

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

In the Matter of	)	Case Nos. <b>06-O-13459-LMA;</b>
<b>KEVIN JOHN HUGHES,</b>	)	<b>06-O-14458 (Cons.)</b>
<b>Member No. 111640,</b>	)	
<u>A Member of the State Bar.</u>	)	<b>DECISION</b>

**I. Introduction**

In this consolidated default disciplinary matter, respondent **Kevin John Hughes** is charged with multiple acts of professional misconduct in five client matters, including (1) failing to perform services competently; (2) failing to return unearned fees; (3) failing to communicate with clients; (4) improperly withdrawing from employment; and (5) failing to return client files.

The court finds, by clear and convincing evidence, that respondent is culpable of most of the 21 alleged counts of misconduct. In view of respondent's misconduct, his lack of a prior record of discipline in 22 years of practice and the evidence in aggravation, the court recommends, among other things, that respondent be suspended from the practice of law for two years, that execution of suspension be stayed, and that he be actually suspended from the practice of law for two years and until he shows proof satisfactory to the State Bar Court of rehabilitation, present fitness to practice, and present learning and ability in the law, pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

## **II. Pertinent Procedural History**

### **A. First Notice of Disciplinary Charges (Case No. 06-O-13459)**

On March 21, 2007, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. A return receipt was returned to the State Bar. A courtesy copy was also sent to respondent at an alternative address which was also not returned as undeliverable.

Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

### **B. Second Notice of Disciplinary Charges (Case No. 06-O-14458)**

On May 8, 2007, the State Bar filed a second Notice of Disciplinary Charges against respondent. But it was not properly served on respondent. Thus, on May 21, 2007, the State Bar re-filed and served on respondent the second NDC at respondent's official membership records address. A return receipt was returned to the State Bar. A courtesy copy was also sent to respondent at an alternative address which was not returned as undeliverable. Respondent again did not file a response.

Respondent's default was entered on July 6, 2007, and respondent was enrolled as an inactive member on July 9, 2007. Contrary to the State Bar's understanding reflected on its brief filed July 26, 2007, the court had consolidated these two cases in its order of entry of default. The order of entry of default was sent to respondent's official membership records address and a return receipt was signed by "Wendy Hogan" on July 10, 2007, as respondent's agent. Other pleadings sent by the court were not returned as undeliverable.

Respondent did not participate in the disciplinary proceedings. This consolidated matter was submitted for decision on July 26, 2007.

## **III. Findings of Fact and Conclusions of Law**

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on December 12, 1983, and has since been a member of the State Bar of California.

**A. First Notice of Disciplinary Charges**

**1. The Burkowski and Shafran Matter (Case No. 06-O-13459)**

On September 26, 2005, Norm Burkowski and Marlene Shafran hired and paid respondent \$1,500 to set up a trust on their behalf. As part of his legal services, respondent agreed to transfer their two real properties located in San Mateo County and Sacramento County into the trust.

Between September 26, 2005, and January 25, 2006, respondent worked on and completed the trust documents creating the trust.

After January 25, 2006, respondent was to transfer the San Mateo and Sacramento properties into the trust. Although respondent assured his clients on March 9, 2006, that he would resolve all remaining issues regarding the transfer of the two properties into the trust and that he would telephone them the following day, he never did so.

Between March 9 and April 14, 2006, Burkowski and Shafran attempted repeatedly to contact respondent by phone and leaving messages at his cell phone number and also at his office phone number. Respondent did not respond to any of their messages.

On April 14 and October 20, 2006, Burkowski and Shafran wrote to respondent regarding the properties not being transferred into the trust. In their October 20 letter, they also requested the return of their trust documents and a refund of 50% of the advanced \$1,500 fee.

Respondent received the letters, but did not respond, communicate with, provide the documents requested or refund any portion of the unearned fee to Burkowski and Shafran.

At some point between September 26, 2005, and July 11, 2006, respondent abandoned his office at 500 Ygnacio Valley Road, Suite 300, Walnut Creek, CA 94596-2846. Respondent did not inform Burkowski and Shafran that he had abandoned the office nor did he provide them with new contact information.

