

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of )  
 )  
**JASON P. MOORE** ) **Case No. 05-O-05113, 06-O-10021**  
 ) **DECISION**  
 )  
**Member No. 214225,** )  
 )  
A Member of the State Bar. )

**I. Introduction**

In this default matter, respondent Jason P. Moore (respondent) is charged with ten counts of professional misconduct. The court finds, by clear and convincing evidence, that respondent is culpable of nine of the charged acts of misconduct.

The court recommends, inter alia, that respondent be actually suspended from the practice of law for two years and until: (1) he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct; (2) the court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California; and (3) he makes restitution as specified below.

## II. Pertinent Procedural History

The Notice of Disciplinary Charges (NDC) was filed on January 23, 2008, and was properly served on respondent on that same date at his official membership records address (official address),<sup>1</sup> by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1, subdivision (c).<sup>2</sup> Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) The NDC was returned to the State Bar by the U.S. Postal Service as undeliverable. (Declaration of DTC Brandon K. Tady, attached to the State Bar's motion for the entry of respondent's default filed on May 5, 2008.)

On January 30, 2008, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for March 13, 2008. A copy of said notice was properly served on respondent by first-class mail, postage fully prepaid, on January 30, 2008, addressed to respondent at his official address.<sup>3</sup> The notice was thereafter returned to the State Bar Court as undeliverable.

On March 13, 2008, the court held an in person status conference in this matter. Respondent failed to appear, either in person or through counsel. On March 14, 2008, the court filed an order pursuant to the status conference. The order included notice that respondent needed to file a response to the NDC or his default would be entered. A copy of the order was

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<sup>1</sup> The State Bar also mailed a second copy of the NDC to respondent at an alternative address of 12 Rock Harbor Lane, Foster City, CA 94404. Respondent provided this address to the State Bar on July 17, 2006, as discussed below.

<sup>2</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

<sup>3</sup> A copy of said notice was also mailed to respondent at his alternative address of 12 Rock Harbor Lane, Foster City, CA 94404. This copy was not returned to the State Bar Court as undeliverable or for any other reason.

properly served on respondent by first-class mail, postage fully prepaid, addressed to respondent at his official address.<sup>4</sup> That order was also returned to the State Bar Court as undeliverable.

Respondent did not file a responsive pleading to the NDC. On May 5, 2008, the State Bar filed a motion for entry of default. The motion was properly served on respondent at his official address by certified mail, return receipt requested.<sup>5</sup> The motion advised respondent that the State Bar would seek, at a minimum, discipline including a two-year actual suspension if he was found culpable of the alleged misconduct. Respondent did not file a response to the motion for entry of default.

On May 22, 2008, 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 respondent at his official address on that same date by certified mail, return receipt requested. The order was returned to the State Bar Court by the U.S. Postal Service as undeliverable.

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 to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220 [126 S.Ct. 1708, 164 L.Ed.2d 415].)

The court took this matter under submission on June 12, 2008, following the filing of the State Bar's brief on culpability and discipline which requested waiver of a hearing in this matter.

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<sup>4</sup> A copy of said order was also mailed to respondent at his alternative address of 12 Rock Harbor Lane, Foster City, CA 94404. This copy was returned to the State Bar Court as undeliverable.

<sup>5</sup> Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's official membership address history.

### **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on June 24, 2001, and has been a member of the State Bar of California at all times since that date.

#### **The Irvin and Nardo Matter [Case No. 05-O-05113]**

On or about July 19, 2005, Arlen Irvin (Irvin) and Teri Nardo (Nardo) hired respondent to represent them in connection with obtaining legal guardianship of their granddaughter. On or about that same day, Irvin paid respondent \$4,000 in advanced fees.

On or about July 21, 2005, respondent filed an Ex Parte Application for a Petition for Appointment of Temporary Guardianship on behalf of Irvin and Nardo (the clients). On July 28, 2005, respondent appeared in court for the hearing on the temporary guardianship and the court awarded Irvin and Nardo temporary guardianship of their granddaughter. On that same day, the court set the hearing for the appointment of permanent guardianship for September 23, 2005. Respondent received notice of the September hearing orally while in court, and by mail from the clerk of the court.

