

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

In the Matter of)	Case No. 06-O-10931-RAP
)	06-O-11336; 06-O-11732
MARGARET ELLEN MONOS,)	06-O-11818; 06-O-12281
)	06-O-13774
Member No. 146871,)	
)	DECISION INCLUDING DISBARMENT
A Member of the State Bar.)	RECOMMENDATION AND ORDER OF
)	INVOLUNTARY INACTIVE
)	ENROLLMENT
_____)	

I. INTRODUCTION

In this disciplinary matter, Christine Souhrada appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Margaret Ellen Monos did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred whether or not the pending disciplinary recommendation in State Bar Court case no. 05-O-02773 is accepted by the Supreme Court and that he be ordered to pay restitution.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on November 21, 2006, and was properly served on respondent on that same date at her official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section¹ 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable.

¹Future references to section are to the Business and Professions Code.

On November 28, 2006, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on January 4, 2007. The court judicially notices its records pursuant to Evidence Code section 452, subdivision (d)(1), which indicate that this and all other correspondence that the court sent to respondent at her official address was returned as undeliverable.

On November 27, 2006, a courtesy copy of the NDC was sent by first-class mail to respondent at an alternate address.

Respondent did not file a responsive pleading to the NDC. On December 28, 2006, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that her disbarment would be sought if she was found culpable. Respondent did not respond to the motion.

Respondent did not appear at the January 4, 2007 status conference. On January 11, 2007, she was properly served with a status conference order at her official address by first-class mail, postage prepaid.

On January 18, 2007 the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested.

The State Bar's and the court's efforts to locate and contact respondent were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (April 26, 2006, No. 04-1477) 547 U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415, <<http://www.supremecourtus.gov/opinions/05slipopinion.html>>.)

The matter was submitted for decision without hearing after the State Bar filed a brief on January 29, 2007.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations.

(§6088; Rules of Proc. of State Bar², rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1990, and has been a member of the State Bar at all times since.

B. Case no. 06-O-10931 (The Anthony Matter)

1. Facts

In early 2003, Sylvester Anthony hired respondent to represent him in the dissolution of his marriage. (*Anthony v. Anthony*, Los Angeles Superior Court case no. BD 379664.)

Between August 22, 2005 and November 3, 2005, Anthony called respondent's office 24 times and left messages seeking to discuss the status of the remaining issues in his dissolution. Respondent received Anthony's messages.

On October 5, 2005, respondent mailed Anthony a letter containing an invoice for legal fees he owed her. Other than this letter and invoice, neither respondent nor anyone acting on her behalf communicated with Anthony regarding the status of his case.

On November 21, 2005, respondent filed a notice of withdrawal as counsel of record for Anthony and ceased to represent him.

On February 16, 2006, the State Bar opened an investigation on case no. 06-O-10931 pursuant to Anthony's complaint regarding allegations of misconduct by respondent in this matter. On April 12, May 3 and June 8, 2006, a State Bar investigator sent and respondent received letters requesting that respondent answer in writing specific allegations of misconduct regarding Anthony's complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. None of the letters was returned to

²Future references to the Rules of Procedure are to this source.

the State Bar as undeliverable or for any other reason. The June 8 letter was also sent via facsimile to respondent and she received it. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 1 - Section 6068, subdivision (m)

Section 6068, subdivision (m) requires an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not answering Anthony's calls to inquire about the status of his case, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

b. Count 2 - Section 6068, subdivision (i)

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

By not responding to the State Bar's letters of April 12, May 3 and June 8, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding Anthony's case in wilful violation of 6068, subdivision (i).

C. Case no. 06-O-11336 (The Cronin Matter)

1. Facts

On May 2, 2003, Mark Cronin hired respondent to represent him in connection with the dissolution of his marriage. (*Cronin v. Cronin*, Los Angeles Superior Court case no. VD 379664). Their contract for legal services provided for a replenishable retainer whereby Cronin would pay respondent \$2,500, respondent would bill her \$150 hourly rate against that amount and Cronin would then replenish the retainer to keep the balance at \$2,500.

