PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **JACK H. BOYAJIAN,** A Member of the State Bar.	**Nos. 06-TE-15159, 07-TE-13054** **ORDER GRANTING APPLICATION FOR INVOLUNTARY INACTIVE ENROLLMENT**

The hearing judge below found that respondent, Jack H. Boyajian, "uses his California law license and his California professional law corporations to aid him in his debt collection activities throughout the United States." Indeed, since 2003, he and his law firms have attempted to collect more than two million consumer debts. Unfortunately, in so doing, respondent has leveraged his California law license for improper purposes, resulting in more than 1,000 California and out-of-state consumer complaints, over 129 consumer lawsuits against him and his law firms, and 10 enforcement actions by various attorneys general and other state agencies.

The hearing judge concluded that the State Bar failed to establish by clear and convincing evidence that the requirements of Business and Professions Code section 6007, subdivision (c),[1] had been satisfied, and he accordingly denied the State Bar's applications to involuntarily enroll respondent as an inactive member. The State Bar asks us to overrule this decision. As discussed more fully below, we find that the hearing judge not only committed legal error, he also abused his discretion, because the overwhelming evidence in the record compels the conclusion that respondent's conduct poses a substantial threat of harm to the public. Accordingly, we order that

[1]All further references to "section(s)" shall be to the Business and Professions Code unless otherwise noted.

respondent be involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

The following facts are established by respondent's declaration filed in the instant matter, as well as by his declarations, sworn deposition testimony and answers to interrogatories given in various other lawsuits and enforcement actions in which he is or was a party, all of which were provided under penalty of perjury.[2]

In 1999, respondent received his license to practice law in California, which is the only state where he is licensed to practice. Prior to 1999, he was involved in the debt collection business in New Jersey through JBC & Associates, Inc., a family-owned company of which he was president. In 2001, respondent formed his first law firm, JBC & Associates, P.C., a California professional corporation. Although he maintained an office in California (initially in Beverly Hills), respondent located the principal office of JBC & Associates, P.C. in Bloomfield, New Jersey, because it was too costly to relocate his family from New Jersey to California. Respondent "routinely" went to his office in Bloomfield, but he also continued to maintain a practice in California and visited his Beverly Hills office once or twice a month for approximately four or five days. He also worked on California matters while traveling and while at his home and law office in New Jersey. As he noted, "In today's age of internet and wireless communication, my office is virtually everywhere with my files scanned and at my disposal online."

Since 2001, respondent has expanded his legal domain through a series of successor law firms, all with their principal offices located in New Jersey. In 2003, respondent changed the

---

[2]Respondent's statements were admitted into evidence pursuant to an order of the hearing judge issued on June 18, 2007, wherein the judge set forth the scope of the evidence admitted and considered by the court. On appeal, neither party has challenged the June 18th order, and we thus rely on that admitted evidence for our factual recitation and findings.

name of JBC & Associates, P.C. to JBC Legal Group "[i]n order to remove any doubt that the entity was in fact a law firm." However, "the [successor] firm, its offices and personnel as well as clients was [sic] the same."[3] According to respondent, one of the primary advantages of "operating as a law firm" is that "you are exempt from the licensing requirements" when "collecting debt as a law firm in various jurisdictions."[4]

JBC Legal grew "significantly and almost exclusively in debt collections . . . ." As of 2004, JBC Legal had over 75 employees (later reduced to 35), including three other attorneys, two of whom were of counsel, plus "paralegals, accounting staff members, administrative personnel, collectors, supervisors, managers, human resource personnel." Almost 90 percent of JBC Legal's revenues was derived from its debt collection activities. Respondent characterized the services that JBC Legal provided as "all of the services that a client would need in the field of legal practice . . . . Writing letters, talking to people, responding to questions from the staff." More specifically, respondent described his legal services to creditor clients on behalf of JBC Legal as follows: "[I] reviewed files, spoke to clients, met with managers, spoke to counsel, reviewed cases." He averred that he devoted a significant amount of his time to determining which debtors should receive a debt collection letter and drafting those letters, using "several different techniques to decide which letters go to whom." In 2006, respondent maintained that "I am also the person that has primary responsibility for drafting all letters sent by my law firm to debtors throughout the nation." Respondent estimated that as of 2004, JBC Legal sent 20,000-30,000 debt collection notices per month to consumers in various states.

---

[3]Hereafter, we refer to the two law firms, JBC & Associates, P.C., and JBC Legal Group collectively as "JBC Legal" unless otherwise expressly stated. In 2006, JBC Legal changed its name one more time to Boyajian and Brandon Legal Group, P.C., at the behest of the New Jersey Attorney Ethics Committee.

[4]Since obtaining his California law license and operating his debt collection activities through his law firms, respondent has asserted his standing as an attorney and/or law firm to secure an exemption from state laws regulating the practices of debt collectors in various states, including Minnesota, North Carolina, and Washington.

In 2004, respondent formed another law firm, Boyajian Law Offices, P.C. (BLO), a California professional corporation, with its principal place of business in Rutherford, New Jersey. Respondent described BLO as "a completely new and different law firm with the intent of establishing a wide network of attorneys who would be hired as direct employees or as of counsel located in many different jurisdictions to provide potential clients with the ability to refer accounts in many states to one firm who could efficiently manage a geographically diverse portfolio." Although BLO shared a few clients with JBC Legal, respondent maintained that he operated JBC Legal and BLO independently, each with its own separate "book of accounts, client[s], employees, offices, books and records, etc."

According to respondent, BLO "eventually engaged up to 30 attorneys, mostly under an 'of counsel' arrangement, where each of their offices was also an office of BLO, connected virtually through the internet, with paralegal and administrative support available from the centralized operational center located in Rutherford, New Jersey." Respondent estimated that about half of BLO's work was related to creditors' remedies, and the other practice areas included "real estate transactions, corporate litigation . . . and entertainment law."[5]

BLO used collection letters similar in content to those of JBC Legal, as well as phone calls, to contact consumer debtors. The record shows that BLO engaged in collection activities as recently as October, 2007.

As president and sole owner of both BLO and JBC Legal, respondent "would spend the amount of time necessary in both firms." He also averred that "[b]oth JBC and BLO expended

---

[5]On its website, www.boyajianlaw.com, BLO describes its expertise as "a multi-functional, full-service law firm specializing in asset recovery, real estate and entertainment law . . . ." Respondent is described as "having extensive knowledge of finance, the law and the management of residential housing [which] has given him a unique ability to address the various and intricate issues involved in the [condominium] conversion process." The website also described BLO's "New Jersey headquarters," and noted it had expanded into an additional 10,000 square feet of office space as of 2003 to accommodate a total staff of about 200, including a Senior Attorney and four associates, plus paralegals and other "professionals." BLO also listed a Santa Ana, California office on the same website.

tens of thousands of man hours over the past six (6) years to identify, correct and otherwise manage its client's collection accounts as part of its legal services and all in accordance with federal and state laws." Nonetheless, he also acknowledged that with his "success came a large number of law suits [against him and his firms] claiming FDCPA[6] violations. Most of the cases were settled but some were adjudicated." In fact, between 2001 and the present, more than 1,000 consumer complaints and about 130 lawsuits have been filed nationwide against JBC Legal and BLO.[7] In addition, there have been at least 10 enforcement actions brought by state attorneys general and other state agencies against respondent and/or his law firms.[8] Some of these actions are still pending, and many of the consumer complaints are quite recent. Between August 30, 2006, and May 8, 2007, the State of New Jersey received 15 consumer complaints against respondent and his law firms, in addition to the 493 complaints filed against them between 2003 and 2006.

B. Procedural Background

On March 8, 2007, the State Bar filed its initial Verified Application for Involuntary Inactive Enrollment with supporting documents and evidence, Case No. 06-TE-15159, alleging that respondent, Jack H. Boyajian, both individually and through his various law firms, caused

---

[6]As used herein, "FDCPA" refers to the Fair Debt Collections Practices Act title 15 United States Code section 1692 et seq.

[7]Lawsuits claiming illegal debt collection practices were filed in the following 11 states: Connecticut, Pennsylvania, California, Washington, Minnesota, New York, Maryland, Michigan, Wisconsin, Montana, and Illinois. Consumer debtors have been certified as classes in cases in California, Minnesota, and Pennsylvania.

[8]Enforcement actions have been brought against respondent, JBC Legal, and more recently, BLO, by the following attorneys general: Connecticut; Minnesota; West Virginia; and New York.

