FILED APRIL 9, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **STEVEN GRANT HANSON**, **Member No. 146418**, A Member of the State Bar.	)	**Case No. 05-O-00598-PEM; 06-N-14328 (Cons.)** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In these two consolidated default matters, respondent **Steven Grant Hanson** is found culpable, by clear and convincing evidence, of (1) failing to perform services competently; (2) improperly withdrawing from employment; and (3) failing to comply with California Rules of Court, rule 955,[1] as ordered by the California Supreme Court on May 10, 2006, in S141744 (State Bar Court case No. 01-O-04659 et al.).

In view of respondent's continuous course of serious misconduct in six years which was found in his prior record of discipline and in this proceeding, and other evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

A. First Notice of Disciplinary Charges (Case No. 05-O-00598)

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on August 30, 2005. Respondent filed an amended response to the NDC on November 7, 2005.

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[1] All references to rule 955 are to California Rules of Court, rule 9.20 (renumbered effective January 1, 2007). Because the Notice of Disciplinary Charges was filed prior to the change in the numbering of this rule, the original numbering will be used in this decision.

Respondent represented himself. The State Bar was represented by Deputy Trial Counsel Manuel Jimenez. Trial was set for June 20-22, 2006.

On the first day of trial, June 20, 2006, respondent failed to appear and his default was entered. (Rules Proc. of State Bar, rule 201.) He was enrolled as an inactive member effective June 23, 2006, under Business and Professions Code section 6007, subdivision (e).[2] An order of entry of default was sent to respondent's official address by certified mail but was returned as undeliverable. The matter was deemed submitted on August 18, 2006, following the filing of a complaining witness's declaration and the attached documents, which were admitted into evidence.

However, on November 14, 2006, on the court's own motion, the submission date of August 18, 2006, for this matter was vacated and the record was reopened, giving the State Bar an opportunity to submit any additional information, including any prior record of discipline.

On November 21, 2006, the State Bar filed a brief on culpability and discipline with respondent's prior record of discipline attached.

B. Second Notice of Disciplinary Charges (Case No. 06-N-14328)

On November 1, 2006, the State Bar properly filed and served on respondent a second NDC at respondent's official membership records address. Respondent did not file a response to the NDC.

On November 27, 2006, the State Bar received a letter from respondent but it was nonresponsive to any of the pleadings in this matter.[3]

On the State Bar's motion, respondent's default was entered on December 19, 2006, and respondent was enrolled as an inactive member on December 22, 2006, under section 6007, subdivision (e). An order of entry of default was sent to respondent's official address by certified mail but was returned as undeliverable. The court ordered that the matter would stand submitted on all issues on January 8, 2007.

Respondent did not participate in the disciplinary proceedings. On February 8, 2007, the

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[2]All references to section (§) are to the Business and Professions Code, unless otherwise indicated.

[3]In his letter, respondent claimed that he would resign from the practice of law if the State Bar dismissed all disciplinary charges against him.

court consolidated these two NDCs and took the matter under submission as of January 11, 2007, instead of January 8, since the State Bar filed its brief on culpability and discipline on January 11.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDCs 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).)

Respondent was admitted to the practice of law in California on June 13, 1990, and has been a member of the State Bar of California at all times since that date.

A. The Nakamura Matter (Case No. 05-O-00598)

On June 12, 2003, Alan Nakamura employed respondent to represent him in a pending civil rights lawsuit, *Alan Nakamura v. City of Hawthorne, et al.*, United States District Court for the Central District of California, case number CV 02-5516-DSF. Nakamura paid respondent $4,000 as advanced fees.

The parties agreed to a mediation session to take place on November 13, 2003, in Irvine, California. On October 24, 2003, a notice of mediation was filed with the court. At all relevant times herein, respondent maintained an office in either Stockton or Lodi, California.

