

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: **06-O-10765-LMA**
) (06-O-10818)
CRAIG KENNETH MARTIN)
) **DECISION AND ORDER OF**
Member No. 74750) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

I. INTRODUCTION

In this contested, original disciplinary proceeding, the Office of Chief Trial Counsel of the State Bar of California (“State Bar”) charges respondent **Craig Kenneth Martin** with a total of seven counts of professional misconduct involving two separate matters. The alleged misconduct involved, among other things, respondent’s failure to perform, his improper withdrawal from representation, and his failure to refund unearned fees.

The court finds, by clear and convincing evidence, that respondent is culpable on six of the seven counts of misconduct. For the reasons stated *post*, the court recommends that respondent be disbarred.

II. PERTINENT PROCEDURAL HISTORY

The State Bar filed the Notice of Disciplinary Charges (“NDC”) in this matter on January 30, 2009. Thereafter, respondent filed his response to the NDC on February 19, 2009.

The trial spanned five days, concluding on September 24, 2009. After both parties filed post-trial briefs, the court took the matter under submission for decision on October 26, 2009.

The State Bar was represented by Deputy Trial Counsel Susan Chan. Respondent represented himself.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact are based on the record and the evidence adduced at trial. Many of the court's findings of fact are based, in large part, on credibility determinations. After careful observation and consideration, the court found the witnesses' testimony to be generally credible, with the following exception. The court found that respondent's testimony at times lacked credibility—particularly in regard to his communications with Maria Perez.

A. Jurisdiction.

Respondent was admitted to the practice of law in the State of California on June 28, 1977, and has been a member of the State Bar of California since that time.

B. The Szeto Matter

On November 10, 1998, respondent filed a civil action against Richard Szeto and Anthony Lincoln ("Szeto defendants"), San Francisco County Superior Court Case No. 999134 ("the Szeto matter"), alleging that the Szeto defendants had slandered him by telling third parties that he was using drugs.

The Szeto defendants conducted depositions of respondent and respondent's key witnesses—Leonard "Lefty" Gordon and Larry Chew—in May and June, 1999. The Szeto defendants also propounded written interrogatories on respondent.

The Szeto matter was referred to arbitration. The original arbitration date was set for December 30, 1999. The December 30, 1999 arbitration date was continued to February 7, 2000. Respondent did not submit an arbitration brief in the matter.

On January 31, 2000, respondent informed counsel for the Szeto defendants that he was not willing to proceed with arbitration until respondent took the deposition of the Szeto defendants and noticed Mr. Szeto's deposition for March 24, 2000.

Also on January 31, 2000, respondent called the arbitrator, Joel Yodowitz, requesting a continuance of the February 7, 2000 arbitration date. In response to this request, Mr. Yodowitz asked respondent to consult with opposing counsel to select a new date and to confirm with the arbitrator. Respondent did not comply with the arbitrator's request. Nonetheless, by letter dated February 3, 2000, the arbitration date was continued to February 15, 2000. The arbitrator also reminded the parties to submit an arbitration brief.

On February 10, 2000, respondent informed the arbitrator and opposing counsel that he expected to be in trial on the date of the arbitration. Respondent was in a jury trial in Alameda County—*Hall v. Tejada*, Case No. 1998018057—starting on February 14, 2000, and continuing through February 17, 2000.

The arbitrator asked respondent and opposing counsel to select a mutually convenient date to reschedule the arbitration. Opposing counsel, however, refused to stipulate to a continuance. Respondent did not submit an arbitration brief in the Szeto matter.

On February 15, 2000, the Szeto matter was arbitrated. Respondent did not appear at the arbitration hearing because he was appearing as counsel in the *Hall v. Tejada* matter. The Szeto defendants filed an arbitration brief and attended the arbitration.

On February 17, 2000, the Szeto arbitration award was filed, denying respondent's claim and awarding costs to the Szeto defendants.

On March 1, 2000, respondent filed for a trial de novo.

On May 15, 2000, the Szeto defendants moved for summary judgment. A summary judgment hearing was set for June 14, 2000.