On or about September 1, 2005, respondent sent Nardo a billing statement dated September 1, 2005. The statement reflected that legal services were provided to the clients on August 4, 2005. According to the statement, there were no other legal services provided to the clients, or costs incurred by them, after August 4, 2005. Of the \$4,000 in advanced fees previously paid by Irvin, the statement showed a "remaining retainer balance" of \$1,812.

Respondent did not provide any legal services to the clients after August 4, 2005.

On September 19, 2005, Irvin and Nardo called respondent to discuss their case and the upcoming hearing on permanent guardianship. Respondent's paralegal (Tamara) told the clients that respondent would not be appearing at the hearing on September 23, 2005, because he was moving to the East Coast.

On September 19, 2005, based upon Tamara's statement that respondent would not appear in court on their behalf on September 23, 2005, Irvin and Nardo hired another attorney to represent them in connection with obtaining legal guardianship of their granddaughter and terminated respondent's employment as of September 19, 2005.

On September 22, 2005, Irvin mailed letters to respondent's office address in Riverside, California, in which he requested, among other things, an accounting and a return of the unearned fees. Respondent received Irvin's letter, but did not communicate with Irvin or Nardo; nor did respondent provide Irvin or Nardo with an accounting or return any of the \$1,812 in unearned fees.

On September 28, on October 10, 12, 18, and 28, and on November 8, 2005, Irvin and Nardo called respondent and left messages with Tamara in which they requested, among other things, an accounting, the return of the unearned fees, and the return of their file. Respondent received the messages, but did not communicate with Irvin or Nardo, did not provide an accounting, and did not return any fees.

On November 11, 2005, Irvin mailed another letter to respondent's office address in Riverside, California, in which Irvin again requested an accounting and the return of unearned fees. The November 11, 2005, letter was sent certified mail, return receipt requested. Tamara signed the return receipt, which then was returned to Irvin in the mail. Respondent received

Irvin's letter, but did not communicate with Irvin or Nardo, did not provide an accounting, and did not return any of the unearned, advanced fees.

On December 1, 2005, the State Bar opened investigation number 05-O-05113 pursuant to a complaint made against respondent by Irvin and Nardo (the Irvin-Nardo complaint).

On December 12, 2005 and again on January 5, 2006, a State Bar investigator wrote to respondent regarding the Irvin-Nardo complaint. The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Irvin-Nardo complaint. The investigator's letters were each placed in sealed envelopes correctly addressed to respondent at his State Bar of California membership address.

On July 17, 2006, respondent called the investigator. Respondent informed the investigator that he had moved and asked that the investigator mail copies of the investigator's December 12, 2005 and January 5, 2006 letters to respondent at respondent's new address: 12 Rock Harbor Lane, Foster City, California 94404 (the Foster City address).

On July 17, 2006, the investigator wrote to respondent at the Foster City address regarding the Irvin-Nardo complaint and enclosed copies of the December 12, 2005 and January 5, 2006 letters. The investigator's July 17, 2006 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Irvin-Nardo complaint. The investigator's letter and the enclosures were placed in a sealed envelope correctly addressed to respondent at the Forster City address. Respondent received the letter and its enclosures.

On July 27, 2006, respondent wrote a letter to the investigator in which he requested a three-week extension to respond to the allegations of the Irvin-Nardo complaint. Thereafter, respondent never responded to those allegations.

**Count 1: Failure to Refund (Rules of Professional Conduct, Rule 3-700(D)(2))<sup>6</sup>**

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By failing to promptly refund, upon termination of employment, the \$1,812 of advanced fees paid to him by Irvin, which respondent did not earn, respondent failed to refund unearned fees in wilful violation of rule 3-700(D)(2).