On February 1, 2007, Burkowski and Shafran e-mailed respondent and renewed their request for all trust papers in respondent's possession.

In his February 1, 2007, e-mail reply, respondent indicated that he would return all documents, including deeds in his possession, the following week. As of March 16, 2007, respondent had not provided the documents to Burkowski and Shafran.

On July 11, 2006, respondent informed the State Bar that he had moved his office. Respondent's official membership records address, effective since July 27, 2005, has remained as 500 Ygnacio Valley Road, Suite 300, Walnut Creek, CA 94596-3846. Although he did not provide the State Bar with a new address, he continued to receive mail addressed to his official address from the State Bar and this court. Furthermore, Deputy Trial Counsel Manuel Jimenez declared that respondent's official telephone number belonged to respondent and that he left respondent a message on June 8, 2007. In other words, respondent has maintained a current address and telephone number to be used for State Bar purposes.

***Count 1(A): Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))<sup>1</sup>***

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

By failing to transfer the San Mateo and Sacramento properties into the trust, respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

***Counts 1(B) and 1(C): Improper Withdrawal from Employment (Rule 3-700(A)(2)) and Failure to Return Client File (Rule 3-700(D)(1))***

Rule 3-700(A)(2) states: "A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules." The State Bar proved by clear and convincing evidence that respondent wilfully violated rule 3-700(A)(2) in count 1(B).

Respondent constructively terminated his services when he took no action on behalf of Burkowski and Shafran after January 2006. He failed to give his clients notice of his intent to withdraw and failed to return the client file, despite the clients' request. Thus, respondent withdrew

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<sup>1</sup>References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to his client's rights in willful violation of rule 3-700(A)(2).

However, as the court has already found respondent culpable of willfully violating rule 3-700(A)(2), the court declines to find respondent also culpable of willfully violating rule 3-700(D)(1) as alleged in count 1(C). Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property.

The rule prohibiting prejudicial withdrawal from employment, rule 3-700(A)(2), is more comprehensive than rule 3-700(D)(1). (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 280.) The rule prohibiting prejudicial withdrawal mandates compliance with the rule requiring the prompt release of all the client's papers and property. Thus, an attorney's failure to promptly return papers may be a portion of the conduct disciplinable as a violation of the rule prohibiting prejudicial withdrawal. (*Ibid.*)

Because respondent's failure to return client file is encompassed in respondent's improper withdrawal from employment, the court rejects a separate finding of culpability under rule 3-700(D)(1). The court therefore dismisses count 1(C) with prejudice.

***Count 1(D): Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))<sup>2</sup>***

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.

Between March 9 and April 14, 2006, Burkowski and Shafran repeatedly called respondent, leaving messages regarding the trust and the transfer of the San Mateo and Sacramento properties. Although respondent received these messages, he did not respond to any of the telephone messages.

The last communication from respondent to Burkowski and Shafran on the trust matter was his February 1, 2007 e-mail.

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<sup>2</sup>References to section are to the provisions of the Business and Professions Code.

By not responding to Burkowski's and Shafran's messages and letters, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 1(E): Failure to Return Unearned Fees (Rule 3-700(D)(2))***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund unearned fees.

Upon respondent's withdrawal from employment and the clients' request in October 2006, respondent was obligated to refund any portion of the unearned fee of \$1,500. By failing to refund to Burkowski and Shafran 50% of the \$1,500 advanced fee, as requested and which respondent had not earned, respondent willfully failed to refund unearned fees in willful violation of rule 3-700(D)(2).

***Count 1(F): Failure to Update Membership Address (§ 6068, Subd. (j))***

Section 6068, subdivision (j), states that a member must comply with the requirements of section 6002.1, which provides that respondent must maintain on the official membership records of the State Bar a current address and telephone number to be used for State Bar purposes.