Respondent did not oppose the summary judgment motion filed by the Szeto defendants because he believed the parties had informally settled after the sudden death of respondent's key witness—Leonard “Lefty” Gordon. Based on this belief, respondent chose to focus on and pursue the matters of his clients rather than his own.

On May 31, 2000, the trial court granted the Szeto defendants' motion for summary judgment on the grounds that no opposition had been filed. On November 7, 2000, the Szeto defendants requested sanctions in the form of attorney fees to be paid by respondent on the grounds that he had acted in bad faith.

On December 1, 2000, respondent filed an opposition to the Szeto defendants' request for attorney fees. In his opposition, respondent declared that he offered to dismiss the case due to the untimely death of the key witness.

On January 4, 2001, the trial court denied the Szeto defendants' motion for attorney fees. On March 26, 2001, the Szeto defendants appealed the denial of their request for sanctions by the trial court to Division Four of the First Appellate District of the Court of Appeal.

On August 14, 2001, respondent filed a brief in opposition, urging that the trial court's ruling be affirmed. Oral argument was to be heard on September 27, 2001.

On September 27, 2001, respondent did not appear at oral argument in the Court of Appeal.

On November 28, 2001, the Court of Appeal reversed the trial court's denial of sanctions after finding that respondent had not acted in good faith. The Court of Appeal stated that respondent's “inaction on this case reveals a total disdain for the judicial process. The record provides ample evidence that he failed to maintain his action in good faith and with reasonable cause. [Citations.]”

In particular, the Court of Appeal considered respondent's failure to attend the arbitration hearing and the summary judgment hearing, his failure to oppose the summary judgment, and his failure to appear for oral argument before the Court of Appeal as evidence that he maintained the action in bad faith. The Court of Appeal discounted respondent's assertion that he failed to attend the hearings in the Szeto matter due to conflicting court appearances in other cases. The Court of Appeal also declined to believe respondent's claim that he attempted to dismiss the action but was unable to do so because the Szeto defendants refused to sign a release.

On January 10, 2002, respondent successfully petitioned the California Supreme Court for review of the Court of Appeal's decision in the Szeto matter.

On February 19, 2004, the California Supreme Court filed its opinion in the Szeto matter. The Supreme Court reviewed the Szeto matter for the limited purpose of resolving a conflict in the lower courts over the proper interpretation of Code of Civil Procedure section 1021.7, leaving undisturbed the Court of Appeal's findings regarding respondent's failure to maintain the Szeto matter in good faith. The Supreme Court specifically stated that it had "no occasion to review the superior court's order granting summary judgment or the Court of Appeal's decision that the plaintiff did not file or maintain his action in good faith and with reasonable cause."

Count 1 – Maintaining an Unjust Action

Business and Professions Code section 6068, subdivision (c),¹ provides that it is the duty of an attorney to counsel or maintain those actions, proceedings, or defenses only as to appear to him or her legal or just. The State Bar alleges that by not filing an arbitration brief, not appearing at the arbitrations, not opposing the summary judgment motion, not appearing at the summary judgment hearing, and not appearing at oral argument before the Court of Appeal, respondent maintained an action

¹ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

or proceeding without any good faith belief in its basis in law or justice. The court disagrees with this assertion, and finds that the aforementioned conduct does not establish, by clear and convincing evidence, that respondent maintained an unjust action.² Count One is therefore dismissed with prejudice.

C. The Perez Client Matter

In December 2000, Maria T. Perez (“Perez”) hired respondent to attempt to resolve issues with Michael Keck (“Keck”), the attorney who had been handling Perez’ late husband’s estate since his death in 1995.

In May 2001, respondent recommended to Perez that she sue Keck to resolve their dispute regarding Keck’s handling of her late husband’s estate since Keck had not responded to respondent’s letters about Perez. Perez agreed to proceed with a suit against Keck and the C.L. Keck law firm to which Keck belonged (the “defendants”).

