FILED APRIL 24, 2007

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **JUAN ANTONIO MOLINA**, **Member No. 177982**, A Member of the State Bar.	**Case Nos. 06-O-10009; 06-O-12332-PEM** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this contested disciplinary matter, respondent **Juan Antonio Molina** is charged with multiple acts of professional misconduct, including (1) engaging in the unauthorized practice of law; (2) committing an act of moral turpitude; (3) violating probation conditions; and (4) misleading the court.

This court finds, by clear and convincing evidence, that respondent is culpable of the misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Significant Procedural History

On June 27, 2006, 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). Respondent filed a response through his counsel, Arthur Margolis.

On September 8, 2006, the court granted attorney Margolis' motion to be relieved as counsel of record.

Evidentiary sanctions were imposed on respondent because he did not file a pretrial

conference statement as ordered on September 18, 2006, and January 8, 2007.[1] Respondent was precluded from presenting exhibits or witness, although he was permitted to testify in the discipline phase of the proceedings.

On November 16, 2006, the parties entered into a stipulation regarding facts and judicial notice which the court approved at trial on January 24, 2007.

At trial, attorney Jayne Kim appeared for the State Bar. Respondent represented himself.

III. Findings of Fact and Conclusions of Law

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.) The court does not find respondent to be a credible witness.

Respondent was admitted to the practice of law in California on November 28, 1995, and has been a member of the State Bar at all times since.

A. Unauthorized Practice of Law (Case No. 06-O-10009)

1. Background – Suspension from the Practice of Law

By order filed November 4, 2004, in case No. S127206 (State Bar Court case No. 02-O-15798) (first disciplinary matter), the California Supreme Court imposed discipline on respondent consisting of one year's stayed suspension and two years' probation on conditions including 30 days' actual suspension and quarterly reporting on the tenth of each January, April, July and October during probation. The court also ordered respondent to take and pass the Multistate Professional Responsibility Exam (MPRE) within one year from December 4, 2004, the effective date of discipline.

By order filed October 21, 2005, in case No. S136356 (State Bar Court case No. 05-O-00160) (second disciplinary matter), the California Supreme Court imposed discipline on respondent consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii)

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[1]Respondent was not present at the September 18, 2006 status conference in which the pretrial conference statement was ordered, but he was properly served the next day with an order memorializing the status conference. He was present telephonically on January 8, 2007, when he was allowed until January 16, 2007, to file the pretrial conference statement. He was also properly served the next day with an order memorializing the status conference.

and two years' probation on conditions including 60 days' actual suspension and quarterly reporting conditions as set forth above. Respondent was suspended from the practice of law from November 20, 2005 through January 19, 2006.

By order filed January 6, 2006, the Review Department of the State Bar Court placed respondent on administrative suspension effective February 10, 2006, because he did not pass the MPRE as ordered in the first disciplinary matter. He remained suspended until April 28, 2006.

From November 20, 2005 through January 19, 2006 and from February 10, 2006 through April 28, 2006, respondent knew he was suspended or not entitled to practice law.

When respondent's 60-day suspension in case No. S136356 went into effect on November 20, 2005, he kept his office practice and client intake procedures.

At all times herein, respondent maintained a law office on First Street in Calexico, California, which was staffed by at least two office assistants during regular office hours. The law office bore three signs that read, "Juan Molina, Attorney."

From the beginning of February through May 2006, respondent advertised his legal services on a large billboard along the international border in Mexicali, Baja California, Mexico. The billboard was clearly visible on the United States side of the border in Calexico.

On March 20, 2006, a State Bar investigator telephoned respondent's law office to inquire whether he would undertake representation in a criminal case. One of respondent's assistants informed the investigator that she could come in for a consultation with him.

On March 22, 2006, Calexico Police Sgt. Gerado and another State Bar investigator telephoned respondent's law office and were informed that respondent was in immigration court.

On March 29, 2006, the State Bar obtained an interim order from the Imperial County Superior Court to assume jurisdiction over respondent's law practice pursuant to Business and Professions Code,[2] sections 6180 and 6190 et seq. On March 30, 2006, the State Bar executed the interim order and took over respondent's law practice.

On October 13, 2006, respondent updated his State Bar membership records address to reflect

[2]Future references to section are to this source.

a new office address and telephone number on Herber Avenue in Calexico.

2. The Martinez Family Matter

On December 6, 2005, respondent provided legal services to Federico Ramirez Martinez, Mirna L.Tapia de Ramirez, Ivan Ramirez Tapia, and Myrna Ramirez Tapia, namely preparing four applications for adjustment of their immigration status (I-485 forms).

On January 20, 2006, respondent signed the I-485 forms as "Juan A. Molina" from the "Law Office of Juan A. Molina, 353 First Street, Calexico, CA 92231."

3. Other Immigration Matters

From February 13 through 24, 2006 while suspended from the practice of law, respondent remained the attorney of record for the following persons who had matters pending before the immigration court in Imperial County: Omar Valenzuela, Refucio Martinez Alvarado, Rusana Rios-Echavarria, Bernardion Gonzalez-Ortega, Martin Navarrete-Gonzalez, Alfonso Navarrete-Gonzalez, Jose Rodriguez-Berumen, Ramon Corrales-Lopez, Jesus Araujo Zavala, Marvin Paises-Canas, Hector Orrantia-Castro and Maria Soto-Garfio.