There is no clear and convincing evidence that respondent failed to maintain a current official membership records address to be used for State Bar purposes. While he may have informed the State Bar in July 2006 that he had moved, respondent continued to receive mail addressed to his official address from the State Bar and this court. Furthermore, the State Bar was able to leave respondent a message on June 8, 2007, on his official telephone number. Thus, respondent has maintained a current address and telephone number to be used for State Bar purposes and he did not violate section 6068, subdivision (j).

**2. The McIntyre Matter (Case No. 06-O-14549)**

On April 11, 2006, Jeff McIntyre hired respondent to handle a trust matter. McIntyre was the trustee of the Grover Trust. He paid respondent \$3,000 in advanced fees to assist with the trust administration. The Grover Trust distributions were to be made in early September 2006.

On May 9, 2006, after being prompted by McIntyre, respondent mailed notification to the trust beneficiaries of their right to contest the trust.

Between May 9 and August 19, 2006, respondent took no further action on the Grover Trust administration.

On August 19, 2006, McIntyre wrote to respondent terminating his services and demanding the return of all documents relating to the Grover Trust. He sent the letter by certified mail and by hand-delivery. Respondent received the letters but did not provide the documents requested or respond to the letters.

Between July 10 and August 18, 2006, McIntyre attempted to communicate with respondent by telephone and emails on at least nine occasions regarding the status of the trust administration. Although respondent contacted McIntyre on two occasions, he did not have the necessary information for his client. Respondent also failed to attend a scheduled meeting with his client.

***Count 2(A): Failure to Perform Competently (Rule 3-110(A))***

Respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to take any further action on the Grover Trust administration after May 9, 2006.

***Count 2(B): Failure to Return Client File (Rule 3-700(D)(1))***

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. Respondent willfully violated rule 3-700(D)(1) by failing to return the client file to McIntyre as requested.

***Count 2(C): Failure to Communicate (§ 6068, Subd. (m))***

By failing to respond to McIntyre's voice-mail messages and e-mails and also failing to appear at a scheduled appointment and provide information to his client, respondent failed to respond to McIntyre's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

**B. Second Notice of Disciplinary Charges**

**1. The Pedri Matter (Case No. 06-O-14458)**

On January 18, 2005, Stacy and Pete Pedri hired respondent to create their estate plan and paid him \$1,500.

On the same day, respondent asked the Pedris to provide him with the address of a rental property and a copy of the grant deed. The Pedris promptly provided the requested information and document to respondent.

On April 12, 2006, the Pedris and respondent met to finalize the estate plan. At that meeting, respondent told the Pedris that he would mail the final copies of the estate plan to the Pedris and he would change title of the rental property into the trust. Thereafter, respondent failed to provide the Pedris with the final estate plan documents, nor did he change title of the rental property into the trust.

From April 12 through September 20, 2006, the Pedris left several messages on respondent's office voice mail requesting that he finish his work on the estate plan. Specifically, on June 21 and July 12, 2006, messages were left on respondent's voice mail, requesting that he finish the work and also that he provide a status update on the estate plan. Respondent received these messages, but failed to respond or finish the work.

Respondent failed to complete the Pedris' estate plan. The services respondent provided to the Pedris were of no value. As of May 21, 2007, respondent had not refunded any amount to the Pedris.

By failing to complete the Pedris' estate plan and taking no action to complete the estate plan, respondent effectively withdrew from representation of the Pedris. At no time did respondent inform the Pedris that he was withdrawing from employment.

***Count 1(A): Failure to Perform with Competence (Rule 3-110(A))***

Respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to complete the Pedris' estate plan from January 18, 2005 through September 20, 2006.

***Count 1(B): Failure to Respond to Client Inquiries (§ 6068, Subd. (m))***

Respondent failed to respond to his clients' reasonable status inquiries in willful violation of section 6068, subdivision (m), by failing to respond to the Pedris' numerous telephone calls requesting a status update on the estate plan.

***Count 1(C): Improper Withdrawal from Employment (Rule 3-700(A)(2))***

Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his clients in willful violation of rule 3-700(A)(2) by not informing the Pedris that he was not going to complete the estate plan and that he was withdrawing from employment.