Cronin paid respondent's invoices so that the balance of the advanced fees paid by Cronin in July 2003 was \$2,500.

In May 2005, Cronin and his wife reconciled. On May 23, 2005, respondent signed the

request for dismissal of Cronin's petition for dissolution. On June 7, 2005, respondent caused the dismissal to be filed with the court and her representation of Cronin terminated.

On November 4, 2005, using an email address respondent provided to him and at which he had previously corresponded with respondent, Cronin sent and respondent received an email requesting an accounting and a refund of unearned legal fees. Cronin gave respondent his home address, cellular phone number and two email addresses at which respondent could contact him. Respondent did not respond to Cronin.

On November 15 and 29, 2005 and December 12, 2005, Cronin again sent and respondent received emails asking her to refund the unearned legal fees. Respondent did not answer the emails.

On December 8 and 12, 2005, Cronin left voice mail messages for respondent asking her for an accounting and a refund of unearned legal fees. Although respondent received Cronin's telephone messages, she did not return the calls.

On December 21, 2005, Cronin sent and respondent received a letter asking for an accounting and a refund of unearned legal fees. Cronin stated that he was entitled to a refund from the \$2,500 in advanced fees he paid respondent, less the cost of two 10-minute telephone conversations and respondent's preparation of the request for dismissal. Respondent did not answer Cronin.

On January 23 and 30, 2006, Cronin left and respondent received voice mail messages asking for an accounting and a refund of unearned legal fees. Respondent did not return the calls.

On January 31, 2006, Cronin again sent and respondent received a letter asking for an accounting and a refund of unearned legal fees. Cronin again informed respondent that he was entitled to a refund from the \$2,500 in advanced fees he paid her, less the cost of two 10-minute telephone conversations and respondent's preparation of the request for dismissal. Respondent did not answer the letter.

On February 14, 2006, Cronin sent respondent a letter by certified mail, return receipt requested, asking for an accounting and a refund of unearned legal fees. Cronin again stated that

he was entitled to a refund from the \$2,500 in advanced fees he paid her, less the cost of two 10-minute telephone conversations and respondent's preparation of the request for dismissal. The letter was returned to Cronin by the United States Postal Service marked "Unclaimed/Refused."

On March 1, 2006, Cronin sent and respondent received an email in which he attached his February 14 letter. Respondent did not answer the email.

As of July 1, 2005, respondent held no less than \$2,000 of unearned attorney's fees she received from Cronin. Respondent never refunded of any portion of the unearned fees to Cronin.

On March 16, 2006, the State Bar opened an investigation on case no. 06-O-11336 pursuant to Cronin's complaint regarding allegations of misconduct by respondent in this matter. On April 5 and 25 and June 8, 2006, a State Bar investigator sent and respondent received letters requesting that respondent answer in writing specific allegations of misconduct regarding Anthony's complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. None of the letters was returned to the State Bar as undeliverable or for any other reason. The June 8 letter was also sent via facsimile to respondent and she received it. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 3 - Rule of Professional Conduct³ 3-700(D)(2)

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. This rule does not apply to true retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a matter.

By not refunding \$2,000 to Cronin, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

b. Count 4 - Rule 4-100(B)(3)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of

³Future references to rule are to this source.

all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

There is not clear and convincing evidence that respondent wilfully violated rule 4-100(B)(3) because there is no allegation that respondent did not provide the accounting to Cronin.

c. Count 5 - Section 6068, subdivision (i)

By not responding to the State Bar's letters of April 5 and 25 and June 8, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Cronin case in wilful violation of 6068, subdivision (i).

