

**STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of	)	<b>Case No. 06-O-11578-RAH</b>
	)	
<b>JAMES JOSEPH BAJGROWICZ,</b>	)	<b>DECISION INCLUDING DISBARMENT</b>
	)	<b>RECOMMENDATION AND ORDER OF</b>
<b>Member No. 49253,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this disciplinary matter, Robert A. Henderson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent James Joseph Bajgrowicz 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.

**II. SIGNIFICANT PROCEDURAL HISTORY**

The Notice of Disciplinary Charges (NDC) was filed on June 15, 2006, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section<sup>1</sup> 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.)

On June 22, 2006, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on July 31, 2006. He did not appear at the status conference.

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<sup>1</sup>Future references to section are to the Business and Professions Code.

Respondent did not file a responsive pleading to the NDC. On July 18, 2006, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that his disbarment would be sought if he was found culpable. Respondent did not respond to the motion, but filed a response to the NDC on August 14, 2006.

Respondent participated at a status conference held on August 28, 2006. At that time, dates for status conferences in September and October 2006, settlement conference, pretrial conference and the filing of pretrial statements and trial were scheduled. Respondent was also instructed to contact the State Bar and the Alternate Discipline Program (ADP) to determine his eligibility for ADP prior to the September 11 status conference. An order memorializing these matters was properly served on respondent on August 29, 2006.

Respondent participated in the September 11, 2006, status conference. He was properly served with the court's September 11, 2006, order memorializing that a further status conference would be held on September 25, 2006 and noting that he should file a nexus statement as to why he believed he was eligible for ADP.

On September 25, 2006, respondent filed a nexus statement<sup>2</sup> and participated in a status conference. He was properly served with an order filed on September 26, 2006, memorializing that further status conferences had been scheduled for October 16 and 23, 2006 and that a settlement conference was set for October 19, 2006.

Respondent participated at the October 16, 2006, status conference and was properly served with an order memorializing same on October 17, 2007.

An amended NDC was filed on November 29, 2006, pursuant to the court's order filed and properly served on respondent on that same date. The order also vacated previously-set dates and scheduled a status conference on December 11, 2006.

Respondent participated telephonically in the December 11 status conference. He

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<sup>2</sup>On October 27, 2006, the court filed and served on the parties an order denying respondent's eligibility for ADP.

indicated that he was hospitalized and that he did not wish to participate in the disciplinary proceeding. He was properly served with an order memorializing the status conference and scheduling the next one for March 6, 2007.

Respondent did not file a responsive pleading to the amended NDC. On January 3, 2007, a motion for entry of default was properly served on respondent at his official address by certified mail, return receipt requested. The motion was filed on January 5, 2007. It advised him that his disbarment would be sought if he was found culpable. He did not respond to the motion.

On January 23, 2007, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested.

On February 7, 2007, the State Bar filed and properly served on respondent at his official and alternate addresses with a motion to file a second amended NDC and to vacate respondent's default.

On February 8, 2007, respondent was properly served at his official and an alternate address with the State Bar's closing brief.

A second amended NDC was filed on March 29, 2007, pursuant to the court's order filed and properly served on respondent on that same date.<sup>3</sup> Accordingly, respondent's default was vacated.

On April 3, 2007, respondent was properly served at his official and alternate addresses with an order scheduling a status conference on May 7, 2007. He did not appear at the May 7 status conference. On May 9, 2007, he was properly served at his official and alternate addresses with an order memorializing the status conference.

Respondent did not file a responsive pleading to the second amended NDC. On May 3, 2007, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. A copy was also served at an alternate

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<sup>3</sup>Both the motion to enter default and the order entering it were properly served on respondent by certified mail, return receipt requested, at his official address and at an alternate address.

address. The motion advised him that his disbarment would be sought if he was found culpable. Respondent did not respond to the motion.

On May 23, 2007, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested, and also at an alternate address.