***Count 1(D): Failure to Refund Unearned Fees (Rule 3-700(D)(2))***

Respondent willfully violated rule 3-700(D)(2) by failing to refund to the Pedris the unearned fee of \$1,500.

**2. The Carmel Matter (Case No. 07-O-10204)**

On September 9, 2006, Charles Carmel hired respondent on behalf of his father Willard Carmel to work on Willard Carmel's trust. At that time, Charles had a power of attorney for his father which permitted him to hire an attorney for his father and communicate with the attorney. Respondent knew that Charles was authorized to act and communicate on Willard's behalf.

On September 9, 2006, Charles paid respondent \$500 for the work to be done on Willard's trust. Respondent received the \$500.

On September 23, 2006, respondent, Charles and Willard met to discuss the work to be done on Willard's trust.

Between September 9 and December 31, 2006, respondent failed to do any work of value on the trust.

Between September 23 and November 22, 2006, Charles attempted to communicate with respondent regarding the trust status by leaving telephone messages on respondent's office telephone answering machine, sending e-mails, and sending a letter. Respondent received these messages, e-mails and letter, but failed to respond.

Respondent did not complete the work on Willard's trust. He provided no service of value to Willard or Charles. As of May 21, 2007, respondent had not refunded any money to Willard or Charles.

By failing to complete Willard's trust between September 9 and December 31, 2006, respondent constructively terminated his employment with Willard. Respondent did not inform

Willard or Charles of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Willard.

***Count 2(A): Failure to Perform with Competence (Rule 3-110(A))***

Respondent recklessly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to do any work of value on Willard's trust.

***Count 2(B): Failure to Respond to Client Inquiries (§ 6068, Subd. (m))***

Respondent failed to respond to the reasonable status inquiries of a client in willful violation of section 6068, subdivision (m), by failing to respond to Charles's telephone messages, e-mails and letter.

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

Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client and thereby improperly withdrew from employment with a client in willful violation of rule 3-700(A)(2) by not informing Charles or Willard of his withdrawal from employment.

***Count 2(D): Failure to Refund Unearned Fees (Rule 3-700(D)(2))***

Respondent willfully violated rule 3-700(D)(2) by failing to refund to Charles or Willard the unearned fee of \$500. (The NDC alleged that respondent failed to return \$1,500 in unearned fees. But based on contrary evidence, respondent was paid \$500, not \$1,500. (Rules Proc. of State Bar, rule 200(d)(1)(A).))

**3. The Hewell Matter (Case No. 07-O-10822)**

On October 2, 2005, Marty Hewell hired respondent to create an estate plan which included preparing a revocable living trust and an advanced health directive and transferring title to several properties into the trust. Hewell provided respondent with the addresses of the properties and the parcel number for each property and paid respondent \$500.

At the same time, Hewell informed respondent that he had leukemia and that he was in his eighties. Therefore, time was of the essence.

On October 19, 2005, respondent sent Hewell drafts of: (1) Revocable Trust; (2) Last Will and Testament; (3) Durable Power of Attorney (Financial); (4) Advanced Health Care Directive; (5) Funding Instructions; and (6) Certification of Trust.

On October 30, 2005, Hewell paid respondent \$1,000. Thus, respondent received a total of \$1,500 in fees.

On November 22, 2005, Hewell signed: (1) quitclaim deeds for the properties transferring them into the revocable living trust; (2) Certification of Trust; (3) Durable Power of Attorney naming Margie Del Moro as the holder of the power of attorney; and (4) Advance Health Care Directive. Respondent had notarized the documents executed by Hewell. Thereafter, respondent failed to: (1) record the deeds; (2) complete the Last Will and Testament; and (3) complete the Revocable Trust.

On June 13, 2006, Margie Del Moro, on behalf of Hewell, e-mailed respondent requesting a status update on the estate plan. She noted that respondent's telephone had been disconnected and Hewell's properties had not been properly transferred into the trust. She requested respondent to give her a telephone call.

On June 19, 2006, respondent replied to Del Moro. Respondent stated that Hewell had signed the deeds transferring the properties into the revocable trust, but that the deeds had not yet been recorded. He stated that he would send Hewell a note along with copies of the deeds that week. Respondent also provided the telephone number (925) 858-4184 for future communication.