D. Case no. 06-O-11732 (The Wallace Matter)

1. Facts

On September 10, 2004, Robert Wallace hired respondent to represent him in the dissolution of his marriage and paid him \$2,000. Their contract for legal services provided for a replenishable retainer whereby Wallace would pay respondent \$2,000, respondent would bill him her \$200 hourly rate against that amount and Wallace would then replenish the retainer to keep the balance at \$2,000.

On September 21, 2004, respondent filed a petition for legal separation on Wallace's behalf and with his consent.

In late October 2004, Wallace informed respondent that he and his wife were attempting reconciliation and asked that respondent suspend work on the dissolution.

In January 2005, Wallace contacted respondent and asked her to begin work again on the dissolution. Respondent agreed and, on February 24, 2005, she sent Wallace a letter memorializing the work she would perform in that regard. She also informed Wallace that she would keep him apprized of all developments in his case.

Respondent did not file a petition for dissolution of Wallace's marriage.

On August 30, 2005, Wallace sent and respondent received a letter telling her that he would be in France until approximately December 17, 2005. Wallace gave respondent his

physical address and telephone number in France, his email address and an address in Los Angeles to which she could send documents. Wallace also asked respondent specific questions about his dissolution and asked her to contact him with the answers to those questions.

Respondent did not answer the letter.

On October 3, 2005, Wallace mailed and respondent received a letter asking for the status of his dissolution within 10 days of the date of his letter, otherwise he would terminate their attorney-client relationship. He also sent respondent a copy of the letter to an email address respondent gave him and at which he had previously corresponded with her. Respondent did not answer the letter.

On October 15, 2005, Wallace mailed respondent a letter from France by priority mail in which he terminated her services. He asked her to confirm receipt of the letter; to provide an accounting of the fees he paid her, and a refund of any unearned fees; and return his case file. He gave respondent a Los Angeles address to which she could send the information and documents he had requested. Respondent received notification of the letter from the United States Postal Service, but she did not claim it.

Wallace terminated respondent's employment on October 15, 2005. As of that date, respondent held no less than \$1,600 in unearned fees for Wallace. She still has not refunded any portion of the unearned fees to Wallace or returned his file.

On November 16 and 30, 2005, Wallace left and respondent received two messages in which he asked her to confirm receipt of his October 15 letter. Respondent did not respond to the messages.

On December 9, 2005, Wallace mailed respondent another letter from France by priority mail and enclosed a copy of his October 15 letter. Wallace asked respondent to contact him and stated that if she did not do so, he would go to her office when he returned to Los Angeles later that month. Respondent received notification of the letter from the United States Postal Service, but did not claim it.

On December 29, 2005, Wallace went to respondent's office but no one was there, so he placed a copy of the October 15 and December 9 letters under the office door. Respondent

received the letters.

On January 9, 2006, Wallace mailed respondent another letter from France by priority and first-class mail. He also sent the letter to her by email to the address at which they had previously corresponded. In the letter, Wallace stated that respondent violated their contract for legal services when she did not return unearned fees or his file or give him an accounting by providing monthly statements. He asked her to answer his letter within 30 days. Respondent received the letter, but did not answer it.

On March 27, 2006, the State Bar opened an investigation on case no. 06-O-11732 pursuant to Wallace's complaint regarding allegations of misconduct by respondent in this matter. On April 26 and May 16, 2006, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding Wallace's complaint. The letter was addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. It was not returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letter or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 6 - Rule 3-110(A)

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently.

By not filing a petition for dissolution for Wallace, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-110(A).

b. Count 7 - Section 6068, subdivision (m)

By not responding to Wallace's letters, telephone calls and emails prior to her termination, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

c. Count 8 - Rule 3-700(D)(2)

By not returning \$1,600 to Wallace, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

d. Count 9 - Rule 4-100(B)(3)

By not providing Wallace with an accounting of the legal services she provided and the charges for those services, respondent wilfully violated rule 4-100(B)(3).

e. Count 10 - Rule 3-700(D)(1)

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By not returning Wallace's file after she had been terminated, respondent wilfully violated rule 3-700(D)(1).

b. Count 11 - Section 6068, subdivision (i)

By not responding to the State Bar's letters of April 26 and May 16, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Wallace complaint in wilful violation of 6068, subdivision (i).