Sometime between February 10 and April 28, 2006, respondent attempted to appear on behalf of a client before Immigration Judge Jack Stanton, who knew that respondent was not entitled to practice law. Judge Stanton told respondent not to appear in court again until his status changed. Judge Stanton also told respondent's client to obtain new counsel.

The next day, another of respondent's clients appeared with counsel before Judge Stanton. Counsel told Judge Stanton that respondent had asked him to make a special appearance because respondent had to attend to another case. Judge Stanton informed them that respondent had lied and that he was suspended from the practice of law.

The following day, still another of respondent's clients appeared before Judge Stanton stating that respondent could not appear that day because he was in Mexico. Judge Stanton told the client that respondent was suspended from the practice of law and that he should obtain new counsel.

Respondent testified, but the court did not believe, that he told the immigration judges about his suspension from the practice of law. Judge Stanton, whom the court found credible, testified that the judges were never told about respondent's suspension.

Respondent did not give notice to the Executive Office of Immigration Review (EOIR) of his suspensions from the practice of law as required by Code of Federal Regulations, Title 8, Chapter V, Part 1003, Subpart G, Section 1003.103(c), which states in relevant part: "Any practitioner . . . who has been disbarred or suspended by . . . the highest court of any state ...must notify the Office of the General Counsel of EOIR . . . within 30 days of issuance of the initial order, even if an appeal . . . is pending . . .."

4. The Loza Matter

On November 14, 2005, respondent appeared as attorney of record in the matter of *People v. Maria Teresa Loza,* Imperial County Superior Court case No. CCM14781, and set it for pretrial conference on November 22, 2005, and trial on December 23, 2005.

On November 22, 2005, respondent asked attorney Ronald Serna to make a special appearance for him on the Loza matter but did not tell Serna that he was suspended from the practice of law. Respondent told Serna that he could not make the appearance himself because he had to be somewhere else and asked Serna to continue the matter. Serna did so.

Respondent remained the attorney of record until March 21, 2006. He did not inform his client, Maria Loza, of his suspension or inactive enrollment.

On March 20, 2006, respondent asked Deputy Public Defender Charles Rider to make a special appearance for him in the Loza case. He asked Rider to continue it to another date but did not tell him that he (respondent) was not entitled to practice law.

On that same day, the prosecutor in the Loza matter, Deputy District Attorney Chris Kowalski saw respondent sitting in a parked car in the courthouse parking lot. Kowalski looked respondent up on the State Bar of California's website and learned that respondent was not entitled to practice of law.

Later that same day, Kowalski appeared in court for the Loza matter. When Rider attempted to make a special appearance for respondent and continue the case, Kowalski informed the court and Rider that respondent was suspended from the practice law. The court continued the matter to the next day and ordered respondent to appear.

When respondent and Kowalski appeared on March 21, 2006, respondent admitted that he

was not entitled to practice of law. As a result, the court continued the matter to March 27, 2006, for Loza to obtain new counsel.

Counts 1, 2 and 3: Unauthorized Practice of Law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125, and 6126)

Section 6068, subdivision(a), provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

By clear and convincing evidence, respondent wilfully violated sections 6068, subdivision (a), 6125 and 6126 in counts 1, 2 and 3. While he was on disciplinary and administrative suspension, respondent knew or should have known that he was not entitled to practice law. Yet, he held himself out as entitled to practice law and practiced law by:

(1) consulting with the Martinez family, preparing their I-485 forms and signing the forms as being from his law office;

(2) advertising and maintaining a law office; appearing as an attorney in several matters before the immigration court in Imperial County; and continuing to represent that he was available to undertake new clients; and

(3) remaining as attorney of record in the Loza case.

Count 4: Misleading the Court (§ 6068, Subd. (d))

Section 6068, subdivision (d), provides that an attorney must never seek to mislead the judge by an artifice or false statement of fact or law. The Supreme Court has held that "[t]he presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is clear violation of [section 6068, subdivision (d)]." (*Pickering v. State Bar* (1944) 24 Cal.2d 141, 144.) "Actual deception is not necessary to prove wilful deception of a court; it is sufficient that the attorney knowingly presents a false statement which tends to mislead the court. [Citation.]" (*Davis v. State Bar* (1983) 33 Cal.3d 231, 240.)

There is clear and convincing evidence that respondent wilfully violated section 6068, subdivision (d) in count 4. By fabricating a reason for Rider to seek a continuance in the Loza matter

and by trying to conceal his suspension from the court, respondent employed means inconsistent with the truth for the purpose of maintaining the causes confided to him sought to mislead a judicial officer by an artifice or false statement of fact or law.

Count 5: Moral Turpitude (§ 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

There is clear and convincing evidence that respondent violated section 6106 by knowingly engaging in the unauthorized practice of law while he was suspended. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106 in count 5.