On July 9, 2006, Del Moro, on behalf of Hewell, e-mailed respondent regarding the status of the estate plan. She noted that Hewell had not received the deeds mentioned in respondent's June 19, 2006 e-mail and requested a status update. Respondent received this e-mail but did not respond.<sup>3</sup>

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<sup>3</sup>The NDC states, "Respondent received this e-mail, but did respond." However, given the use of the conjunction "but," as well as the allegations found in paragraph 66 of the NDC, the court finds that the NDC contains a typographical error, and that the NDC should have stated that respondent did not respond to Margie Del Moro's e-mail. However, after considering the overall content of the NDC, the court finds that respondent had sufficient notice of the allegations against him, and that there are no due process concerns resulting from the typographical error.

On September 11, 12, 13 and 14, 2006, Del Moro left messages on respondent's telephone requesting a status update on Hewell's estate plan. She also requested a refund of the \$1,500 paid. Respondent received these messages, but again he did not respond.

Thereafter, Hewell contacted attorney Linda Boudier regarding his estate plan which had not been completed and the \$1,500 payment. Hewell authorized attorney Boudier to contact respondent.

On October 19, 2006, attorney Boudier left a message on respondent's office telephone concerning the Hewell estate plan. Respondent received this message, but did not respond.

On October 27, 2006, attorney Boudier wrote to respondent, asking respondent to refund to Hewell the \$1,500 as respondent had not completed the work. Respondent received this letter, but again he did not respond.

On January 9, 2007, respondent finally returned the client file to Hewell. The estate plan was not complete, nor had the quitclaim deeds been recorded.

Respondent did not provide any service of value to Hewell. As of May 21, 2007, respondent had not refunded any portion of the unearned fees of \$1,500 to Hewell.

By taking no action to complete the Hewell's estate plan after November 22, 2005, respondent effectively withdrew from representation of Hewell. At no time did respondent inform Hewell that he was withdrawing from employment.

***Count 3(A): Failure to Perform with Competence (Rule 3-110(A))***

Respondent recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) by failing to complete Hewell's estate plan from October 2, 2005 through January 9, 2007, and by not recording the quitclaim deeds.

***Count 3(B): Failure to Respond to Client Inquiries (§ 6068, Subd. (m))***

Respondent failed to respond to his client's reasonable status inquiries in willful violation of section 6068, subdivision (m), by failing to respond to Del Moro's July 9 and September 11 through 14, 2006, status inquiries on behalf of Hewell.

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

Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in willful violation of rule 3-700(A)(2) by not

informing Hewell of his intent not to complete the estate plan and that he was withdrawing from employment.

***Count 3(D): Failure to Refund Unearned Fees (Rule 3-700(D)(2))***

Respondent willfully violated rule 3-700(D)(2) by failing to refund to Hewell the unearned fee of \$1,500.

**IV. Mitigating and Aggravating Circumstances**

**A. Mitigation**

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>4</sup>

However, respondent's lack of a prior record of discipline in 22 years of practice of law at the time of his misconduct in 2005 is a significant mitigating factor. (Std. 1.2(e)(i).) "Absence of a prior disciplinary record is an important mitigating circumstance when an attorney has practiced for a significant period of time." (*In re Young* (1989) 49 Cal.3d 257, 269.)

**B. Aggravation**

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

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

Respondent's misconduct caused his clients substantial harm. His failure to return unearned fees deprived his clients of their funds. (Std. 1.2(b)(iv).)

Respondent's failure to return unearned fees and client files demonstrate indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

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

**V. Discussion**

The purpose of 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

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<sup>4</sup>All further references to standards are to this source.

professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Respondent's misconduct involved five client matters. The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. The standards applicable to this case are standards 1.6, 2.4(b), 2.6, and 2.10.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.) It has been long-held that the court "is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar recommended conflicting level of discipline in its closing brief. Deputy Trial Counsel Manuel Jimenez urged three years actual suspension and disbarment in the same closing brief filed July 26, citing several cases, including *Bowles v. State Bar* (1989) 48 Cal.3d 100 in support of the recommended discipline.