E. Case no. 06-O-11818 (The Ballasteros Matter)

1. Facts

In October 2005, Stephen Ballasteros hired respondent to represent him in the dissolution of his marriage and paid her \$3,000 in advanced fees. Ballasteros and respondent met twice for a total of about two-and-a-half hours.

Between November 1 through mid-December 2005, Ballasteros left several voice mail messages for respondent and also sent her two facsimiles asking her to call him with the status of his dissolution. Although respondent received these communications, she did not answer them.

In late December 2005, respondent and Ballasteros discussed a January 24, 2006, court hearing regarding his dissolution.

On January 24, 2006, respondent and Ballasteros appeared in court for approximately one hour. Later that day, Ballasteros left and respondent received a message seeking clarification as to certain legal issues. She did not respond to the message.

On January 25, 2006, Ballasteros sent and respondent received a facsimile asking her questions about his case. She did not respond to him.

In February 2006, Ballasteros left respondent voice mail messages and sent her facsimiles and emails at an email address she had given to him. Respondent received Ballasteros's voice mail and email messages and facsimiles but did not respond to him.

On March 22, 30 and 31, 2006, Ballasteros sent and respondent received facsimiles asking for the status of his dissolution. She did not respond to him.

On April 3, 2006, Ballasteros sent and respondent received a letter and an email message asking her to contact him. She did not respond to him.

On April 14, 2006, Ballasteros went to respondent's office during business hours, but the door was locked and no one answered when he knocked on the door.

Respondent's employment was terminated on May 11, 2006.

On May 11, 2006, Ballasteros hired new counsel, John Bledsoe. On May 16, 2006, Ballasteros and Bledsoe executed a substitution of attorney form and sent it to respondent via certified mail. The letter was returned unclaimed by the United States Postal Service.

On June 9, 2006, Bledsoe appeared in court ex parte to have respondent relieved as Ballasteros' counsel. The court did so.

Respondent took no action in regard to Ballasteros' dissolution after January 24, 2006, and, therefore, effectively withdrew from representing him. She did not assist Ballasteros by executing the substitution of attorney, nor did she inform him that she was withdrawing from employment.

As of on January 24, 2006, respondent held no less than \$2,000 in unearned fees she received from Ballasteros. She has not refunded any portion of the unearned fees to him.

On April 6, 2006, the State Bar opened an investigation on case no. 06-O-11818 pursuant to Ballasteros' complaint. On April 26 and May 22, 2006, a State Bar investigator sent respondent a letter requesting that respondent answer in writing specific allegations of misconduct regarding Ballasteros' complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned

to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 12 - Rule 3700(A)(2)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until she has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D) and with other applicable laws and rules.

By taking no action on Ballasteros' case after January 24, 2006 and by causing Ballasteros' counsel to take extraordinary measures to substitute into Ballasteros' case, respondent effectively withdrew from employment. She did not tell Ballasteros that she was withdrawing from employment. By not informing the client of her intent to withdraw from employment, respondent failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

b. Count 13 - Rule 3-700(D)(2)

By not refunding \$2,000 to Ballasteros, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

c. Count 14 - Section 6068, subdivision (i)

By not responding to the State Bar's letters of April 26 and May 22, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Ballasteros case in wilful violation of 6068, subdivision (i).

F. Case no. 06-O-12281 (The Diaz Matter)

1. Facts

On February 17, 2005, Efrain Diaz hired respondent regarding a child support dispute and to file motions to set aside two uncontested paternity judgments of paternity (the motions). (*County of Los Angeles vs. Efrain Diaz*, Los Angeles Superior Court case nos. BY 689 666 and BY 432 659.) The contract for legal services entered into between Diaz and respondent provided for a replenishable retainer whereby Diaz would pay respondent \$2,000, respondent would bill

her \$225 hourly rate against that amount, and Diaz would replenish the retainer to keep the balance at \$2,000. On March 1, 2005, Diaz paid respondent \$2,000.