Cease and desist orders have been issued to enjoin improper debt collection practices in the following states: Maryland, Connecticut, West Virginia, North Dakota, Maine, and Idaho. In 2006, the Supreme Court of New Jersey, Office of Attorney Ethics, filed disciplinary charges against Boyajian, his associate attorney Marvin Brandon, and JBC Legal, alleging that Boyajian engaged in the unauthorized practice of law, which are still pending.

substantial harm to the public from widespread misconduct in his nationwide, high-volume debt collection practices. The alleged misconduct included, inter alia, FDCPA violations, violations of various state laws, and violations of the California Business and Professions Code and Rules of Professional Conduct.[9] In its application, the State Bar alleged specific misconduct arising from respondent's debt collection activities in the following 17 states: California; Connecticut; Minnesota; Illinois; Pennsylvania; Missouri; Tennessee; Washington; Kansas; Kentucky; Arizona; Maryland; Ohio; Massachusetts; West Virginia; New Jersey; and New York.

On August 9, 2007, the State Bar filed a second Verified Application for Involuntary Inactive Enrollment with supporting documents, Case No. 07-TE-13054,[10] alleging that Boyajian failed to comply with court orders, to report judgments against him to the State Bar, and to cooperate with State Bar disciplinary investigations. The Applications identified numerous pending State Bar investigations; however, no disciplinary proceedings have been commenced. The Applications were considered together, and, after hearings, the matter was submitted on September 17, 2007.[11]

Although the focus in the proceedings below was on the allegations of FDCPA violations, the hearing judge also considered the issues of unauthorized practice of law (UPL) and holding out as entitled to practice, which were reflected in his decision. The matter was submitted on September 17, 2007, and the decision was filed on October 2, 2007, denying the State Bar's two Applications to involuntarily enroll respondent as an inactive member because the hearing judge found the State Bar failed to satisfy its evidentiary burden under section 6007, subdivision (c).

---

[9]Unless otherwise noted, all further references to rule(s) are to the Rules of Professional Conduct of the State Bar of California.

[10]Hereafter, both verified applications are collectively referred to as Applications, unless otherwise noted.

[11]Prior to the hearing below, the State Bar requested the dismissal of respondent's various law firms, without prejudice, which the hearing judge granted on May 17, 2007.

The State Bar filed a Petition for Review on November 29, 2007, which was denied without prejudice to re-file with appropriate record citations. The Amended Petition for Review was filed on December 21, 2007, and we granted interlocutory review on January 7, 2008. In so doing, we specifically requested that the parties address in their briefing the issues of the UPL and the unlawful holding oneself out as entitled to practice in those jurisdictions where respondent conducted his debt collection practice.

On February 14, 2008, respondent filed his response, which was due on February 11, together with a request for leave to file the untimely response, which we granted on February 15, 2008. On February 19, 2008, we granted respondent's request for permission to file an untimely response and provided the State Bar with five days after service of our order to file a reply. The State Bar filed its reply on February 29, 2008.

II. LEGAL REQUIREMENTS

A. Requirements for Involuntary Inactive Enrollment (§ 6007, subd. (c))

Section 6007, subdivision (c)(1) provides for an order of involuntary inactive enrollment "upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public . . . ." Under section 6007, subdivision (c)(2), this ultimate determination must be predicated on the following findings:

> "(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.
> (B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood the harm will recur or continue.
> (C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter."

In our discussion below, we make findings as to each of these elements, all of which must be established by clear and convincing evidence. (Rules Proc. of State Bar, rule 466(b)(2); *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

B. The Standard of Review: Abuse of Discretion/Error of Law

In proceedings conducted pursuant to section 6007, subdivision (c), the standard of review is abuse of discretion or error of law. (Rules Proc. of State Bar, rule 467.) Accordingly,

we review the decision of the hearing judge " 'not with an intention of substituting the view of this court for that of the hearing judge, but rather with the intention of "employ[ing] the equivalent of the substantial evidence test by accepting the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences [citations omitted]." ' [Citation.]" (*In the Matter of Terrones* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 289, 293.) We also review the record to determine if any errors of law have been committed. (Rules Proc. of State Bar, rule 300(k).)

We find that the hearing judge committed the following errors of law: 1) the failure to make findings of fact as required by Rules of Procedure of the State Bar, rule 466; 2) the application of the criminal standard of "beyond a reasonable doubt" to prove the charges of UPL and holding out as entitled to practice; and 3) the imposition of an "exigency" requirement constituting "a current, imminent pending danger" to prove a substantial threat of harm under section 6007, subdivision (c).

The decision of the hearing judge merely summarized the factual allegations contained in the State Bar's two Applications, but it made no express findings of fact regarding these specific allegations as required by Rules of Procedure of the State Bar, rule 466(a). The hearing judge also failed to render findings of fact as to whether each of the factors prescribed by section 6007, subdivision (c)(2) had been proven by clear and convincing evidence. (Rules Proc. of State Bar, rule 466 (b)(2).) These omissions constitute legal error.

The hearing judge also erred as a matter of law in finding that UPL and holding oneself out as entitled to practice requires proof beyond a reasonable doubt. As we discuss on a state-by-state basis below, culpability for UPL and holding oneself out may be established by clear and convincing evidence when this conduct is proscribed by rules of professional conduct. (Cf. *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 903 fn. 11 [requiring proof beyond a reasonable doubt for violation of *criminal* statute prohibiting UPL].)

The hearing judge also committed legal error by interpreting section 6007, subdivision (c) to require proof of an "exigency." He arrived at this interpretation by reviewing the statutory

language of subdivisions (c)(1) and (c)(2) of section 6007, which directs that "the attorney's conduct *poses* a substantial threat" and finding that the use of the present tense of the word "poses" suggests the need to prove "a current, imminent, pending danger." (Italics added.)

The legislative history of section 6007, subdivision (c), clearly belies this interpretation. When subdivision (c) was added to section 6007 in 1985, it included the requirement in subdivisions (c)(1) and (c)(2) and (c)(5) that "the attorney's conduct poses an *imminent* threat of harm." (Italics added.) The word "imminent" was deleted in 1986 and the word "substantial" was inserted in its stead in all three subsections. We note, too, that in 1986, the legislature lessened the burden of proof of "substantial threat of harm" by changing the language of section 6007, subdivision (c)(2)(A) requiring evidence that "the attorney has caused or is causing *irreparable* harm" to proof that "the attorney has caused or is causing *substantial* harm to . . . the public." (Italics added.) As a further lessening of the required proof of harm, the legislature in 1986 amended subdivision (c)(2)(B) to allow a showing of "*reasonable* likelihood that harm will reoccur" to replace the "*substantial* likelihood that harm will reoccur." (Italics added.) The hearing judge's interpretation of section 6007 imposing a stricter standard of imminent danger is clearly inconsistent with the legislative history of the statute, which deleted the requirement of "imminent" harm and substituted a more lenient standard of proof.

The hearing judge compounded his error by engrafting on to the exigency requirement a "corollary" condition that the conduct at issue cannot be dated and he accordingly denied the relief sought by the State Bar because he found that it failed to timely file its Applications. The hearing judge made no factual findings establishing that the purported delay resulted in a showing of prejudice to respondent. (*Harris v. State Bar* (1990) 51 Cal.3d 1082, 1089 ["The imposition of discipline may be challenged on the basis of delay only upon a showing of specific prejudice. [Citations.]"].) Further, the misconduct alleged does not appear to be "stale" as characterized by the hearing judge, but rather appears to be continuous and continuing. There is evidence in the record of complaints as late as 2007, with at least one complaint filed by a

consumer two months *after* the State Bar filed its initial application for involuntary inactive enrollment.

Finally, we look to *Conway v. State Bar* (1989) 47 Cal.3d 1107, 1111-1112, where an attorney was ordered involuntarily inactively enrolled in 1988 based on conduct that began in 1983. Furthermore, despite investigation of several complaints against Conway, the State Bar had not filed charges at the time it sought inactive enrollment. The California Supreme Court found that section 6007, subdivision (c), is aimed at protecting the public from the threat of harm based on a finding that the attorney has "*already caused,* or be causing, substantial harm . . . ." (*Id.* at p. 1117, italics added.)

Based on the clear and convincing evidence in the record, we also find that the hearing judge abused his discretion in failing to find a reasonable probability that the State Bar will prevail on the charges that respondent committed UPL, unlawful holding out as entitled to practice and/or acts of moral turpitude as a result of his misrepresentations as to his status as an attorney in New Jersey, Connecticut, Ohio, and Minnesota in violation of section 6068, subdivision (a), section 6106, and rule 1-300(B).[12]

The hearing judge further abused his discretion in concluding that the State Bar failed to establish that respondent's conduct poses a substantial threat of harm, in view of clear and convincing evidence in the record that: 1) respondent has caused substantial harm to the public; 2) the public is likely to suffer greater injury from denial of involuntary inactive enrollment than the attorney is likely to suffer if it is granted; and 3) there is a reasonable likelihood that the harm will recur.