On June 7, 2007, the State Bar filed a closing brief. Among other things, the brief requested that the court take judicial notice of the transcript of respondent's deposition, the declaration of C. Wallace Coppock and respondent's two prior disciplinary records. The requests as to the deposition and declaration are denied as they are not the proper subject of judicial notice. (Evidence Code section 450 - 452.) Pursuant to Evidence Code section 452, subdivision (d), the court judicially notices respondent's two prior records of discipline.

The State Bar's and the court's efforts to contact respondent after December 2006 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 on June 7, 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 Bar<sup>4</sup>, 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.)

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<sup>4</sup>Future references to the Rules of Procedure are to this source.

**A. Jurisdiction**

Respondent was admitted to the practice of law in California on June 24, 1971, and has been a member of the State Bar at all times since.

**B. Facts**

Respondent was suspended from the practice of law from January 15 until July 15, 2006, pursuant to Supreme Court order no. S137837 (State Bar Court case no. 04-O-13150), filed December 16, 2005. He was also placed on probation with conditions for four years. One of those conditions was that he comply with the provisions of the State Bar Act and the Rules of Professional Conduct.

Charles Wallace Coppock was, at all relevant times, an active member of the State Bar of California entitled to practice law.

Prior to his suspension, respondent represented California Property Management (CPM), which managed residential real property on behalf of property owners. He represented CPM in various matters, including unlawful detainers. William C. Mitchell was the president of CPM and was authorized to act on behalf of property owners in unlawful detainer complaints.

Prior to January 15, 2006, but after he knew he was going to be suspended, respondent and Coppock entered into an agreement in which Coppock would provide legal services to CPM in the filing of unlawful detainer complaints. Pursuant to the agreement, respondent would work directly with CPM in preparing the complaints which would then go to Coppock for review and signature and, later, filing. Coppock would make any necessary court appearances. Respondent would pay Coppock \$100 for each unlawful detainer filed and his regular hourly fee for any appearances or other work done on these cases. CPM would pay respondent \$750 for each unlawful detainer complaint and then respondent would pay Coppock from those funds.

After January 15, 2006, respondent did not consult with Coppock regarding unlawful detainer complaints for CPM. Instead, he prepared the complaints and gave CPM legal advice.

On March 8, 2006, in order to save time in the filing of the unlawful detainer complaints, Coppock suggested that respondent sign Coppock's name to several of them and provided respondent with an exemplar of his signature.

Respondent and Coppock have differing versions of whether Coppock rescinded the March 8 signature authorization. At this time, Coppock did not rescind the underlying business relationship with respondent.

After January 15, 2006, but prior to the dates listed below, respondent engaged in the unauthorized practice of law or other misconduct by:

- (1) giving legal advice and counsel to CPM on unlawful detainees;
- (2) preparing unlawful detainer complaints for CPM and signing Coppock's name on them;
- (3) forging the clients' authorized agent's, William C. Mitchell, signature on the verifications of the unlawful detainer complaints; and
- (4) having the following complaints filed:

Case <sup>5</sup>	Date of Forged Coppock Signature	Date of Forged Mitchell Signature	Date Complaint Filed
<i>Bannister v. Clawson</i> , Solano Co. Superior Court no. FCM093199	2/24/06	2/24/06	2/28/06
<i>Heiman v. Chaironi</i> , case no. 185978	3/14/06	3/14/06	3/14/06
<i>Goyuhenetche v. Wade</i> , case no. 185993	3/15/06	3/15/06	3/15/06
<i>Mora v. Gammon</i> , case no. 185994	3/14/06	3/14/06	3/15/06
<i>Stilson v. Hoenig</i> , case no. 186016	3/16/06	3/16/06	3/17/06
<i>Stilson v. Thompson</i> , case no. 186017	3/16/06	3/16/06	3/17/06
<i>Cole-Dutton LLC v. Clifton</i> , case no. 186088	3/21/06	3/21/06	3/22/06
<i>Dang Puoung v. Morphis/Rocks</i> , case no. 186090	3/21/06	3/21/06	3/22/06

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<sup>5</sup>All cases are filed in Sonoma County Superior Court unless otherwise stated.