On January 19, 2006, respondent mailed Diaz a letter in which she stated that she sent his motions "down for filing" and that she would advise him of the hearing dates the following day.

In March 6, 2006, Diaz filled out a substitution of attorney form and mailed it to respondent with a letter asking for his file, the return of unearned legal fees and an accounting. Respondent received this letter but did not answer it.

Respondent never filed the motions nor did she perform any legal services for Diaz.

On January 27 and 30 and February 2 and 7, 2006, Diaz sent and respondent received email asking for the status of his matters. Respondent did not answer Diaz.

On March 16, 2006, Diaz sent an email to respondent at the email address at which they had previously corresponded. He reminded her that he was going to her office on the following day to pick up his file, the unearned fees and an accounting. When Diaz went to respondent's office the next day, no one was there.

Respondent did not earn any portion of the \$2,000 in advanced fees paid to her. She has not refunded the unearned legal fees to Diaz.

Respondent also never returned Diaz's file.

On May 6, 2006, the State Bar opened an investigation on case no. 06-O-12281 pursuant to Diaz's complaint. On May 25 and June 8, 2006, a State Bar investigator sent respondent letters requesting that respondent answer in writing specific allegations of misconduct regarding the Diaz complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. The June 8 letter was also sent by facsimile, which she received. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 15 - Rule 3-110(A)

By not filing the motions or otherwise providing any legal services to Diaz, respondent intentionally, recklessly or repeatedly did not perform competently in wilful violation of rule 3-

110(A).

b. Count 16 - Section 6068, subdivision (m)

By not responding to Diaz's emails in which he sought the status of his matters, respondent did not respond promptly to his reasonable status inquiries in wilful violation of section 6068, subdivision (m).

c. Count 17 - Rule 3-700(D)(2)

By not refunding to Diaz any part of the \$2,000 in advanced fees which she did not earn, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

d. Count 18 - Rule 4-100(B)(3)

There is not clear and convincing evidence that respondent wilfully violated rule 4-100(B)(3) because the NDC does not allege that she did not give him an accounting.

e. Count 19 - Rule 3-700(D)(1)

By not giving Diaz his file as requested after her employment was terminated, respondent wilfully violated rule 3-700(D)(1).

f. Count 20 - Section 6068, subdivision (i)

By not responding to the State Bar's letters of May 25 and June 8, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Diaz case in wilful violation of 6068, subdivision (i).

G. Case no. 06-O-13774 (The Hendrick Matter)

1. Facts

On July 19, 2005, Larry Hendrick hired respondent to represent him regarding child support arrearages he allegedly owed to California Welfare Services. Their contract for legal services provided for a replenishable retainer whereby Hendrick would pay respondent a minimum of \$2,000, respondent would bill her \$250 hourly rate against that amount and Hendrick would replenish the retainer to keep the balance at \$2,000. On that date, Hendrick's mother, Norma, paid respondent \$3,000 on Hendrick's behalf.

On November 3, 2005, Hendrick received a letter from respondent requesting additional information from him. Hendrick sent respondent the information in November 2005.

In June 2006, Hendrick began calling respondent three or four times a week, each time leaving her a voicemail message asking her to contact him regarding the status of his case. Although respondent received Hendrick's messages, she did not answer them. In early August 2006, Hendrick stopped leaving messages when her voice mailbox became full and would no longer accept messages.

Respondent took no action regarding Hendrick's child support arrearages after November 3, 2005, and therefore effectively withdrew from representing him. Respondent never informed Hendrick that she was withdrawing from employment. Respondent's employment was effectively terminated in early November 2005.