---

[12]In view of the expedited nature of these proceedings (Rules Proc. of State Bar, rule 460 (b)), we have considered only some of the charges alleged in the Applications, which more than satisfy the requirements of section 6007, subdivision (c). Our order in the instant matter is not intended as a binding or preclusive determination of the issues to be litigated in the subsequent, formal disciplinary case (*Conway v. State Bar, supra,* 47 Cal.3d at p. 1119), including, without limitation, the factual or legal issues relating to alleged violations of the FDCPA, 15 U.S.C. § 1692e(3).

III. CHARGES OF HOLDING OUT AND/OR UNAUTHORIZED PRACTICE OF LAW

The fundamental concern running through the regulation of UPL and holding out in virtually every state is that of consumer protection. One simply "cannot expressly or impliedly create or leave undisturbed the false impression that he or she has the present or future ability to practice law" when in fact he or she is ineligible to practice in the jurisdiction. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91 [suspended attorney found to have created a false impression that he was currently able to practice by using the term "Member of the State Bar" and the honorific "Esq." next to his signature on a job application].)

We have focused our attention on the State Bar's charges of UPL, holding out as entitled to practice law and misrepresentations in connection therewith, because respondent's utilization of his law license and his law firms as leverage for his nationwide debt collection practice is at the heart of our concern about public harm. As the Third Circuit has explained: "Abuses by attorney debt collectors are more egregious than those of lay collectors because a consumer reacts with far more duress to an attorney's improper threat of legal action than to a debt collection agency committing the same practice. A debt collection letter on an attorney's letterhead conveys authority and credibility." (*Crossley v. Lieberman* (3rd Cir. 1989) 868 F.2d 566, 570, followed by *Martsolf v. JBC Legal Group, P.C., Jack H. Boyajian, et al.* (M.D. Pa., Jan. 30, 2008, Civ. A. No. 04-CV-1346) 2008 WL 275719 [FDCPA action against respondent and JBC Legal].)

The Third Circuit's observations are borne out in the instant matter. For example, a Kentucky recipient of a debt collection letter from BLO in September 2006 attested: "I thought that I was calling a law office since it does say Boyajian Law Office as the heading on the top of the letterhead, and they were threatening to sue me if I did not pay the amount they were demanding that [sic] to pay them." Another consumer in Minnesota attested: "I believed this letter [from JBC Legal] was from a lawyer, so I was concerned." A New Jersey consumer described his reaction upon receiving a debt collection letter from BLO in 2006: "This was a threatening letter. I am 88 years old and I was very upset after reading this letter."

In considering the charges of UPL and holding out, we have reviewed more than 100 exemplars of respondent's debt collection letters in the record. He has repeatedly attested that these letters were drafted and sent pursuant to his direction by and through JBC Legal and BLO to consumers in the 16 states identified in the Applications. Our analysis is not confined to the substantive *content* of these letters; we also look to the *form* of the letters, such as the use of letterhead and the terms "Esq.," "attorney at law" and "Member of the Bar." These professional appellations and letterhead stationery designating a law office and satellite offices may be considered as evidence of holding oneself out as entitled to practice. (*In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at p. 903 [designation of licensed status in California, use of term "of counsel" on correspondence and business cards, and listing of a South Carolina address as "administrative office" constituted UPL in California and South Carolina in violation of rule 1-300(B)].)

As a general matter, we find that respondent's retention of local attorneys in approximately 30 states as "of counsel" does not insulate him from charges of UPL, holding out as entitled to practice or misrepresentation. The conduct at issue here is not that of the local attorneys, but rather that of respondent, who was responsible for drafting and sending the debt collection letters. Furthermore, a review of BLO's contracts with its local attorneys confirms that they were "of counsel" in name only. There was no contractual obligation to maintain a bona fide local BLO law office where the "of counsel" attorney could be reached on a regular and continuous basis during normal business hours by BLO's clients and adversaries. (In fact, the "Office Locations" listed on the BLO letterhead were not even identified with local addresses or local phone numbers; instead, the letterhead listed the phone number and address of BLO's office

in Rutherford, New Jersey.) Nor were there any contractual rights or duties giving the local attorneys management responsibility for the operation of the BLO law firm within their local states. (See, e.g., N.J.Eth.Op. 550 (Jan. 24, 1985), 115 N.J.L.J. 77, 1985 WL 150695 (N.J. Adv.Comm.Prof.Eth.) [New Jersey attorney must be actively responsible for out-of-state firm's practice in New Jersey and must maintain bona fide office].) In actuality, these "of counsel" attorneys were merely independent contractors who continued to maintain their own law practices in their own names or the names of their local law firms and were paid a contingency fee for litigating debt recovery cases plus a de minimus retainer fee. Finally, respondent operated JBC Legal's debt collection practice in virtually every state in the nation without a local office and without "of counsel" attorneys (except in a few states).

In reaching his conclusion that the State Bar failed to prove UPL, holding out and misrepresentation, the hearing judge focused on certain elements of respondent's activities, when in fact "consideration of the entire pattern of conduct is necessary. [Citation.]" (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 669.) As discussed below, we conclude that the hearing judge abused his discretion by ignoring the totality of respondent's activities, which clearly and convincingly establish a reasonable probability that the State Bar will prevail on its charges of UPL, holding out as entitled to practice and misrepresentations in New Jersey, Connecticut, Ohio, and Minnesota.

A. New Jersey

1. Findings of Fact

Although the principal offices for respondent's two law firms, JBC Legal and BLO, are located in New Jersey, he is not licensed to practice in that state.[13] Presently, the New Jersey Attorney General's Office, Division of Consumer Affairs is investigating respondent and his law firms regarding 508 consumer complaints it has received about respondent's debt collection practices during the past four years.[14] Fifteen of those complaints were filed as recently as August 30, 2006, through May 4, 2007. On May 18, 2006, the New Jersey Supreme Court, Office of Attorney Ethics filed a complaint against respondent and JBC Legal alleging, inter alia, UPL in violation of New Jersey Rules of Professional Conduct rule 5.5(a)(2).

JBC Legal's principal office is located in Bloomfield, New Jersey. As of 2004, it had over 100 employees (later reduced to 35 employees). Respondent's other law firm, BLO, had about 200 employees as of 2007. Respondent described BLO's office in Rutherford, New Jersey, as the law firm's "centralized operational center" for its nationwide debt collection practice.

---

[13]Respondent applied for a license to practice after he passed the New Jersey bar exam in 1996. On March 15, 1999, the New Jersey Committee on Character recommended to the Supreme Court of New Jersey that it should withhold certification of respondent on the basis of his "gross financial mismanagement, his lack of complete candor, and his failure to acknowledge responsibility for his acts and omissions . . . ." On March 31, 1999, respondent withdrew his application for admission to practice, without prejudice to his right to reinstate it.

[14]Generally, the complaints concern: 1) threatening legal action that the law firms do not intend to take; 2) threatening legal action over time-barred debts; 3) misrepresenting the amount of the debts; 4) misrepresenting the involvement of an attorney; 5) engaging in harassing or abusive collection practices; and 6) failing to respond to consumer requests to cease communication and/or provide verification of the debts.

Respondent serves as sole shareholder and president of both law firms, and he resides in New Jersey, traveling to his California offices a couple of times a month.

As the principal attorney for the two law firms, respondent provided "all of the services that a client would need in the field of legal practice," e.g., he "reviewed files, spoke to clients, met with managers, spoke to counsel, reviewed cases." A significant amount of his time was spent determining which debtors should receive debt collection letters and drafting those letters, which he described as his "primary responsibility."[15]

The record contains 35 exemplars of collection letters admitted into evidence, which were sent by JBC Legal and BLO to New Jersey consumers. There are three basic letterheads: 1) "JBC & Associates, P.C., Attorneys at Law, a California Professional Corporation;" 2) "JBC Legal Group, P.C., Attorneys at Law, a California Professional Corporation;" and 3) Boyajian Law Offices. The common thread among all of the letterheads, as well as the BLO website, is the designation of a New Jersey address as the principal office, with New Jersey contact information as to fax numbers.