In May 2001, Perez signed a fee agreement drafted by respondent. At the time Perez signed the fee agreement, respondent demanded and accepted \$5,000 in advanced fees from Perez. The agreement also included a provision that respondent would send Perez monthly statements indicating attorney’s fees and the costs incurred and their basis.³

On November 9, 2001, respondent filed on behalf of Perez a civil complaint alleging negligence against the defendants in San Francisco County Superior Court, Case No. CGC-01-401172 (the “Perez matter”). The proof of service on the defendants was due no later than January 8, 2002.

Respondent did not file proof of service on any defendant by January 8, 2002.

² The court found credible respondent’s testimony that he pursued his clients’ matters instead of his own and believed that the Szeto matter would be mutually dismissed following the passing of his key witness.

³ On December 20, 2000, respondent sent Perez a bill detailing his fees and the charges incurred on her behalf. Thereafter, respondent did not send Perez any bills or statements indicating the work performed or charges incurred on her behalf.

On March 5, 2002, the superior court held an Order to Show Cause (“OSC”) hearing for failure to file proof of service on defendants. Respondent appeared at the OSC hearing and the OSC was ordered off calendar.

On April 3, 2002, another OSC hearing for respondent’s failure to file proof of service on the defendants and obtain an answer from the defendants or enter default and default judgment against the defendants was set for May 28, 2002.

Respondent did not file the proof of service on the defendants by May 28, 2002. On May 28, 2002, respondent appeared at the OSC hearing. The OSC was reset to July 22, 2002.

On June 17, 2002, respondent filed proof of service with the superior court which indicated that the defendants had been personally served on March 21, 2002. On June 17, 2002, the superior court rejected a request for entry of default and default judgment in the Perez matter.

On July 11, 2002, the superior court set an OSC hearing for respondent’s failure to obtain an answer from or enter a default against the defendants. This hearing was set for September 3, 2002.

Respondent did not obtain an answer from or enter a default and default judgment against the defendants prior to September 3, 2002.

On September 3, 2002, respondent did not appear at the scheduled OSC hearing. The superior court ordered sanctions in the amount of \$350 against respondent for his failure to appear at the September 3, 2002 OSC hearing. The sanctions were ordered payable no later than September 18, 2002. The court continued the OSC hearing to October 15, 2002.

Respondent did not pay the sanctions ordered by the superior court by September 18, 2002.

On October 15, 2002, respondent appeared at the OSC hearing and the matter was reset for December 16, 2002.

On December 16, 2002, respondent did not appear at the OSC hearing. The superior court ordered sanctions in the amount of \$350 against respondent for his failure to appear at the December 16, 2002 OSC hearing. The sanctions were payable no later than December 31, 2002. The superior court continued the OSC hearing to February 24, 2003.

Respondent did not pay the sanctions ordered by the superior court by December 31, 2002.

On February 24, 2003, respondent did not appear at the OSC hearing. The court ordered sanctions in the amount of \$350 against respondent for his failure to appear at the February 24, 2003 OSC hearing. The sanctions were payable no later than March 12, 2003. The superior court continued the OSC hearing to April 28, 2003.

Respondent did not pay the sanctions ordered by the superior court by March 12, 2003.

On April 28, 2003, respondent appeared at the OSC hearing in the Perez matter and the OSC hearing was reset for June 30, 2003.

On June 23, 2003, the OSC hearing was continued to October 27, 2003.

On October 27, 2003, respondent did not appear at the OSC hearing. The superior court ordered sanctions in the amount of \$350 against respondent for his failure to appear at the October 27, 2003 OSC hearing. The sanctions were payable no later than November 12, 2003. The superior court continued the OSC hearing to January 26, 2004.

Respondent did not pay the sanctions ordered by the court by November 12, 2003.

On January 26, 2004, respondent did not appear at the OSC hearing. On January 26, 2004, the superior court ordered sanctions in the amount of \$350 against respondent for his failure to appear at the January 26, 2004 OSC hearing. The sanctions were payable on or before February 11, 2004. The superior court continued the OSC hearing to April 26, 2004.

Respondent did not pay the sanctions ordered by the superior court by February 11, 2004.