B. Probation Violations (Case No. 06-O-12332)

At all relevant times, respondent knew the terms and conditions of his probation and understood his reporting requirements.

Respondent did not file his April 10 and July 10, 2005 quarterly reports until August 25, 2005. He did not file his October 10, 2005 quarterly report until December 5, 2005. And he did not file his April 10, 2006 quarterly report at all.

On January 10, 2006, respondent filed a quarterly report in which he declared under penalty of perjury that he had complied with the State Bar Act and Rules of Professional Conduct during the preceding calendar quarter (October through December 2005) although he knew that he had engaged in the unauthorized practice of law during that time.

Counts 6 and 8: Failure to Comply With Probation Conditions (§ 6068, Subd. (k))

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to a disciplinary probation.

By filing three quarterly reports late and not filing one at all and by not complying with the State Bar Act and the Rules of Professional Conduct, respondent did not comply with disciplinary probation conditions in wilful violation of section 6068, subdivision (k), in counts 6 and 8.

Counts 7 and 9: Moral Turpitude (§ 6106)

There is clear and convincing evidence that respondent violated section 6106 by knowingly signing and submitting to the Office of Probation a false declaration. Accordingly, he committed

an act of moral turpitude and dishonesty in wilful violation of section 6106 in counts 7 and 9.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[3] Respondent did not present any evidence in mitigation. The court has been provided no basis for finding mitigating factors other than cooperation during the disciplinary proceedings by entering into a stipulation of facts and regarding judicial notice. (Std. 1.2(e)(v).)

B. Aggravation

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

As previously noted, respondent has two prior instances of discipline. (Std. 1.2(b)(i).)

In respondent's first disciplinary matter, Supreme Court case No. S127206 (State Bar Court case No. 02-O-15798), discipline was imposed consisting of one year's stayed suspension and two years' probation on conditions including 30 days' actual suspension for respondent's violations of rule 3-110(A) of the Rules of Professional Conduct and sections 6068, subdivision (m), and 6106, which occurred between August 1999 and March 2004.

In respondent's second disciplinary matter, Supreme Court case No. S136356 (State Bar Court case No. 05-O-00160), discipline was imposed consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii) and two years' probation on conditions including 60 days' actual suspension. The parties stipulated that, in at least five cases, respondent engaged in the unauthorized practice of law and also violated section 6106 (misrepresenting entitlement to practice law) between December 4, 2004 and January 3, 2005.

The court notes that respondent has been engaged in a nearly continuous course of misconduct since August 1999. Further, it is very significant and troubling that respondent engaged in the same misconduct, the unauthorized practice of law, in the present case and in S136356. Moreover, he has committed misrepresentations in both priors and, in the instant case, the court finds

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

respondent's dishonesty, discussed below, as an aggravating factor.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) Moreover, he has engaged in a pattern of misconduct as to the unauthorized practice of law.

In relevant part, standard 1.2(b)(iii) permits consideration as an aggravating circumstance whether respondent's misconduct was surrounded or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct. In the instant case, respondent misrepresented to this court that he had told the immigration judges about his suspension.

Respondent's misconduct significantly harmed clients and the administration of justice. (Std. 1.2(b)(iv).) Loza and some of the immigration clients had to obtain new counsel and the courts had to reschedule proceedings because respondent tried to remain as counsel in various cases although he was not entitled to practice law.

Respondent displayed a lack of candor and cooperation to the State Bar during disciplinary proceedings by not filing a pretrial status conference despite being given two opportunities to do so. (Std. 1.2(b)(vi).)

V. 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(a) and (d) 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.

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 several instances of engaging in the unauthorized practice of law, committing acts of moral turpitude and not complying with probation conditions. Aggravating factors include multiple acts and a pattern of misconduct, misconduct surrounded by deceit or concealment, harm to clients and to the administration of justice and two prior instances of discipline. In mitigation, the court considered respondent's cooperation during the disciplinary proceedings by stipulating to facts.

The court found *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563 instructive. In *Taylor*, the attorney had committed serious misconduct in three client matters, including repeatedly practicing law while suspended, deceiving a court and client by filing an unauthorized lawsuit and not complying with his criminal probation by disobeying two separate court orders requiring him to provide support to his minor children. He also had a prior record of discipline and did not participate in either the present or past disciplinary proceedings. There were no mitigating circumstances. Accordingly, the Review Department found that respondent was not a good candidate for suspension and/or probation because "... 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." (*Id.* at p. 581.) Respondent was disbarred.

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 nature of the misconduct as well as the self-interest underlying respondent's actions 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 prior two instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. To the contrary, his continuous record of practicing law while suspended demonstrates, as in *Taylor*, his disdain and contempt for the orderly process and rule of law. The court feels that respondent cannot be trusted. He has not given the court a reason to believe that he will not practice law without authorization if he is suspended instead of being disbarred. 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.

VI. Discipline Recommendation

It is hereby recommended that respondent **Juan Antonio Molina** 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.[4]

VII. 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.

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[4]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 Regarding 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 ___, 2007

PAT McELROY
Judge of the State Bar Court