Some of the letterhead stationery identified "JBC & Associates, P.C., Attorneys at Law," but listed no attorney by name and did not indicate that JBC Legal was a California professional

---

[15]Parenthetically, these factual findings alone would support a conclusion that respondent committed UPL in New Jersey. (N.J. Stats Ann. 2C:21-22; N.J. Court Rules 1:22-1; N. J. Rules Prof. Conduct rule 5.5(a)(1); *In re Jackman* (2000) 165 N.J. 580, 586 [761 A.2d 1103, 1106] [finding "we have the unabashed practice of law in New Jersey" by an unlicensed New Jersey attorney, who was licensed to practice in another state, and who practiced as an associate in a New Jersey firm for seven years].) However, we confine our analysis to holding out as entitled to practice, which is a variant of UPL in New Jersey (N. J. Rules Prof. Conduct rule 5.5(a)(4)), and to misrepresentations about respondent's status as an attorney (N. J. Rules Prof. Conduct rule 7.1(a) and N. J. Rules Prof. Conduct rule 7.5(a) and (b)) because that is the misconduct charged in the Application relating to New Jersey.

corporation. It listed a New Jersey address, a toll-free 800 number, and a New Jersey fax number as the only contact information. The other letterhead stationery for "JBC & Associates, P.C., Attorneys at Law, a California Professional Corporation," also listed a toll-free 800 number and a local New Jersey fax number. In the top right-hand corner were the addresses of the California, New York and Massachusetts offices. On the left was respondent's name, with an asterisk denoting his California Bar membership, and another attorney, Marv Brandon, who was listed as a member of the New Jersey and New York Bars. Also, two other attorneys were listed as "of counsel," one of whom was a member of the New Jersey and New York Bars and the other a member of the Massachusetts Bar. In every instance, the address given for JBC Legal was in Bloomfield, New Jersey, and the letters were signed "JBC & Associates, P.C., *Attorneys at Law.*" (Original italics.) The letterhead stationery for JBC Legal Group, P.C., was virtually identical and signed in the same manner.

The exemplars bearing the letterhead for "Boyajian Law Offices, P.C., a California Professional Corporation, Attorneys at Law" listed an address in Rutherford, New Jersey, but no attorneys were named. Each contained columns flanking the title that list "Office Locations" in several states, but without addresses. These letters were signed "Very Truly Yours, Boyajian Law Offices, *Attorneys at Law*" (emphasis in the original).

The following are representative examples of JBC Legal letters sent to New Jersey residents:

A letter to Maria Marshall, dated September 17, 2004, stated:

> **Warning**: You may be sued if you do not make payment of the amount shown on this notice within 35 days after the date this notice was received. . . . [¶] Pursuant to New Jersey Statutes Annotated Sections 2A:32A-1, if you do not make payment within 35 days after this notice is received, you may be sued to recovered

[sic] payment. If a judgment is rendered against you in court, it may not only include the amount for each check specified herein, but also additional liquidated damages equal to triple the amount of each check . . . plus mailing costs, court costs and attorney's fees.
(Original boldface.)

A letter to William Witz, dated October 24, 2003, stated:

> You have obviously chosen to ignore our previous communication demanding that you make restitution on an NSF check(s) written to the above-referenced retailer. Our client(s) may now assume that you delivered the check(s) with intent to defraud, and may proceed with the allowable remedies.
>
> Since you have not tendered payment for the full amount of the check(s) and service charge(s) within the 35 days provided, pursuant to New Jersey Statutes Annotated Section 2A:32A-1, you may be subject to statutory penalties . . . .
>
> You may wish to settle this matter before we seek appropriate relief before a court of proper jurisdiction by a qualified attorney by remitting immediate payment to our offices.

A letter to Paola Fernandez, dated January 21, 2004, stated:

> It is unfortunate that you have refused our offer to voluntarily make restitution for the above-referenced "returned" check(s) you wrote to our clients(s). . . . [¶] Unless we receive immediate payment or sufficient documentation that relieves you of this obligation, we reserve the right to seek authorization to proceed with civil or criminal action. . . . [¶] Be guided accordingly.

Examples of the contents of BLO letters to New Jersey residents are as follows:

A letter to Kelli Geary, dated July 27, 2005, stated:

> You have obviously chosen to ignore our previous communication demanding that you resolve the outstanding indebtedness to Consolidated Edison Of Ny [sic] for utility services delivered and for which payment has not been made . . . .
>
> Your failure to contact this office and make proper payment arrangements leaves us no choice but to proceed with advising our client that further action against you is warranted. Rest assured that we will do all that is allowable under your state's laws to protect our client's interests. Therefore, unless we receive immediate payment of $101.48 we reserve the right, on behalf of our client, to seek all remedies available to ensure payment. . . . [¶] Be guided accordingly.

Respondent attested that he made the final decision as to the contents of these debt collection letters and was responsible for determining who should receive them.

2. Conclusions of Law

The State Bar alleges in its Application that, inter alia, respondent willfully held himself out as entitled to practice law in violation of the laws of the state of New Jersey and engaged in acts of dishonesty and moral turpitude by misrepresenting his status as an attorney. As discussed below, we conclude that there is a reasonable probability that the prosecution will prevail as to these charges.

3. Discussion

The New Jersey statutes and regulations applicable to the practice of law guide our analysis of the above charges against respondent. We note that the standard of proof in New Jersey is clear and convincing evidence for violations of the disciplinary rules, including UPL and holding out. (*Matter of Sears* (1976) 71 N.J.175, 197 [364 A.2d 777, 788-89].)[16]

New Jersey Statutes section 2C: 21-22, entitled "Unauthorized Practice of Law," provides in relevant part:

> a. A person is guilty of a disorderly persons offense if the person knowingly engages in the unauthorized practice of law.
> b. A person is guilty of a crime of the fourth degree if the person knowingly engages in the practice of law and [¶] (1) Creates or reinforces a false impression that the person is licensed to engage in the practice of law . . . .

The following New Jersey Rules of Professional Conduct (New Jersey RPC) also inform our analysis:

---

[16]The criminal statute regulating UPL in New Jersey, section 2C: 21-22, would be governed by the standard of beyond a reasonable doubt.

New Jersey RPC, rule 5.5 *Lawyers not Admitted to the Bar of this State and the Lawful Practice of Law*

> (a) A lawyer shall not: [¶] (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; . . .[¶] . . . [¶] (c) A lawyer admitted to practice in another jurisdiction . . .[¶] . . . [¶] (4) [shall not] hold himself or herself out as being admitted to practice in this jurisdiction.

New Jersey RPC, rule 7.1 *Communications Concerning a Lawyer's Services*

> (a) A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services . . . . A communication is false or misleading if it: [¶] (1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

New Jersey RPC, rule 7.5 *Firm Names and Letterheads*

> (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1.
> (b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction. In New Jersey, identification of all lawyers of the firm . . . on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licensed to practice in New Jersey. Where the name of an attorney not licensed to practice in this State is used in a firm name, any . . . letterhead or other communication containing the firm name must include the name of at least one licensed New Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof.

As a general rule, "[t]he practice of law in New Jersey is not limited to litigation. [Citation.] One is engaged in the practice of law whenever legal knowledge, training, skill, and ability are required. [Citation]." (*In re Jackman, supra,* 165 N.J. at p. 586.) Most relevant to these proceedings is the formal opinion of the New Jersey Supreme Court's Unauthorized Practice Committee (Committee), which concluded that the operation of a debt collection business constitutes the practice of law when it involves threats of legal action or the implied representation that a collection letter was sent by or at the direction of an attorney and "usually stating that legal consequences will flow from the nonpayment of the debt or from the institution of legal action to collect the debt." (N.J. Unauth.Prac.Op. 8 (Feb. 10, 1972) 95 N.J.L.J.105, 1972 WL 19654 *2 (N.J. Comm.Unauth.Prac.).)

As the Committee explained: "The collection agency practices referred to above are intended to and unquestionably frequently do cause a recipient of a document, such as one of those described, to believe either that some judicial proceeding has been commenced [to collect the] debt, that he is under some court direction to pay the money demanded by the agency from which the document came, or that there has been an evaluation by an attorney of the claim asserted with a determination by the attorney that proceedings to enforce collection are warranted. Frequently there is an implication that an attorney is advising the alleged debtor of the consequences of nonpayment of the claim made. In each one of those situations, the intervention of a court or of an attorney is clearly implied." (*Ibid.*)

Many of the collection letters rendered legal advice about respondent's client's rights and the consumer debtor's obligations or penalties under New Jersey law. (*Tumulty v. Rosenblum* (1956) 134 N.J.L. 514 [48 A.2d 850].) The letters also contained charges of criminal conduct and civil violations as well as numerous express and implied threats of legal action. (N.J.Unauth. Prac.Op., *supra*, 1972 WL 19654 (N.J.Comm.Unauth.Prac. at p. 1).) In almost every instance, the letters stated that "legal consequences will flow from the nonpayment of the debt or from the institution of legal action to collect the debt." (*Ibid*; *Appell v. Reiner* (1964) 43 N.J. 313, 316 [204 A.2d 146, 148] [advice about the consequences of compromising consumer's indebtedness is practice of law].) Finally, the letters were signed by BLO or JBC Legal with the designation "Attorneys at Law" in italics.