On November 12, 2003, respondent called and informed Nakamura about the November 13 mediation. Respondent also told Nakamura that he had a previously scheduled court appearance in another case in Sacramento and, therefore, he may not be able to appear at the mediation. Nakamura offered to purchase respondent's airplane ticket in case respondent could make it to the mediation.

Neither respondent nor Nakamura appeared at the mediation. The parties agreed to reschedule the mediation to December 18, 2003.

Prior to December 3, 2003, Nakamura was available by phone and had an address at which respondent could contact him. Respondent made no attempt to notify Nakamura of the December 18, 2003 arbitration date prior to December 3, 2003.

Yet, on December 17, 2003, respondent called opposing counsel and the arbitrator and told them that he had not been able to locate his client.

Respondent did not appear at the December 18, 2003 mediation.

On January 22, 2004, the court called respondent and defense counsel notifying them that a telephonic status conference was scheduled for January 23, 2004, to determine why Nakamura and respondent failed to appear at the two previously scheduled mediation sessions. Again, respondent did not appear at the telephonic status conference.

The court then issued an Order to Show Cause (OSC) re Dismissal or for Sanctions for Failure to Attend Mediations and to Attend Telephonic Hearing. The court ordered Nakamura to file a written response to the OSC by February 13, 2004, and scheduled an OSC hearing for February 23, 2004. The court also stated that if no written response was filed by February 13, 2004, the hearing would be taken off calendar and the case would be dismissed without prejudice.

Respondent did not file a written response to the OSC or appear at the OSC hearing.

On February 24, 2004, the court issued an Order re Dismissal for Failure to Attend Mediations, Failure to Attend Telephonic Hearing, and Failure to Respond to Order to Show Cause. The case was dismissed without prejudice.

On April 22, 2004, Nakamura attempted to file a motion for relief from dismissal prepared by respondent. Prior to filing the motion, Nakamura raised concerns with respondent about errors contained in the pleading, such as lack of an original signature, lack of signature on the proof of service, and incorrect date and courtroom. Respondent did not correct the errors, but told Nakamura to file the motion.

On April 23, 2004, the court rejected the motion as defective and issued an Order re: Noncompliance with Local Rules and Initial Standing Order, directing Nakamura to correct the defects and file the papers by May 1, 2004. Respondent did not do so.

On April 29, 2004, respondent sent three e-mails to Nakamura. First, respondent requested that Nakamura send him a round trip airplane ticket and a check for $550 by May 8 in order for him to appear at the hearing on the motion for relief from dismissal.

In the second e-mail, respondent changed his mind and stated that he would no longer represent Nakamura, that he would send a substitution of attorney form immediately and that he would not appear at the hearing.

In the third e-mail, respondent again reiterated his withdrawal from representation.

On May 4, 2004, Nakamura contacted respondent to clarify statements he made about the hearing date on the motion and requested that he correct the errors on the motion so that it was in compliance with local rules. Respondent did not respond to the question about the hearing date nor did he provide a corrected motion.

Nakamura ultimately corrected the errors himself and filed the motion with the court. A hearing was then set for May 24, 2004.

On May 13, 2004, the court issued an Order re Compliance with Local Rule 7-3. The order directed Nakamura to file a statement in compliance with local rule 7-3 by May 18, 2004, or the May 24 hearing would be taken off calendar. Respondent did not file a statement.

Respondent sent Nakamura an unsigned substitution of attorney. Nakamura contacted respondent and requested that he sign the substitution. Respondent refused, but told Nakamura to file it as is. On May 17, 2004, Nakamura attempted to file the substitution without respondent's signature, but was told that respondent's signature was necessary.

On May 17, 2004, Nakamura filed an amended Motion for Relief from the Court's Order Dismissing Plaintiff's Case without prejudice.

On May 18, 2004, the court ordered the substitution of attorney be filed and processed despite its discrepancy.

On May 20, 2004, respondent sent a letter to the court requesting that the hearing set for May 24 be withdrawn.

