misconduct and that he

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<sup>7</sup>Future references to standard or std. are to this source.

had not participated in the proceedings prior to the entry of his default.

By order filed on April 28, 2005 in case no. S131363, the Supreme Court imposed discipline on respondent consisting of one year's stayed suspension and five years of probation on conditions including 90 days' actual suspension for violating rule 3-110(A), 3-700(A)(2) and 3-700(D)(2) in two client matters as well as violating sections 6068, subdivision (a), 6125 and 6126 in five client matters. The court notes that this is the same type of misconduct as found in the instant case, a significant consideration in assessing the level of discipline herein.

The court also notes that the misconduct in S123422 occurred at the same time as that in S131363. Accordingly, the aggravating effect of having two prior disciplinary matters is lessened as it is not indicative of respondent's inability to conform to ethical norms. (*Cf. In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

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).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

#### **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 and 2.6 apply in this matter. The most severe sanction is found at 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.

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. As previously noted, however, the aggravating effect of having two prior disciplinary matters is lessened as it is not indicative of respondent's inability to conform to ethical norms since the misconduct in the prior matters was concurrent.

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 engaging in the unauthorized practice of law and committing acts of moral turpitude in one client matter as well as several instances of not complying with probation conditions. Aggravating factors include prior discipline and multiple acts of misconduct. There were no mitigating factors. The court finds significant that respondent continued to engage in the unauthorized practice of law despite being disciplined for this conduct in S13163.

The State Bar recommends disbarment and the court agrees.

*In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593 is instructive. In *Snyder*, the attorney perjured himself in his rule 955(c) declaration of compliance<sup>8</sup>; engaged in the unauthorized practice of law; did not account for or return unearned fees; and appeared for a client without the client's authority. Aggravating factors included one prior instance of discipline such that his current and prior misconduct included six out of his 10 years of practice; and lack of candor. Although Respondent Snyder presented mitigating evidence of family pressures and misfortune, good character, therapy, community service and compliance with probation conditions, some similar evidence of which had been considered mitigating in his first disciplinary case, it was found insufficient to avert disbarment in this case after the court considered his additional serious misconduct and the need to protect the public.

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, the similar nature of the misconduct in this and prior cases and the lack of participation in these and one of the prior 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 prior discipline has 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.

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

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<sup>8</sup>The attorney did not advise a client, the insurer-defendant or the superior court in which litigation was pending that he was suspended from practice but misrepresented in the declaration of compliance that he had notified all clients, courts and opposing parties of his suspension.

within 30 days following the CSF payment, whichever is later.

Therefore, the court recommends that respondent be ordered to make restitution to CSF and Piazza more fully set forth below.

#### **V. DISCIPLINE RECOMMENDATION**

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

1. to Frank Piazza in the amount of \$28,507.40 plus 10% interest per annum from March 29, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Piazza, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
2. to the State Bar of California Client Security Fund in the amount of \$3,054.53<sup>9</sup> plus 10% interest per annum from March 15, 2005;

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

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, 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.

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<sup>9</sup> This is the sum of \$2,500 plus interest (\$407.53) and processing costs (\$147) which CSF paid in the Mudie case.

## **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: April 10, 2007

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RICHARD A. HONN  
Judge of the State Bar Court