In addition to the content of the collection letters, we look to the form of the letters as evidence of holding out under New Jersey law, where a law firm's letterhead is carefully examined because the courts have "scrupulously endeavored to protect against even the slightest

propensity that the public will be deceived or mislead. [Citations.]" (*In the Matter of the Advisory Committee on Professional Ethics Opinion No. 447* (1981) 86 N.J. 473, 478 [432 A.2d 59, 61].) For this reason, in New Jersey, letterheads are examined through "the eyes of an unsophisticated member of the public" in order to determine if the use of a firm name is deceptive. (N.J.Eth.Op. 533 (July 5, 1984) 114 N.J.L.J. 1, 1984 WL 140933 (N.J. Adv.Comm.Prof.Eth.)

Because consumer protection is paramount in New Jersey's regulation of attorneys, law firm names are strictly scrutinized by the courts. " 'Under [New Jersey] rules, law firm names are "official" designations, and therefore are regulated more carefully than [the commercial speech in] ordinary advertising.' [Citation.] When we seek 'simply to ensure that the official status of an attorney as one licensed to practice in New Jersey is conveyed with accuracy and clarity, there can be no doubt about the validity of a rule proscribing deceptive law firm names.' [Citation.]." (*In re Weiss, Healey & Rea* (1988) 109 N.J. 246, 251 [536 A.2d 266, 268].)

BLO and JBC Legal's letterheads clearly designated New Jersey as their principal, and in many instances only, office location. The only other contact information was either a local New Jersey telephone number or a toll-free 800 number and a local New Jersey fax number. (*In re Dalena* (1999)157 N.J. 242, 247 [723 A.2d 970, 973] [foreign law firm's letterhead containing New Jersey address misleading in that it implied law firm was New Jersey law partnership in violation of New Jersey RPC, rule 7.5(d) and 7.1].)

New Jersey Rules of Professional Conduct, rule 7.5(b) requires "[w]here the name of an attorney not licensed to practice in this State is used in a firm name, any . . . letterhead or other communication containing the firm name must include the name of at least one licenced New

Jersey attorney who is responsible for the firm's New Jersey practice or the local office thereof." Other than respondent, no attorney was identified on the "Boyajian Law Office" letterhead. The JBC Legal letterhead also runs afoul of the requirement of New Jersey RPC rule 7.5(b) that "identification of all lawyers of the firm . . . on letterheads or anywhere else that the firm name is used, shall indicate the jurisdictional limitations on those not licenced to practice in New Jersey." The JBC Legal letterhead merely indicated that respondent was licensed to practice in California and that the law firm was a California professional corporation, but was misleading in that there was no affirmative disclaimer that respondent and his law firm are not licensed in New Jersey or that he was licensed *only* in California.

The 35 exemplars in the record provide clear and convincing evidence establishing that it is probable that the State Bar will prevail on the merits that respondent held himself out as entitled to practice law and engaged in acts of dishonesty and moral turpitude by misrepresenting his involvement as an attorney in New Jersey.

B. Connecticut

1. Findings of Fact

Respondent is not licensed to practice in Connecticut. He, JBC Associates, Inc., and his law firms, JBC Legal and BLO, have been involved in debt collection activities in Connecticut for nearly a decade, resulting in at least eight consumer lawsuits filed against them between 1998 and 2005. Between June 2002 and July 2006, at least 21 consumer complaints about respondent and his firms were filed with the Connecticut Department of Banking.

The Connecticut Banking Commissioner brought two enforcement actions within two years as a result of consumer complaints. In March 2004, the Banking Commissioner issued a

Notice of Intent to Issue a Cease and Desist Order, and, at the same time, denied JBC Legal's application to become a consumer collection agency on the grounds that it would not be in the public interest. This enforcement proceeding resulted in a Settlement Agreement in July 2004 whereby JBC Legal, without admission of liability, agreed to pay a civil penalty in the amount of $18,000 and to cease debt collection operations in Connecticut.

A second enforcement action was commenced in September 2006 by the Connecticut Attorney General on behalf of the Banking Commissioner in the Connecticut Superior Court for the Judicial District of Hartford (Connecticut Superior Court), seeking a temporary restraining order (TRO) against respondent, JBC Legal, and BLO, enjoining them from consumer debt collection activities in Connecticut. The Banking Commissioner alleged that respondent and BLO were acting in concert with JBC Legal in breaching the July 2004 Settlement Agreement. The Connecticut Superior Court issued a TRO on September 6, 2006, enjoining respondent, JBC Legal and BLO from further consumer debt collection activities in Connecticut. This enforcement action is ongoing.

There are several exemplars in the record of collection letters sent by JBC Legal to Connecticut consumers. As to these letters, respondent has attested: "[T]o most of the degree, I make the final decision on what letters are sent out and what they contain." Two collection letters were sent to Eveline J. Goins on JBC Legal letterhead, demanding payment for an NSF check to Wilson Suede and Leather. One letter, dated November 22, 2001, was sent on JBC Legal's letterhead, and its contents were recited by the court in *Goins v. JBC & Associates, P.C., et al.*

(D. Conn., Sept. 3, 2004, No. 02 Civ. 1069) 2004 WL 2063562 (*Goins I.*).[17] The second letter, sent to Goins on February 17, 2003, which provided the basis of the litigation in *Goins v. JBC & Associates, P.C., et al.* (D. Conn. 2005) 352 F.Supp.2d 262 (*Goins II*), was admitted in this record.[18] This letter was sent on letterhead stationery which stated: "JBC & Associates, P.C., Attorneys at Law." It listed no attorney by name and did not indicate that JBC Legal is a California professional corporation. The address given for JBC Legal was in Bloomfield, New Jersey, with a toll-free number and a local New Jersey fax number. In the top right-hand corner were the addresses of the California, New York and Massachusetts offices. The letter was signed "JBC & Associates, P.C., Attorneys at Law."

In *Goins I,* the district court granted partial summary judgment in favor of Goins finding that the letter violated the FDCPA because it contained "false, deceptive, or misleading"

---

[17]The following is the relevant portion of the *Goins I* letter: "It is unfortunate that you have refused our offer to voluntarily make restitution for the above- referred "returned" check(s) you wrote to our client(s). [¶] We see no reason or excuse why you would avoid responding to our attempts to contact you. . . . [¶] Please note the information we have establishes that a person using your name, address and/or drivers license obtained merchandise, presumably with fraudulent intent, by issuing a bad check(s) to our client(s). [¶] Unless we receive immediate payment of $1971.80 or sufficient documentation that relieves you of this obligation, we reserve the right to use any and all information we have obtained in further civil or criminal proceedings. [¶] Be guided accordingly." (*Ibid.*)

[18]The relevant portion of the text of the *Goins II* letter reads as follows: "You have obviously chosen to ignore our previous communication demanding that you make restitution on an NSF check(s) written to our above-referenced client(s). Our client(s) may now assume that you delivered the check(s) with intent to defraud, and may proceed with the allowable remedies. [¶] Since you have not tendered payment for the full amount of the check(s) and service charge(s) within the 30 days provided, pursuant to Connecticut General Statutes Section 52-565a, you may be subject to statutory penalties as determined by the court, but in no event shall be greater than the face value of the check or $400.00, whichever is less, for a total amount of $10,277.56. [¶] You may wish to settle this matter before we seek appropriate relief before a court of proper jurisdiction by a qualified attorney by contacting Lori Brown at 800-241-1510."

representations about the amount of money owed and the possible initiation of criminal proceedings against Goins. (*Goins v. JBC & Associates, P.C., supra*, 2004 WL 2063562 at p. #5.)

In *Goins II*, the district court granted partial summary judgment in favor of Goins, concluding that JBC Legal and respondent violated the FDCPA by misrepresenting the amount of debt owed, engaging in unlicensed debt collection activity, unambiguously threatening litigation under circumstances in which JBC Legal was not entitled to sue, and improperly communicating with a client known to be represented by counsel. (*Goins v. JBC & Associates, P.C.* (D. Conn. 2005) 352 F.Supp.2d 262, 269-273.)

The record also contains exemplar letters sent to Connecticut consumers by BLO. On March 26, 2005, BLO sent a collection letter to Shaquille Sellers in New Haven, Connecticut on legal letterhead for "Boyajian Law Offices, a California Professional Corporation, Attorneys at Law." It listed a New Jersey office address, and on either side of the letterhead were two columns listing "Office Locations" in 21 different states, including an office in Avon, Connecticut. No attorneys were identified other than Boyajian in the law firm name. The letter was signed: "Boyajian Law Offices, P.C., *Attorneys at Law.*"[19]

Sellers filed a complaint against respondent and BLO in the United States District Court

---

[19]The relevant portion of the text of the Sellers letter states: "You have obviously chosen to ignore our previous communication demanding that you resolve the outstanding indebtedness . . . for utility services delivered and for which payment has not been made. . . . [¶] Your failure to contact this office and make proper payment arrangements leaves us no choice but to proceed with advising our client that further action against you is warranted. Rest assured that we will do all that is allowable under your state's laws to protect our clients' interests. Therefore, unless we receive immediate payment . . . *we reserve the right, on behalf of our client, to seek all remedies available to ensure payment.* [¶] Be guided accordingly." (Italics added.)

for the District of Connecticut on November 30, 2005, alleging violations of Connecticut law and the FDCPA. On March 16, 2006, the court entered judgment in favor of Sellers based on a settlement agreement between the parties.