**Count 2: Failure to Account (Rule 4-100(B)(3))**

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession. By failing to respond to Irvin's and Nardo's requests for an accounting regarding their funds in respondent's possession, respondent failed to render appropriate accounts to a client regarding client funds in his possession, in wilful violation of rule 4-100(B)(3).

**Count 3: Failure to Cooperate with State Bar Investigation (Section 6068, subd. (i))**

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

Respondent failed to cooperate in a disciplinary investigation, in wilful violation of section 6068, subdivision (i), by failing to provide a response to any of the State Bar investigator's letters or to the allegations of the Irvin-Nardo complaint.

**The Vasquez Matter [Case No. 06-O-10021]**

On or about January 7, 2004, Robert and Frances Vasquez (the Vasquezes) hired respondent to recover money they believed they had overpaid to Chase/Providian. On or about that same day, they paid respondent \$2,000 in cash, representing advanced attorney's fees.

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<sup>6</sup> All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

From January 7, 2004 through April 2004, the Vasquezes provided respondent with all of the documents they had in their possession concerning their overpayment. In April 2004, the Vasquezes informed respondent that they had no more documents to provide respondent concerning their case.

In or about December 2004, the Vasquezes called respondent and left a message with his secretary in which they asked respondent to call them concerning the status of their case. Respondent received the message, but did not contact the Vasquezes.

In January and February 2005, the Vasquezes scheduled appointments with respondent at his office to discuss the status of their case. Respondent was not present for either of these appointments, but instead had his mother meet with the Vasquezes. Respondent's mother is not an attorney or a paralegal; she had no specific knowledge of the status of the Vasquezes' case; and she did not provide them with any pertinent information concerning their case.

In or about March 2005, respondent asked the Vasquezes for documents concerning their case. The Vasquezes again informed respondent that they had given him all of the documents they had in their possession concerning their overpayment to Chase/Providian.

In May 2005, respondent saw the Vasquezes at a social event and falsely told them that he had filed their case with the court and that everything was "under control." At the time respondent made that statement to the Vasquezes, he knew, or was grossly negligent in not knowing, that the statement was false. In fact, respondent had not provided any legal services of value to the Vasquezes and had not earned any portion of the \$2,000 in advanced fees.

From June 2005 through December 2005, the Vasquezes called respondent's office approximately every other day and left messages with his staff and on his voice mail in which

they asked for the status of their case. Respondent received the messages but did not return the Vasquezes' calls.

On December 13, 2005, the State Bar opened an investigation as a result of a complaint made by the Vasquezes (the Vasquez complaint).

On January 11, 2006, a State Bar investigator wrote to respondent regarding the Vasquez complaint. The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Vasquez complaint. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership address. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the U.S. Postal Service in the ordinary course of business. The U.S. Postal Service returned the investigator's letter stamped "Attempted. Not known."

On January 30, 2006, the Vasquezes wrote a letter to respondent in which they terminated his services, requested the return of their file, and requested a refund of the \$2,000 in advanced legal fees they had previously paid to respondent. Respondent received the Vasquezes' letter but did not respond to it.

To date, respondent has not refunded any portion of the \$2,000 advanced fee, all of which is unearned. Nor has respondent returned to the Vasquezes their file.

On March 22, 2006, a State Bar investigator wrote to respondent regarding the Vasquez complaint at an address that the investigator believed to be respondent's home address - 7440 Cascade Lane, Riverside, California 92509-6909 (the Cascade Lane address). The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Vasquez complaint. The U.S. Postal

Service did not return the investigator's letter as undeliverable or for any other reason.

Respondent received the letter, but did not respond to it.

On July 17, 2006, after respondent had orally provided the State Bar with the Foster City address in conjunction with the Irvin and Nardo matter (see above), the State Bar investigator also wrote to respondent at that address regarding the Vasquez complaint and enclosed his January 11, 2006 and March 22, 2006 letters. The investigator's July 17, 2006 letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Vasquez complaint. Respondent received the letter and its enclosures.