As of on November 3, 2005, respondent held no less than \$2,500 in unearned fees regarding Hendrick's cases. She has not refunded any portion of the unearned fees to Norma or Hendrick.

On August 10, 2006, the State Bar opened an investigation on case no. 06-O-13774 pursuant to Hendrick's complaint. On September 6 and October 10, 2006, a State Bar investigator sent and respondent received letters requesting that respondent answer in writing specific allegations of misconduct regarding Hendrick's complaint. The letters were addressed to respondent's official membership records address and sent by first-class mail, postage prepaid. Neither was returned to the State Bar as undeliverable or for any other reason. Respondent did not answer the letters or otherwise communicate with the investigator.

2. Conclusions of Law

a. Count 21 - Rule 3-700(A)(2)

By not informing Hendrick of her intent to withdraw from representing him, respondent effectively withdrew from employment and failed to take reasonable steps to avoid reasonably foreseeable prejudice to the client in wilful violation of rule 3-700(A)(2).

b. Count 22 - Rule 3-700(D)(2)

By not refunding to Norma or Hendrick any of the \$2,500 in unearned, advanced fees, respondent wilfully violated rule 3-700(D)(2).

c. Count 23 - Section 6068, subdivision (i)

By not responding to the State Bar's letters of September 6 and October 10, 2006, respondent did not participate in the investigation of the allegations of misconduct regarding the Hendricks case in wilful violation of 6068, subdivision (i).

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct⁴, std. 1.2(b).)

Respondent has one prior instance of discipline. (Std. 1.2(b)(i).) In State Bar Court case no. 05-O-02773, discipline was recommended consisting of stayed suspension for five years and until respondent makes certain restitution and complies with standard 1.4(c)(ii) and actual suspension for two years and until she makes restitution and complies with standard 1.4(c)(ii) and rule 205 of the Rules of Procedure⁵. Respondent was found culpable of, essentially abandoning four clients and not returning unearned fees (three counts) or client files (two counts) or providing accountings (two counts). She also did not participate in the State Bar's investigation of two of the complaints. Multiple acts of misconduct and client harm are aggravating factors. The court considered respondent's 14 years of practice without discipline as a mitigating circumstance.

The misconduct in the prior disciplinary case occurred between approximately July 2004 and November 2005. In the present case, the misconduct occurred between approximately August 2005 and October 2006. The court notes respondent has been engaged in a course of misconduct for about two and one-half years. Moreover, the 10 clients involved in the two disciplinary matters have suffered similar misconduct, including not returning unearned fees or

⁴Future references to standard or std. are to this source.

⁵This matter is pending finality in the California Supreme Court. It is, nonetheless, considered a prior disciplinary record. (Rules Proc. of State Bar, rule 216(a) and (c).)

files and not giving accountings.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).) The court also finds a pattern of misconduct as to violations of section 6068, subdivision (i) and rule 3-700(D)(2).

Respondent's misconduct significantly harmed clients. (Std. 1.2(b)(iv).) Clients Anthony, Cronin, Wallace, Ballasteros, Diaz and Hendrick had to make repeated attempts over a long time to try to obtain information, case files, unearned fees or accountings from respondent.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

C. Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. (Std. 1.7.)

Standards 2.2(b), 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is suggested by standard 2.2(b): at least three months actual suspension regardless of mitigating

circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

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, in six client matters, of violating sections 6068, subdivisions (i) and (m) (six and three counts, respectively); and rules 3-100(A) (two counts), 3-700(A)(2) (two counts), 3-700(D)(1) (two counts), 3-700(D)(2) (five counts) and 4-100(B)(3) (one count). Aggravating factors included multiple acts and a pattern of misconduct, client harm and one prior instance of discipline for similar misconduct. There were no mitigating factors since respondent did not participate in these proceedings.

The State Bar recommends disbarment and the court agrees.