Another BLO letter to a Connecticut consumer (with the name redacted), dated September 20, 2005, uses the same BLO letterhead as the letter sent to Sellers, except that it lists 25 different states under "Office Locations," including an office in Avon, Connecticut. The letter was also signed: "Boyajian Law Offices, P.C., *Attorneys at Law.*"[20]

2. Conclusions of Law

The State Bar alleges, inter alia, that respondent willfully held himself out as entitled to practice law in violation of the laws of the state of Connecticut and engaged in acts of dishonesty, moral turpitude or corruption by falsely misrepresenting he was entitled to practice law in Connecticut. As discussed below, we conclude that there is a reasonable probability that the prosecution will prevail as to these charges.

3. Discussion

We turn to the Connecticut statutes and regulations applicable to the practice of law for guidance in evaluating the above-described charges against respondent. We note that the standard of proof in Connecticut is clear and convincing evidence for violations of the

---

[20]The relevant portion of the letter states: "We have been advised that you have failed, refused or neglected to make necessary payments and, as a result, you are now in serious default of $347.00 . . . our client demands payment from you . . . . [¶] We are also advised that certain credit reporting bureaus may have been notified of this outstanding obligation which may affect your ability to obtain credit from a financial institution that makes an inquiry as to your credit history. There has been no decision made to file suit against you at this time."

disciplinary rules, including UPL and holding out. *(Statewide Grievance Committee v. Presnick* (1989) 18 Conn.App. 316, 323 [559 A.2d 220, 224].)

Connecticut General Statutes section 51-88, which prohibits the practice of law by persons not attorneys in Connecticut, provides in relevant part:

> *Practice of law by persons not attorneys*
> (a) A person who has not been admitted as an attorney . . . shall not: (1) Practice law or appear as an attorney-at-law for another, in any court of record in this state, . . . (4) hold himself out to the public as being entitled to practice law, . . . (6) assume, use or advertise the title of lawyer, attorney and counselor-at-law, attorney-at-law, counselor-at-law, attorney, counselor, attorney and counselor, or an equivalent term, in such manner as to convey the impression that he is a legal practitioner of law, or (7) advertise that he, either alone or with others, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law.

The following Connecticut Rules of Professional Conduct (Connecticut RPC) also inform our analysis:

Connecticut RPC, rule 5.5 *Unauthorized Practice of Law*

> (b) A lawyer who is not admitted to practice in this jurisdiction, shall not:
> (1) except as authorized by law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
> (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Connecticut RPC, rule 7.1 *Communications Concerning a Lawyer's Services*

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Connecticut RPC, rule 7.5 *Firm Names and Letterheads*

> (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1..
> (b) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

The Connecticut Supreme Court has stated that " '[t]he practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court.' " (*Statewide Grievance Committee v. Patton* (1996) 239 Conn. 251, 254 [683 A.2d 1359, 1361] [holding the preparation of legal documents amounts to the practice of law].) An attorney practices law when he engages in activities that " 'reasonably demand the application of a trained legal mind' [citation.]" (*id.* at p. 255), which also "embraces the giving of legal advice." (*Id.* at p. 254; accord, *State Bar Association of Connecticut v. Connecticut Bank & Trust Co.* (1958) 145 Conn. 222 [140 A.2d 863].)

Respondent testified that he was personally responsible for making determinations as to which Connecticut consumers should receive collection notices from JBC Legal and the content of those letters. (See *Goins v. JBC & Associates, P.C., supra,* 352 F.Supp.2d 262, 268 [finding respondent had "sole control" over drafting and sending letters to Connecticut consumers].) These letters contained references to Connecticut law, express and implied threats of lawsuits, and references to penalties owed, citing Connecticut authority for such penalties. The letters containing these threats, accusations and legal references then concluded with the salutation "Very truly yours, JBC & Associates, P.C., *Attorneys at Law.*" (Original italics.)

The letters sent on BLO letterhead similarly threatened legal action and concluded with the following admonition: "Be guided accordingly. Very truly yours, Boyajian Law Offices, P.C., *Attorneys at Law.*" (Original italics.)

On this record, we find it is reasonably probable that the State Bar will prevail on the charges that respondent's letters constituted UPL in violation of the laws and rules of professional conduct in Connecticut. We also find it is reasonably probable that the State Bar

will prevail on the charges that respondent held himself out to Connecticut consumers as entitled to practice law in Connecticut, which also constitutes UPL in that state. (Conn. Stat., § 51-88(a)(4), Conn. Rules Prof. Conduct, rule 5.5(b)(2).) Connecticut RPC, rules 7.1 and 7.5(a) proscribe a lawyer from using a misleading letterhead or communication relating to his or her services. The JBC Legal and BLO letterheads do not identify any attorney licensed in Connecticut, and the JBC Legal letterhead does not even disclose that it is a California professional corporation. In the absence of a disclaimer in the letterhead that respondent is not licensed in Connecticut, a reasonable person would conclude that the designation of JBC Legal or BLO as "Attorneys at Law" in the letterhead and as signatory to the letters indicate that respondent, by and through his law firms, is authorized to practice in Connecticut. (See Commentary to Conn. Rules Prof. Conduct, rule 7.1 ["The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client."]; Connecticut RPC, rule 7.5(b) [law firm with offices in more than one jurisdiction must indicate in its letterhead the jurisdictional limitations on those not licensed to practice in Connecticut.].)

C. Ohio

1. Findings of Fact

Respondent is not licensed to practice in Ohio. However, he and his law firms, JBC Legal and BLO, have been involved in substantial debt collection activities in that state, which have resulted in 53 consumer complaints filed against them with the Office of the Ohio Attorney

General as of July 2006. Many of these complaints echo those received by consumer agencies in other states.[21]

The record contains eight exemplar letters sent to Ohio consumers by JBC Legal and BLO. The JBC Legal letters were written on letterhead bearing the name "JBC Legal Group, P.C,. Attorneys at Law, a California Professional Corporation" and included a toll-free number, a local New Jersey fax number, and the addresses of the California, New York and Massachusetts offices. Respondent was identified, with an asterisk denoting his California Bar membership, and another attorney, Marv Brandon, was listed as a member of the New Jersey and New York Bars. Also, two other attorneys were listed as "of counsel," one of whom was a member of the New Jersey and New York Bars and the other a member of the Massachusetts Bar. The address for JBC Legal was in Bloomfield, New Jersey, and the letters were signed "JBC Legal Group, P.C., *Attorneys at Law*" (original italics). Two of the letters sent by JBC Legal in March and April 2004 contain the following language:

> This firm represents the successors in interest of the obligation you created and have not yet satisfied when you passed the bad check(s) identified below. . . . [¶] Pursuant to Ohio Revised Code Annotated Section 2307.61, you have thirty (30) days from the receipt of this letter to pay the full amount of each check and a service charge of $30.00 per check for a total of payment of [an amount representing the alleged debt]. You are cautioned that unless this total amount is paid in full within thirty (30) days after the date this letter is received, you may be subject to statutory penalties equal to triple the amount of each check or $200.00 per check, whichever is greater, court costs and reasonable attorney's

---

[21]The harm complained of in Ohio encompasses: 1) verbal harassment including threats of criminal prosecutions and civil proceedings; 2) repeated phone calls even after the consumer disclaimed the debt; 3) failure to verify the debt after requested to do so by the consumer or responding to such request by sending another, more threatening collection letter; 4) failure to explain charges – sometimes in excess of 10 times the alleged debt; 5) attempts to collect debts incurred by deceased relatives; 6) demand for payment of disputed debts to avoid further harassment; and 7) directing new collection efforts toward consumers who had already paid the debt.

fees after suit has been filed. These penalties will be in addition to your check amount(s), service charge(s), court costs and attorney's fees.