On July 27, 2006, respondent wrote a letter to the investigator in which he requested a three-week extension within which to respond to the allegations in the Vasquez complaint. Thereafter, respondent never replied to the State Bar's inquiries or responded to the allegations in the Vasquez complaint.

**Count 4: Failure to Perform with Competence (Rule 3-110(A))**

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. By failing to perform any legal services in connection with the Vasquezes' matter, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A).

**Count 5: Moral Turpitude - Misrepresentation (Section 6106)**

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or wilfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

Respondent committed acts involving moral turpitude when he falsely told the Vasquezes that he had filed their case with the court and that everything was under control, when he had actually not performed any legal services on their behalf. Respondent's comments were, at a minimum, a grossly negligent misrepresentation of the status of the Vasquezes' matter. "Gross negligence is a well-established basis for finding an act of moral turpitude." (*In the Matter of Moriarty* (Review Dept. 1999) 4 Cal State Bar Ct. Rptr. 9, 15.) By making such misrepresentations respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of section 6106.

**Count 6: Failure to Refund Promptly Unearned Fees (Rule 3-700(D)(2))**

Rule 3-700(D)(2) states that a member whose employment has terminated shall promptly refund any part of a fee paid in advance that has not been earned. By failing to promptly refund the \$2,000 advanced and still unearned fees paid to him by the Vasquezes, respondent failed to refund promptly unearned fees in wilful violation of rule 3-700(D)(2).

**Count 7: Failure to Release File (Rule 3-700(D)(1))**

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property. By failing to provide the Vasquezes with their file, despite a request from them that he do so, respondent wilfully violated rule 3-700(D)(1).

**Count 8: Failure to Respond to Client Inquiries (Section 6068, subd. (m))**

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients. By failing to respond to the status inquiries of the Vasquezes from June 2005 to December 2005, respondent failed to respond promptly to

reasonable status inquiries of his clients in a matter in which respondent agreed to provide legal services, in wilful violation of section 6068, subdivision (m).

**Count 9: Failure to Cooperate with State Bar Investigation (Section 6068, subd. (i))**

Respondent failed to cooperate in a disciplinary investigation, in wilful violation of section 6068, subdivision (i), by failing to provide a response to any of the State Bar investigator's letters or to the allegations of the Vasquez complaint.

**Count 10: Failure to Update Membership Records Address (Section 6068, subd. (j))**

Section 6068, subdivision (j), provides that it is the duty of an attorney to comply with the requirements of section 6002.1. Section 6002.1 requires that members maintain, on the official membership records of the State Bar, their current office address and telephone number; and in the event that a member's address or office telephone information changes, the member must notify the membership records office of the State Bar within 30 days.

The factual allegations in Count 10 establish that a single letter, dated January 11, 2006, was returned to the State Bar stamped "Attempted. Not known." The court finds this evidence, standing alone, to be insufficient to establish, by clear and convincing evidence, that respondent had changed his address without updating his official membership records. This conclusion is particularly true, given the specific allegation in another paragraph of the NDC that a letter was sent by the State Bar to the very same address on January 5, 2006, less than a week earlier, which letter was not returned but instead was received by respondent. Therefore, Count 10 is dismissed with prejudice.

## **Aggravation**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)<sup>7</sup>

The court finds in aggravation the following:

### Multiple Acts

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) Respondent has been found culpable of nine counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

### Significant Harm

Respondent's misconduct significantly harmed his clients. (Std. 1.2(b)(iv).) As a result of respondent's misconduct, Arlen Irvin and the Vasquezes were financially harmed in the amounts of \$1,812 and \$2000, respectively. Respondent continues to retain the unearned fees previously advanced to him by these individuals.

## **Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Standard 1.2(e).)

No mitigating factors were shown by the evidence presented to this court. Although respondent has no prior record of discipline, this factor warrants no consideration in mitigation due to the fact that respondent began practicing law less than four years prior to the

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<sup>7</sup> All further references to standard(s) are to this source.

commencement of the present misconduct. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [four years of practice prior to misconduct is not mitigating].)