In *Bowles v. State Bar* (1989) 48 Cal.3d 100, the attorney abandoned five clients, issued a bad check, falsely promised that he would "make good" the check, and failed to forward an arbitration award to a client. The Supreme Court found that such misconduct was the functional equivalent of issuing "numerous" bad checks, which supported a conclusion of deceit. In addition, the record was completely devoid of mitigating factors and demonstrated the attorney's complete disinterest in the practice of law. His misconduct began six years after he was admitted to the practice of law. Therefore, his habitual disregard of clients' interests combined with failure to communicate with clients constituted acts of moral turpitude justifying disbarment.

Unlike *Bowles*, respondent's misconduct did not involve acts of moral turpitude and he began his misconduct 22 years after he had been admitted to the practice of law. Thus, respondent's misconduct is not as egregious as that of the attorney in *Bowles*.

The court finds these cases to be instructive: *Lester v. State Bar* (1976) 17 Cal.3d 547; *Segal v. State Bar* (1988) 44 Cal.3d 1077; and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074, whose level of discipline ranges from six months to two years actual suspension.

In *Lester*, the Supreme Court actually suspended an attorney for six months for failing to perform services in four matters, failing to refund any portion of advanced fees, failing to communicate with clients and with misrepresentation. Aggravation included his lack of candor before the State Bar and general lack of insight into the wrongfulness of his actions.

In *Segal*, the attorney was actually suspended for one year for his misconduct in four matters, including failure to perform services, failure to return unearned fees, failure to communicate promptly, and issuance of two bad checks. He also had a prior record of discipline involving bad checks.

The Supreme Court in *Bledsoe* imposed a two-year actual suspension on an attorney who had abandoned four clients, failed to return unearned fees, failed to communicate with three clients, made misrepresentations to a client regarding her case status, and failed to cooperate with the State Bar. The attorney had also defaulted in the disciplinary proceeding

Here, the gravamen of respondent's misconduct is his failure to perform services in five client matters in two years and failure to return unearned fees of \$4,250 to four clients. Respondent's misconduct reflects a blatant disregard of professional responsibilities. He had flagrantly breached his fiduciary duties to his clients and abandoned their causes.

Respondent's client abandonments and default in this matter weigh heavily in assessing the appropriate level of discipline. Respondent had not returned any portion of the unearned fees to his clients.

Failing to appear and participate in this hearing shows that respondent comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.) His failure to participate in this proceeding leaves the court without information about the underlying cause of respondent's misconduct or of any mitigating circumstances surrounding his misconduct.

In recommending discipline, the “paramount concern is protection of the public, the courts and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) But the State Bar’s recommendation of disbarment or three years of actual suspension is excessive. Disbarment will not be recommended where there is no evidence that a sanction short of disbarment is inadequate to deter future misconduct and protect the public. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 472.) In view of respondent’s misconduct, the case law, the aggravating evidence, and his lack of a prior record of discipline in 22 years, the court concludes that placing respondent on an actual suspension for two years would be appropriate to protect the public and to preserve public confidence in the profession.

Moreover, it has long been held that “[r]estitution 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.) Therefore, respondent should refund all legal fees to his clients if he had not done so and restitution should be included as a probation condition.

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent **Kevin John Hughes** be suspended from the practice of law for two years, that said suspension be stayed, and that respondent be actually suspended from the practice of law for two years and until he files and the State Bar Court grants a motion to terminate his actual suspension (Rules Proc. of State Bar, rule 205).

It is recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of her rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii). (Rules Proc. of State Bar, rule 205.)

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination during the period of his actual suspension. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

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. Willful failure to comply with the provisions of rule 9.20 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.<sup>5</sup>

#### **VII. Costs**

It is further 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: October \_\_\_\_, 2007

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**LUCY ARMENDARIZ**  
Judge of the State Bar Court

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<sup>5</sup>Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)