Two other letters from JBC Legal sent in the same month stated:

> You have obviously chosen to ignore our previous communication demanding that you make restitution on an NSF check(s) written to the above-referenced client(s). Our client(s) may now assume that you delivered the check(s) with intent to defraud, and may proceed with the allowable remedies.
>
> Since you have not tendered payment for the full amount of the check(s) and service charge(s) within the 30 days provided, pursuant to Ohio Revised Code Annotated Section 2307.61, you may be subject to statutory penalties equal to the greater of either triple the amount of each check or $200.00 per check.
>
> You may wish to settle this matter before we seek appropriate relief before a court of proper jurisdiction by a qualified attorney by remitting immediate payment to our offices.
>
> Be advised that if you do not resolve this matter now, you may be subject to additional statutory fees including court costs and attorney's fees.

Ohio consumers also complained to the Attorney General about letters and phone calls initiated by BLO. Four exemplars in the record bear the title Boyajian Law Offices, PC, A California Professional Corporation, Attorneys At Law, with an address in Rutherford, New Jersey. These letters were signed "Very truly yours, Boyajian Law Offices, *Attorneys at Law*" (original italics). Each set forth a list of office locations in several states. One letter listed offices in 20 other states, excluding Ohio, and another listed offices in 25 states, including one in Shaker Heights, Ohio.

One Ohio resident, Lawrence Myers, received a BLO collection letter on March 29, 2005, demanding payment of an outstanding debt of $582.94 to Verizon. Myers wrote a letter to BLO disputing the debt, stating he had never owned a Verizon phone, informing BLO that he was not the person it was seeking and asking how to proceed. On May 3, 2005, BLO sent Myers a second letter with the following threatening language:

"You have obviously chosen to ignore our previous communication demanding that you resolve the outstanding indebtedness . . . . [¶] Your failure to contact this office and make proper payment arrangements leaves us no choice but to proceed with advising our client that further action against you is warranted. Rest assured that we will do all that is allowable under your state's laws to protect our client's interests. Therefore, unless we receive immediate payment of $582.94 we reserve the right, on behalf of our client, to seek all remedies available to ensure payment."

The letter concludes: "Be guided accordingly. Very truly yours, BOYAJIAN LAW OFFICES, *Attorneys at Law*." (Original italics.)

Three of the BLO letters stated: "We have been advised that you have failed, refused or neglected to make necessary payments and, as a result, you are in serious default . . . ." Two letters included the additional language: "We are also advised that certain credit reporting bureaus may have been notified of this outstanding obligation which may affect your ability to obtain credit . . . . There has been no decision made to file suit against you at this time."

2. Conclusions of Law

The State Bar alleges in its Applications that, inter alia, respondent willfully held himself out as entitled to practice law in violation of the laws of the state of Ohio, and committed acts of moral turpitude by falsely representing that he was entitled to practice law in Ohio. As discussed below, we find that there is a reasonable probability that the prosecution with prevail as to these charges.

3. Discussion

The various Ohio statutes and regulations applicable to the practice of law guide our analysis. We note that the standard of proof in Ohio is clear and convincing evidence for disciplinary proceedings. (Ohio Rules Gov. Bar. rule V; *Cincinnati Bar Assn. v. Young* (2000)

89 Ohio St.3d 306, 314 [731 N.E.2d 631, 638].) Ohio law also establishes civil and criminal penalties for false representation as an attorney. (Ohio Rev. Code, §§ 4705.07, 4705.99.)

Ohio Supreme Court Rules for the Government of the Bar (RGB) provide:

RGB, rule VII, Section 2(A)

> The unauthorized practice of law is rendering legal services for another by any person not admitted to practice in Ohio . . . .

RGB, rule VI, Section 3(D)

> [An attorney who is admitted to the practice of law in another state, but not in Ohio, and who is employed by, associated with or a partner in an Ohio law firm] may not practice law in Ohio, [or] hold himself or herself out as authorized to practice law in Ohio . . . . The law firm may include the name of the attorney on its letterhead only if the letterhead includes a designation that the attorney is not admitted in Ohio.

The following Ohio Rules of Professional Conduct (Ohio RPC) also inform our analysis:

Ohio RPC, rule 5.5 *Unauthorized practice of law; multijurisdictional practice of law*

> (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
> (b) A lawyer who is not admitted to practice in this jurisdiction shall not do either of the following:
> (1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law;
> (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
> (c) A lawyer who is admitted in another United States jurisdiction . . . may provide legal services *on a temporary basis* in this jurisdiction if . . . [¶] (1) the services are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively practices in the matter . . . . (Italics added.)

Ohio RPC, rule 7.1 *Communications concerning a lawyer's services*

> A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

Ohio RPC, rule 7.5 *Firm names and letterheads*

> (a) A lawyer shall not use a *firm* name, letterhead or other professional designation that violates Rule 7.1. A lawyer in private practice shall not practice under a trade name . . . .
> (b) A *law firm* with offices in more than one jurisdiction that lists attorneys associated

with the *firm* shall indicate the jurisdictional limitations on those not licensed to practice in Ohio.

Ohio Revised Code, section 4705.07 *False representation as an attorney; interim relief; civil actions*

> (A) No person who is not licensed to practice law in this state shall do any of the following: [¶] (1) Hold that person out in any manner as an attorney at law . . . [¶] . . . .[¶] (B)(1) The use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person who is not licensed to practice law, in connection with that person's own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe that person to be an attorney, constitutes holding out within the meaning of division (A)(1) of this section.

In analyzing whether the letters from respondent, by and through JBC Legal and BLO, constitute UPL, we look first to the definition of the practice of law in Ohio, which extends beyond litigation to " 'preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law'." (*Office of Disciplinary Counsel v. Brown* (1992) 61 Ohio Misc.2d 792, 794 [584 N.E.2d 1391, 1392].) In other words, "the practice of law [is] *the performance of legal services for others* * * *' (Emphasis sic)" (*Ibid.*)

Most relevant to our analysis is the Ohio Supreme Court's finding that, despite statements in solicitation letters that he was not an attorney and was not offering legal advice, an unlicensed individual who assisted debtors in collection proceedings engaged in UPL in that such activities involved " 'making representations to creditors on behalf of third parties, and advising persons of their rights, and the terms and conditions of settlement.' [Citation.]" (*Cincinnati Bar Association v. Telford* (1999) 85 Ohio St.3d 111, 113 [707 N.E.2d 462, 464].)[22] More recently, the Ohio

---

[22]Official Comment [4] to Ohio RPC, rule 5.5 states: "Presence may be systematic and continuous even if the lawyer is not physically present here." It also adds "*initiating contact with*

Supreme Court found that the actions of an unlicensed individual constitutes UPL when he or she "advises, counsels, or negotiates on behalf of an individual or business in the attempt to resolve a collection claim between debtors and creditors. [Citations.]" (*Ohio State Bar Association v. Kolodner* (2004) 103 Ohio St.3d 504, 507 [817 N.E.2d 25, 28].) The court further found that the unlicensed individual committed UPL because he failed to correct correspondence in which others referred to him by the title "Esquire" after his name, and he referred to himself as an attorney at least once in attempting to negotiate a settlement on behalf of a debtor. (*Id.* at p. 27.)

Also relevant to the State Bar's charges of holding out as entitled to practice and misrepresentation is the requirement that attorneys not licensed to practice in Ohio must make affirmative disclaimers in their letterhead that they are *not* licensed in that state as an express limitation on their jurisdiction to practice law. (*Disciplinary Counsel v. Mbakpuo* (2002) 98 Ohio St.3d. 177, 179 [781 N.E.2d 208, 211]; *Disciplinary Counsel v. Palmer* (2001) 115 Ohio Misc.2d 70 [761 N.R.2d 716]; accord, Bd. of Commissioners on Grievances and Discipline (1991) Op. No. 91-6, p. 4.) The Ohio Supreme Court in *In re Application of Stage* (1998) 81 Ohio St.3d 554, 559, 692 N.E.2d 993, 996), held that unlicensed attorneys are prohibited from using designations and terms implying entitlement to practice in Ohio unless they provide an accompanying disclaimer "in any letterhead or other oral or written communication stating that the individual is *not licensed to practice law in Ohio*." (Italics added.) The court thus found that an out-of-state attorney engaged in wrongful holding out as entitled to practice by including the

---

Ohio residents for solicitation purposes could be viewed as a systematic and continuous presence." (Italics added.)

titles "General Counsel" and "Attorney at Law" on her letterhead while awaiting admission in Ohio. (*Ibid.*)

Applying Ohio law to the exemplars sent to Ohio consumers in the record, we find it is reasonably probable that the State Bar will prevail on the merits of its charges that respondent committed UPL in Ohio. The letters sent by JBC Legal in March and April 2004, and by BLO in 2005, contain implied and express threats of legal action, and cite Ohio law as legal authority for repayment of the alleged debts and charges. The letters containing these legal references, threats, and proposed remedies conclude with the salutation "Very truly yours, JBC & Associates, P.C. [or Boyajian Law Offices, PC] *Attorneys at Law.*" (Original italics.)