#### **IV. Discussion**

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is “ ‘not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.’ [Citations.]” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

In this case, the standards provide for the imposition of sanctions ranging from actual suspension to disbarment depending on the extent to which the victim of the misconduct was harmed or misled and depending on the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law. (See standard 2.3.) The range of discipline imposed in cases focusing on client abandonment and failure to communicate is also extremely broad, ranging from six months' actual suspension to disbarment." (*In re Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 960.)

The State Bar recommends, inter alia, that respondent be actually suspended from the practice of law for two years. The court finds *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, and *In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, to be instructive.

In *Bledsoe*, the California Supreme Court found, in a default proceeding, that respondent abandoned or failed to perform for four clients, failed to communicate with three clients, failed to return fees to two clients, and failed to cooperate with the State Bar investigation. In mitigation, the respondent had been practicing for a total of seventeen years with no prior discipline. However, based on the analysis in the dissenting opinion, it appears that the respondent had only been practicing for twelve years prior to the commencement of his misconduct. (*Bledsoe v. State Bar, supra*, 52 Cal.3d at p. 1081.) In aggravation, the respondent, at least initially, failed to participate in the proceedings. The Supreme Court ordered that the respondent be suspended from the practice of law for five years, stayed, with five years' probation and two years' actual suspension.

In *Bailey*, another default proceeding, the respondent was found to have abandoned four clients. Additionally, the respondent was found culpable of single counts of collecting an illegal fee, failing to return a client's file, failing to perform, failing to respond to reasonable status inquiries, failing to maintain a current business address, and failing to cooperate with a State Bar investigation. In aggravation, respondent committed multiple acts of misconduct, harmed one of his clients, and failed to participate in the proceedings. The court found no mitigation. The respondent was suspended from the practice of law for five years, stayed, with two years' actual suspension.

The present case shares many similarities with *Bledsoe* and *Bailey*, including respondent's abandonment of clients, his failure to refund unearned legal fees, and his failure to participate in the current proceedings. While the present case involves a smaller number of clients, this factor is counter-balanced by the fact that respondent's misconduct included an added element of deceit. Respondent's misconduct, coupled with his aggravation, his lack of mitigation, and his failure to participate, gives the court grave concerns regarding the potential threat he poses to the public. Therefore, the court finds that the appropriate level of discipline includes, among other things, a period of actual suspension consistent with that found in *Bledsoe* and *Bailey*.

#### **V. Recommended Discipline**

Accordingly, the court recommends that respondent **JASON P. MOORE** be suspended from the practice of law for three years and until: (1) he makes specified restitution, as discussed below, and (2) he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. It is

further recommended that execution of the above suspension be stayed but that respondent be actually suspended from the practice of law for two years<sup>8</sup> and until:

(1) The court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California;

(2) He makes restitution to Arlen Irvin in the amount of \$1,812 plus 10% interest per annum from July 19, 2005 (or to the Client Security Fund to the extent of any payment from the fund to Arlen Irvin, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;

(3) He makes restitution to Robert and Frances Vasquez in the total amount of \$2,000 plus 10% interest per annum from January 7, 2004 (or to the Client Security Fund to the extent of any payment from the fund to Robert and Frances Vasquez, plus interest and costs, in accordance with Business and Professions Code section 6140.5), and furnishes satisfactory proof thereof to the State Bar's Office of Probation;<sup>9</sup> and

(4) He has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct.

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<sup>8</sup> Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice of law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

<sup>9</sup> Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to 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 order in this matter.<sup>10</sup>

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners during the period of his actual suspension and furnish satisfactory proof of such to the State Bar's Office of Probation within said period.

#### **VI. Costs**

The court recommends 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.

Dated: September 4, 2008

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DONALD F. MILES  
Judge of the State Bar Court

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<sup>10</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)