On June 22, 2004, Nakamura's motion for relief from dismissal was granted.

Count 1: Failure to Perform with Competence (Rules Prof. Conduct, Rule 3-110(A))[4]

Rule 3-110(A) provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A), by failing to attend the two scheduled mediation

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

sessions in November and December 2003, failing to appear for the telephonic status conference in January 2004, failing to appear for the February 2004 OSC hearing, and failing to submit a motion for relief from dismissal that complied with local rules.

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

The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2). Rule 3-700(A)(2) states: "A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules."

By not correcting the motion for relief from dismissal pursuant to the court's instructions and not signing the substitution of attorney as was required, respondent, upon termination of employment, failed to take reasonable steps to avoid reasonably foreseeable prejudice to his client, in wilful violation of rule 3-700(A)(2).

B. Violation of California Rules of Court, Rule 955 (Case No. 06-N-14328)

On May 10, 2006, in California Supreme Court case No. S141744 (State Bar Court case No. 01-O-04659 et al.), the Supreme Court suspended respondent from the practice of law for three years, stayed the execution of the suspension and actually suspended him for two years and until he files and the State Bar Court grants a motion to terminate his actual suspension. Among other things, the Supreme Court ordered respondent to comply with rule 955, subdivisions (a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order became effective June 9, 2006, and was duly served on respondent.

Rule 955(c) mandates that respondent "file with the Clerk of the State Bar Court an affidavit showing that he ... has fully complied with those provisions of the order entered pursuant to this rule."

Notice of the order was duly and properly served upon respondent in the manner prescribed by California Rules of Court, rule 24(a), at his address as maintained by the State Bar in accordance with section 6002.1.

Respondent was to have filed the rule 955 affidavit by July 19, 2006, but to date, he has not

done so. He did, however, sent a letter to the State Bar on September 22, 2006, arguing that compliance with rule 955 would violate his right to remain silent under the United States Constitution, 5th Amendment, which he chose to do.

Whether respondent is aware of the requirements of rule 955 or of his obligation to comply with those requirements is immaterial. "Wilfulness" in the context of rule 955 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent wilfully failed to comply with rule 955, as ordered by the Supreme Court.[5]

Violation of Section 6103

Accordingly, respondent's failure to comply with rule 955 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[6]

B. Aggravation

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

Respondent has a prior record of discipline. (Std. 1.2(b)(i).) On May 10, 2006, in Supreme Court case No. S141744, the underlying matter, respondent was suspended for three years, stayed, and was actually suspended for two years and until he proves rehabilitation and until the State Bar Court grants a motion to terminate his actual suspension. His misconduct involved four client

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[5]Specifically, rule 955(d) provides that a suspended attorney's wilful failure to comply with rule 955 constitutes a cause for disbarment or suspension and for revocation of any pending probation.

[6]All further references to standards are to this source.

matters from 1998 to 2002. He repeatedly failed to perform services competently, failed to deposit client funds in a trust account, failed to render accountings, failed to avoid adverse interests, failed to promptly release client file, failed to notify client of receipt of client funds, failed to communicate, misrepresented to clients and the court, and failed to return unearned fees of $25,000 to one client. He also defaulted in the proceedings.

Respondent's misconduct from 1998 to 2002 in his prior record of discipline and his current misconduct from 2003 to 2004 and in 2006 not only evidence multiple acts of wrongdoing, but also a pattern of misconduct involving five clients within a period of six years. (Std. 1.2(b)(ii).)

Respondent's misconduct was surrounded by or followed by bad faith. (Std. 1.2(b)(iii).) Respondent did not inform his client of significant court dates; instructed his client to file defective documents with the court, knowing that they were defective but at the same time, refusing to correct them; and threatened to unilaterally stop representing Nakamura when the client informed him that the pleadings were defective.