The court found *McMorris v. State Bar* (1983) 35 Cal.3d 77 instructive. In *McMorris*, the attorney was disbarred for habitually disregarding his clients' interests. In seven matters for five clients over a period of nine years, Respondent McMorris was found culpable of failing to perform and to communicate, improperly withdrawing from representation and committing an act of moral turpitude in violation of section 6106. Client harm was found in aggravation, including the entry of a default judgment and the need for the client to retain other counsel to have it set aside. He did not participate in the discipline hearing and had three prior instances of discipline.

The Supreme Court noted: "As we have repeatedly stated, willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]' (Citation omitted.) Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude

justifying disbarment. (Citations omitted.)" (*McMorris v. State Bar, supra*, 35 Cal.3d at p. 85.)

In determining its recommended degree of discipline, the Supreme Court considered respondent's prior disciplinary record and the harm resulting from his misconduct.

"Significantly, in examining the combined record of this disciplinary proceeding and [respondent's] prior discipline, we are confronted not by isolated or uncharacteristic acts but by 'a continuing course of serious professional misconduct extending over a period of several years.' (Citation omitted.) We are therefore concerned with what appears to have become an habitual course of misconduct. We believe that the risk of petitioner repeating this misconduct would be considerable if he were permitted to continue in practice. (Citation omitted.) As [respondent] has previously demonstrated, the public and the legal profession would not be sufficiently protected if we merely, once again, suspended [him] from the practice of law. (Citation omitted.)" (*McMorris v. State Bar, supra*, 35 Cal.3d at p. 85.)

The Supreme Court's reasoning in *McMorris* is equally applicable in this case. Lesser discipline than disbarment is not warranted. As previously noted, respondent has been engaged in a course of similar misconduct for about two and one-half years affecting 10 clients in this and the prior disciplinary matters. The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent's actions suggest that she is capable of future wrongdoing and raise concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. 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.

Because the prior disciplinary recommendation is pending with the Supreme Court, the court must make alternate discipline recommendations in this case. (Rules Proc. of State Bar, rule 216(c).) The court believes that, whether or not the pending disciplinary recommendation in State Bar Court case no. 05-O-02773 is accepted, respondent should be disbarred as the only adequate means to protect the public.

The court, on its own motion, recommends that respondent be ordered to make restitution. "Restitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar*

(1989) 49 Cal.3d 1084, 1094.) Restitution is a method of protecting the public and rehabilitating errant attorneys because it forces an attorney to confront the harm caused by his misconduct in real, concrete terms. (*Id.* at p. 1093.) Here, respondent failed to return unearned fees to clients.

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

Therefore, the court recommends that respondent be ordered to make restitution as set forth below.

V. DISCIPLINE RECOMMENDATION

Whether or not the discipline recommendation in State Bar Court case no. 05-O-02773 is accepted by the Supreme Court, IT IS HEREBY RECOMMENDED that respondent MARGARET ELLEN MONOS be DISBARRED from the practice of law in the State of California and that her name be stricken from the rolls of attorneys in this state.

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

1. Mark Cronin in the amount of \$2,000 plus 10% interest per annum from July 1, 2005(or to the Client Security Fund to the extent of any payment from the fund to Cronin, 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;
2. Robert Wallace in the amount of \$1,600 plus 10% interest per annum from October 15, 2005(or to the Client Security Fund to the extent of any payment from the fund to Wallace, 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. Stephen Ballasteros in the amount of \$2,000 plus 10% interest per annum from January 24, 2006(or to the Client Security Fund to the extent of any payment from the fund to Ballasteros, 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;
4. Efrain Diaz in the amount of \$2,000 plus 10% interest per annum from February 17, 2005(or to the Client Security Fund to the extent of any payment from the fund to Diaz, 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;
5. Larry Hendrick in the amount of \$2,500 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 Hendrick, 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.

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

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing her compliance with said order.

VI. COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: April 25, 2007

RICHARD A. PLATEL
Judge of the State Bar Court