On April 26, 2004, attorney Vonnah Brillet specially appeared for Perez at the OSC hearing. The OSC was reset for June 28, 2004.

On May 14, 2004, respondent filed a proof of service in the Perez matter indicating that Keck was personally served on May 10, 2004.

On June 16, 2004, the June 24, 2004 OSC hearing was continued to August 9, 2004.

On July 13, 2004, the superior court rejected a request for entry of default and default judgment against the defendants filed by respondent.

On July 20, 2004, the superior court rejected a second request for entry of default and default judgment against the defendants filed by respondent.

On August 4, 2004, the OSC hearing for failing to file proof of service on, obtain an answer from, or enter a default and default judgment against defendants, and pay outstanding sanctions set for August 9, 2004 was continued to October 12, 2004.

On October 6, 2004, the OSC hearing scheduled for October 12, 2004, was continued to January 10, 2005.

On January 10, 2005, respondent appeared at the OSC hearing and the matter was reset to March 14, 2005.

On January 10, 2005, the court sent notice of impending discretionary dismissal pursuant to California Code of Civil Procedure (“CCP”) sections 583.410 and 583.420(A)(2)(A) to the parties.

On March 7, 2005, respondent filed a motion to set aside all prior sanctions. A hearing on the motion was set for April 7, 2005.

On March 10, 2005, the March 14, 2005 OSC hearing for failure to pay outstanding sanctions and for failure to enter default and default judgment was continued to June 13, 2005.

On April 7, 2005, the court heard respondent's motion to set aside all sanctions issued against him. The court adopted a tentative ruling to grant the motion.

On May 9, 2005, the court issued an order setting aside all sanctions issued against respondent prior to April 7, 2005.

On June 8, 2005, the June 13, 2005 OSC hearing for failure to enter default and default judgment was continued to September 12, 2005.

In 2004, respondent moved his office but did not inform Perez of his new address. In July 2005, Perez independently discovered respondent's new address on the internet.

On July 6, 2005, Perez mailed to respondent's then official membership records address a letter demanding a return of her \$5,000.00. Perez sent this letter by regular mail and by certified mail. Respondent did not claim the certified letter. Respondent received but did not respond to Perez' letter of July 6, 2005.

On July 27, 2005, Perez mailed to respondent's then official membership records address a letter requesting information regarding the Perez matter. Respondent received but did not respond to Perez' letter of July 27, 2005.

On July 27, 2005, respondent filed a First Amended Complaint ("FAC") in the Perez matter.

On August 26, 2005, the defendants filed a motion to strike and a demurrer to the FAC. The basis for the defendants' demurrer was that the FAC failed to state facts which supported each element of the cause of action alleged.

On September 9, 2005, the OSC hearing scheduled for September 12, 2005, was continued to December 12, 2005.

On September 19, 2005, respondent filed a memorandum of points and authorities in opposition to the demurrer and motion to strike portions of the FAC filed by the defendants.

On September 28, 2005, the superior court heard arguments on the defendants' motion to strike the FAC and adopted its tentative ruling to grant the defendants' motion. The superior court also heard arguments on the defendants' demurrer to the FAC and adopted its tentative ruling to sustain it with leave to amend.

On October 17, 2005, the superior court was informed that respondent did not object to the proposed order sustaining the defendants' demurrer and motion to strike the FAC.

On October 28, 2005, the superior court issued its order granting the defendants' motion to strike portions of the FAC and to sustain the defendants' demurrer to the FAC.

Respondent did not file a Second Amended Complaint. Therefore, on November 23, 2005, the defendants submitted an ex parte application for an order of dismissal based on Perez' failure to file a Second Amended Complaint.

On November 23, 2005, the superior court granted the ex parte application and ordered that the Perez matter be dismissed with prejudice

Respondent did not inform Perez that the Perez matter had been dismissed with prejudice until March 22, 2006. Respondent failed to inform Perez that he had effectively withdrawn from her representation when he failed to prosecute her claim in the Perez matter. Perez was prejudiced by respondent's withdrawal from employment as her action against Keck was ultimately dismissed with prejudice despite the superior court granting leave to file a Second Amended Complaint.