Respondent's misconduct harmed the client and the administration of justice. (Std. 1.2(b)(iv).) His failure to perform and improper withdrawal from employment caused substantial delay in the client's ability to pursue his matter. As a result of respondent's failure to appear at the mediation sessions, telephonic status conference and OSC hearing, his client's case was dismissed without prejudice. The client had to subsequently file an amended motion for relief.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) Although respondent caused the client's case to be dismissed, he refused to correct a defective motion for relief or sign a substitution of attorney. Instead, he admonished his client in his April 29, 2004 e-email: "I will not appear at the hearing. I am not playing any games and I am not taking any more of your crap." Respondent also demonstrated indifference by failing to comply with rule 955(c), even after the second NDC in the instant proceeding was filed.

Respondent's failure to participate in this disciplinary matter before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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

Respondent's misconduct involved his failure to perform services competently, improper withdrawal from employment and failure to comply with rule 955. The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. (Stds. 1.6, 1.7, 2.4, and 2.6.)

Standard 2.4(a) provides that culpability of an attorney of a pattern of wilfully failing to perform services demonstrating his abandonment of the causes in which he was retained must result in disbarment.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id*. at p. 251.) The court will look to applicable case law for guidance. Nevertheless, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar urges disbarment and restitution, citing several cases, including *Cooper v. State Bar* (1987) 43 Cal.3d 1016; *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697; and *Lydon v. State Bar* (1988) 45 Cal.3d 1181 in support of its recommendation.

The court agrees with the recommendation of disbarment.

In another instructive Supreme Court case, *Farnham v. State Bar* (1988) 47 Cal.3d 429, the Court disbarred the attorney and found that his actions "evidence a serious pattern of misconduct whereby he wilfully deceived his clients, avoided their efforts to communicate with him and eventually abandoned their causes." (*Farnham v. State Bar* (1976) 17 Cal.3d 605, 612.) "The combined record of this disciplinary proceeding and [respondent's] prior discipline shows not a series of aberrant or uncharacteristic acts, but rather '"a continuing course of serious professional misconduct extending over a period of several years."' [Citations.] The risk of [respondent]

repeating this misconduct if he were permitted to continue in practice would appear to be considerable. [Citations.] As [respondent's] conduct demonstrates, 'the public and the legal profession would not be sufficiently protected if we merely, once again, suspended [respondent] from the practice of law.'" (*Farnham v. State Bar, supra,* 47 Cal.3d at p. 447.)

Here, respondent had abandoned five clients in six years. The enormous harm to clients and to the public weigh heavily in assessing the appropriate level of discipline.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) "It is clear that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most significant factor . . . is respondent's complete lack of insight, recognition, or remorse for any of his wrongdoing." (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) There is a great likelihood that respondent will engage in misconduct in the future.

Moreover, respondent's wilful failure to comply with rule 955(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar, supra,* 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding, even though he was aware of it, leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct. These facts reflect respondent's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his wilful disobedience of the Supreme Court order and his repeated acts of client abandonment.

Finally, the court does not recommend restitution in this matter. A similar issue arose in respondent's prior record of discipline (case No. 01-O-04659). There, the court stated in its December 8, 2005 order re motion for reconsideration: "'Although restitution in disciplinary proceedings may be consistent with equity, doing equity is not its principal purpose.' (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 15.) The Supreme Court does not approve of imposition of restitution in attorney discipline matters as compensation to a victim of wrongdoing. (*Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044.)" Therefore, since respondent was not charged with failure to return unearned fees in the NDC, there is no basis for ordering restitution.

VI. Recommended Discipline

Accordingly, the court hereby recommends that respondent **Steven Grant Hanson** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this State.

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.[7]

VII. 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.

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[7]Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar, supra,* 44 Cal.3d 337, 341.)

VIII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status. (Bus. & Prof. Code, § 6007(c)(4), and Rules Proc. of State Bar, rule 220(c).) The inactive enrollment will become effective three calendar days after service of this order.

Dated: April 9, 2007

PAT McELROY
Judge of the State Bar Court