The unlawful detainer verifications that respondent signed for CPM were made under penalty of perjury. At the time respondent signed the verifications for Mitchell, he was not entitled to practice law and Mitchell was not residing outside the county.<sup>6</sup>

**C. Conclusions of Law**

**a. Count One - Section 6068, subd. (a) (Unauthorized Practice of Law)**

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By giving legal advice and counsel to CPM on unlawful detainers; preparing unlawful detainer complaints for CPM; and having the complaints filed, respondent practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a).

**b. Counts Two and Three - Section 6106 (Moral Turpitude)**

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106 by signing Coppock's name on the unlawful detainer complaints; by forging CPM's authorized agent's,

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<sup>6</sup>On its own motion, the court judicially notices Code of Civil Procedure, section 446, which, among other things, allows attorneys to verify pleadings for parties who are absent from the county where the attorney has his or her office.

William C. Mitchell, signature on the verifications of the complaints; and by signing CPM's verifications under penalty of perjury when he was not entitled to practice law and when CPM's agent, Mitchell, did not live outside the county. Accordingly, he committed acts of moral turpitude, dishonesty and corruption.

**c. Count Four - Section 6068, subd. (k) (Probation Conditions)**

Section 6068, subdivision (k) requires an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

There is clear and convincing evidence that respondent violated section 6068, subdivision (k), by not complying with disciplinary probation conditions. However, the facts supporting this charge are the same as those supporting the culpability finding regarding section 6068, subdivision (a), so the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of section 6068, subdivision (k). (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155.) It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. "There is 'little, if any, purpose served by duplicative allegations of misconduct.'" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice.

**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. Misconduct<sup>7</sup>, std. 1.2(b).)

Respondent has two prior instances of discipline. (Std. 1.2(b)(i).) By order filed August 4, 1997, in Supreme Court case no. S061675 (State Bar Court case no. 94-O-14770), discipline

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<sup>7</sup>Future references to standard or std. are to this source.



was imposed consisting of stayed suspension for two years and until respondent complied with standard 1.4(c)(ii) and probation for two years on conditions including 90 days' actual suspension. He was found culpable, in one client matter, of violating rules 3-300(A) (two counts) and (B) of the Rules of Professional Conduct and section 6068, subdivision (m). No prior discipline was a mitigating factor. In aggravation, the parties stipulated to multiple acts of misconduct and client harm.

As previously stated, in Supreme Court case no. S137837 (State Bar Court case no. 04-O-13150), filed December 16, 2005, discipline was imposed consisting of stayed suspension for three years and until respondent complied with standard 1.4(c)(ii) and probation for four years on conditions including six months' actual suspension. He was found culpable, in one client matter, of violating rule 3-300 of the Rules of Professional Conduct regarding two loans and section 6068, subdivision (i). Mitigating factors were substantial professional and community service. In aggravation, the parties stipulated to multiple acts of misconduct and one prior instance of discipline.

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

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, the misconduct occurred while respondent was on actual suspension and while he was on probation. It is evident that he is unable or unwilling to conform his behavior to the ethics rules and that he does not respect them. This is a significant aggravating factor.

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to participate therein, a serious aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

## **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).)

Standards 2.6(a) and 2.3 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 engaging in the unauthorized practice of law and committing acts of moral turpitude. Aggravating factors include multiple acts of misconduct, two prior instances of discipline, committing misconduct while on actual suspension and probation and not participating in the disciplinary proceedings prior to the entry of default.

The State Bar recommends disbarment. The court agrees.

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 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 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 instances of discipline have not served to rehabilitate respondent or to deter him from further misconduct. 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.

#### **V. DISCIPLINE RECOMMENDATION**

IT IS HEREBY RECOMMENDED that respondent JAMES JOSEPH BAJGROWICZ be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

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 his 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: August \_\_\_, 2007

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RICHARD A. HONN  
Judge of the State Bar Court