Respondent's services in the present matter consisted of—in a nutshell—his filing of a defective complaint, his failure to serve the defendants for an extended period of time, his filing of a defective amended complaint, and his failure to file a second amended complaint—resulting in the dismissal of Perez' cause of action. While respondent did perform some “work” in the Perez matter, he did not provide services of value to Perez; nor did he provide services valuing

\$5,000. Nonetheless, respondent failed to refund or account for the advanced fees paid to him by Perez.

Count 2A - Failure to Perform with Competence

Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)⁴ provides that a member must not intentionally, recklessly or repeatedly fail to perform legal services with competence. Respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to: (1) timely serve the defendants; (2) obtain an answer or file an acceptable default against the defendants; (3) appear at repeated OSC hearings; and (4) file the Second Amended Complaint.

Count 2B - Failure to Respond to Client Inquiries

Section 6068, subdivision (m), provides that it is the duty of 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 failing to respond to Perez' July 6, 2005 and July 27, 2005 letters, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent agreed to provide legal services, in willful violation of section 6068, subdivision (m).

Count 2C - Failure to Inform Client of Significant Developments

By failing to inform Perez for four months that her case had been dismissed with prejudice, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

⁴ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

Count 2D – Improper Withdrawal From Employment

Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid foreseeable prejudice to the client's rights. By not filing a Second Amended Complaint when the superior court granted him leave to amend and effectively withdrawing from representation without notice, respondent failed to take reasonable steps to avoid foreseeable prejudice to his client, in willful violation of rule 3-700(A)(2).

Count 2E - Failure to Render Accounts of Client Funds

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 not sending Perez any accounting statements after December 20, 2000, as provided by the terms of the retainer agreement, respondent failed to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 2F - Failure To Pay Client Funds Promptly

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive. By failing to refund to Perez the unearned portion of the \$5,000 paid in advanced fees by Perez, respondent failed to promptly pay, as requested by his client, any funds in his possession which the client was entitled to receive, in willful violation of rule 4-100(B)(4).

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,⁵ std. 1.2(e).) Here, respondent established the following factors in mitigation.

⁵All further references to standard(s) or std. are to this source.

1. Good Character Testimony

Respondent presented extensive character testimony from 17 witnesses, including former clients, a court commissioner, a pastor, California State Senator Curren Price, Jr., former San Francisco Mayor Art Agnos, and various community activists and leaders. Respondent's character witnesses—many of whom had known respondent for over 40 years—testified regarding his good character and the invaluable assistance he has provided to clients that were less likely to afford legal assistance.

The court finds that, as a whole, respondent's character evidence constitutes an extraordinary demonstration of good character by a wide range of references in the legal and general communities. (Std. 1.2(e)(vi).) The weight of this evidence, however, is somewhat diminished by the fact that several of respondent's character witnesses were not aware of the present misconduct. Nonetheless, the testimony of respondent's character witnesses warrants significant weight in mitigation.

2. Pro Bono Activities

Respondent presented evidence of substantial pro bono work. Respondent has represented numerous low-income people at little or no cost. In addition, respondent has worked with various community organizations, has represented special education children with the San Francisco Unified School District, and has served as a volunteer for the San Francisco City College. Respondent's pro bono activities warrant additional consideration in mitigation.

B. Aggravation

It is the State Bar's burden to establish aggravating circumstances by clear and convincing evidence. (Std 1.2(b).) The court finds three factors in aggravation.

1. Prior Record of Discipline

Respondent's prior record of discipline is an aggravating circumstance. (Std. 1.2(b)(i).)

Respondent has been previously disciplined on four separate occasions.

On October 16, 1991, the California Supreme Court issued an order (S022263) suspending respondent from the practice of law for six months, stayed, with a one-year period of probation. This discipline resulted from respondent's failure to perform legal services with competence in a single-client matter. In mitigation, respondent had no prior record of discipline, he acted in good faith, and he presented good character testimony from several witnesses. In aggravation, respondent caused significant harm to his client, and failed to cooperate with both his client and the State Bar.

On August 25, 1993, the California Supreme Court issued an order (S022263) suspending respondent from the practice of law for six months, stayed, with a one-year period of probation. This discipline involved respondent's failure to comply with the conditions of his previously imposed disciplinary probation. Specifically, respondent failed to timely attend the State Bar's Ethics School and timely file one quarterly report. In aggravation, respondent had a prior record of discipline. In mitigation, respondent subsequently completed the State Bar's Ethics School.

On August 25, 1993, the California Supreme Court issued a second order (S033351) suspending respondent from the practice of law for two years, stayed, with a three-year probationary period, and an actual suspension of 60 days. This discipline resulted from respondent's commingling personal and/or business funds with client funds in his client trust account. In aggravation, respondent had two prior instances of discipline. In mitigation, respondent displayed candor and cooperation with the State Bar.

On July 16, 1996, the California Supreme Court issued an order (S053374) suspending respondent from the practice of law for two years, stayed, with a three-year probationary period,

and an actual suspension of 90 days. In this matter, respondent practiced law while he was suspended and failed to notify his client of his suspension. In addition, respondent violated the terms of his disciplinary probation by failing to timely submit one quarterly report and a certificate from a certified public accountant. In aggravation, respondent had three prior disciplines. In mitigation, respondent displayed candor and cooperation with the State Bar, and subsequently filed the requisite probation report.⁶

2. Multiple Acts of Misconduct

Respondent committed multiple acts of misconduct by failing to perform with competence, failing to respond to client inquiries, failing to inform his client of significant developments, improper withdrawal, failing to account, and failing to refund unearned fees. (Std. 1.2(b)(ii).)

3. Harm

The court also finds in aggravation that respondent's misconduct caused significant harm to his client. (Std. 1.2(b)(iv).) As a result of respondent's misconduct, Perez' action was dismissed with prejudice. Moreover, respondent has demonstrated a lack of recognition and understanding regarding the harm he caused Perez.

V. DISCUSSION

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090.) As the Review Department noted more than 18 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re*

⁶ It was also noted that respondent was suspended from the practice of law for 60 days due to his failure to pass the California Professional Responsibility Examination ("CPRE"). It was later discovered, however, that the CPRE was graded incorrectly, and that respondent actually passed the examination and should not have been suspended.

Silverton (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310, 1311.)

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 the present proceeding, the most severe sanction for respondent's misconduct is found in standard 1.7(b). Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.⁷

Standard 1.7(b), however, has not been rigidly applied by the courts. The Supreme Court and Review Department have generally found disbarment to be appropriate under standard 1.7(b) when there is a repetition of offenses for which an attorney has previously been disciplined that demonstrate a pattern of misconduct. (*Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 842.)

Here, respondent has been previously disciplined four times; yet, the present matter reflects some of the same misconduct that respondent has been disciplined for in the past—namely failing to perform with competence and failing to communicate significant developments to his client. And respondent's lack of recognition and understanding of the harm he caused Perez gives the court little assurance that he will not continue to commit similar misconduct in the future.

⁷ Even if the court construes respondent's two 1993 disciplines as a single discipline, standard 1.7(b) remains applicable.

In addition, the court has good reason to question whether another round of disciplinary probation will adequately satisfy the interests of public protection. Respondent's past probations and suspensions were not able to prevent the present misconduct; and respondent's two prior failures to timely comply with the constraints of disciplinary probation give little assurance that he recognizes and appreciates the serious nature of disciplinary probation.

Although respondent presented an impressive array of good character testimony, it does not outweigh the substance and nature of his extensive record of prior discipline. Consequently, the court finds no reasonable cause to deviate from standard 1.7(b) and is in agreement with the State Bar's recommendation that respondent should be disbarred.

VI. RECOMMENDED DISCIPLINE

The court recommends that respondent **Craig Kenneth Martin**, State Bar Number 74750, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

The court 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.⁸

VII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

⁸ 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.)

VIII. 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.

Dated: January _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court