The evidence of 53 consumer complaints over a six-year period about respondent's debt collection activities shows his services were not provided on a temporary basis (Ohio Rules Prof. Conduct, rule 5.5(c)), but rather through a "systematic and continuous presence" in Ohio. (Ohio Rules Prof. Conduct, rule 5.5(b)(1).)

We further find that it is reasonably probable the State Bar will prevail on the charges that, under Ohio laws and regulations, respondent held himself out as entitled to practice and misrepresented his status as an attorney. Boyajian's name appeared as an attorney on the JBC Legal letters, which stated he is licensed in California, yet he failed to include the requisite disclaimer that he was not licensed to practice in Ohio. (*In re Application of Stage, supra*, 81 Ohio St.3d 554 [692 N.E.2d at p. 996].) His name also appeared in the firm title on the letters sent by Boyajian Law Offices, which otherwise contain no reference to a responsible attorney. Instead, the letters identified local offices in 20 states, including a "Local Office" in Shaker Heights, Ohio.

Respondent's name in the BLO letterhead implies that he is the responsible attorney and his "local office" listing reinforces the misrepresentation that he and BLO are licensed under Ohio law, when in fact BLO has no Ohio counsel with management responsibility for a BLO law office in Ohio. (See *Medina County Bar Assn v. Grieselhuber* (1997) 78 Ohio St.3d 373, 374-75 [678 N.E.2d 535, 536-37][finding misleading a firm name suggesting respondent had affiliates when in fact he was a sole practitioner].)

D. Minnesota[23]

1. Findings of Fact

Respondent is not licensed to practice in Minnesota. Respondent and his law firms, JBC Legal and BLO, have been involved in substantial debt collection activities in Minnesota. The record reflects that JBC Legal attempted to collect $9,445,000 from approximately 22,000 Minnesota consumers between 2003 and 2004, and BLO sent almost 9,000 collection letters from its inception through November 2005. Of special significance to this court is respondent's assertion in the Minnesota enforcement action that he and his law firms were exempt from state regulation of collection agencies because he conducted his debt collection activities in Minnesota as an attorney and BLO and JBC Legal operated as law firms within the state.

In 2004, as the result of consumer complaints against respondent, JBC Legal and BLO, the Minnesota State Attorney General brought an enforcement action against respondent and his law firms in the Minnesota District Court, County of Ramsey, *State of Minnesota v. JBC Legal*

---

[23]We consider respondent's activities in Minnesota because of the extent of the evidence in the record of public harm in that state. Moreover, the charges of UPL, holding out and misrepresentation were expressly set forth with particularity in the State Bar's Application, and the evidence of this conduct was adduced in the proceedings below.

Group, P.C., et al., Case No. C9-04-6033, alleging violations of both Minnesota's debt collection statutes and the FDCPA. Of additional significance to this court is the Minnesota Attorney General allegation, inter alia, that "JBC and BLO emphasize[d] the threat of legal action by sending dunning letters to consumers on attorney letterhead with a facsimile signature of '*Attorneys at Law.*'" (Original italics.) This enforcement action is still pending.

In March 2005, a class action lawsuit, *Michael Thinesen v. JBC Legal Group, P.C., et al.*, No. CIV. 05-518 DWFSRIV, was filed in the United States District Court for the District of Minnesota against JBC Legal and respondent in his individual capacity, alleging violations of Minnesota's debt collection statutes and the FDCPA. More than 1,000 consumer debtors were certified as a class in September 2005. On November 3, 2006, judgment was entered approving a settlement in the amount of $40,580, and enjoining JBC Legal and respondent from sending collection letters that: 1) stated they would charge consumers "statutory penalties equal to twice the amount of each check or $100.00 per check, whichever is greater, interest and reasonable attorney's fees after suit has been filed . . . ;" 2) warned that because payment had not been received, respondent's client "may now assume that you delivered the check(s) with the intent to defraud;" or 3) threatened JBC Legal would "seek appropriate relief before a court of proper jurisdiction."

The record contains exemplars of eight collection letters sent by JBC Legal to Minnesota consumers between 2003 and 2004. JBC Legal's letterhead stationery is virtually identical to that utilized in the other states discussed *ante*. The letterheads identified "JBC & Associates, P.C., A California Professional Corporation, Attorneys at Law" or "JBC Legal Group, A California Professional Corporation, Attorneys at Law" and listed a New Jersey address, a toll-

free 800 number or a New Jersey telephone number, and a New Jersey fax number as the only contact information. In the top right-hand corner, the addresses of the California, New York and Massachusetts offices were listed on most of the stationery. On the left was respondent's name, with an asterisk denoting his California Bar membership, and another attorney, Marv Brandon, who was listed as a member of the New Jersey and New York Bars. Also, two other attorneys were listed as "of counsel," one of whom was a member of the New Jersey and New York Bars and the other a member of the Massachusetts Bar. In every instance, the letters were signed "JBC & Associates, P.C., *Attorneys at Law,*" with the exception of one letter that was signed personally by Marv Brandon.

On August 5, 2003, Gregory Eyler, of St. Paul, Minnesota, received a letter from JBC Legal demanding payment in the amount of $103.49 for a dishonored check. The letter stated:

> Pursuant to Minnesota Statutes Annotated Section 332.50, you have thirty (30) days from receipt of this letter to pay the full amount of each check and a service charge of $30.00 per check for a total payment of $103.49. You are cautioned that unless this total amount is paid in full within thirty (30) days after the date this letter is received, you may be subject to statutory penalties equal to twice the amount of each check or $100.00 per check, whichever is greater, interest and reasonable attorney's fees after suit has been filed.

On the same date, Catherine Greskovics, a resident of East Bethel, Minnesota, received an almost identical letter from JBC Legal, demanding payment in the sum of $49.99. After Ms. Greskovics disputed the charges and requested copies of documentation of the debt, she received the following letter from JBC Legal:

> You have obviously chosen to ignore our previous communication demanding that you make restitution on an NSF check(s) written to the above-referenced retailer. Our client(s) may now assume that you delivered the check(s) with the intent to defraud, and may proceed with the allowable remedies. [¶] Since you have not tendered payment for the full amount of the check(s) and service charge(s) within the 30 days provided, pursuant to Minnesota Statutes Annotated

> Section 332.50, you will be subject to statutory penalties equal to the greater of either twice the amount of each check or $100.00. [¶] You may wish to settle this matter before we seek relief before a court of proper jurisdiction by a qualified attorney . . . [¶] Be advised that if you do not resolve this matter now, you will be subject to additional statutory fees including interest and attorney's fees.

Similarly, on December 24, 2003, Robert Murphy, another St. Paul resident, received a letter on JBC Legal letterhead, demanding payment in the amount of $190.23 for a dishonored check. This letter stated:

> Since you have not tendered payment for the full amount of the check(s) and service charge(s) within the 30 days provided, pursuant to Minnesota Statutes Annotated Section 604.113, you will be subject to statutory penalties equal to the greater of either twice the amount of each check or $100.00. [¶] You may wish to settle this matter before we seek appropriate relief before a court of proper jurisdiction by a qualified attorney by remitting payment to our offices.

Judicial notice was taken of two additional affidavits by two Minnesota residents, Kathleen Underhill and Patricia Peterson, who both attested to receiving similar collection letters from JBC Legal. In addition, the record contains a declaration of Peter Angelos, who attested that on February 8, 2007, he received an automated telephone call at his residence at 5:39 p.m. from Boyajian Law Offices asking him to call an 800 telephone number.

2. Conclusions of Law

The State Bar alleges in its Applications, inter alia, that respondent willfully held himself out as entitled to practice law in violation of the laws of Minnesota, committed acts of moral turpitude by falsely representing that he was entitled to practice law in Minnesota and violated rule 1-300(B), which prohibits a member from practicing in a jurisdiction where to do so would violate the regulations of the profession in that jurisdiction.

As discussed below, we find that there is a reasonable probability that the prosecution will prevail as to these charges.

3. Discussion

We discuss below various statutes and regulations applicable to the practice of law in Minnesota. The evidentiary standard for disciplinary offenses is clear and convincing evidence. (*In re Disciplinary Action Against Brehmer* (Minn. 2001) 620 N.W.2d 554, 561); *In re Disciplinary Action Against Ray* (Minn. 2000) 610 N.W.2d 342, 345.) UPL may also result in a misdemeanor conviction (Minn. Stat., § 481.02), which must be proven by evidence beyond a reasonable doubt.

Minnesota Statutes section 481.02

> Subdivision 1. Prohibitions. It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law . . . or, by word, sign, letter or advertisement, to hold out as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services . . . ."
>
> Subdivision 2. Corporations. No corporation . . . except an attorney's professional firm organized under chapter 319B, by or through its officers or employees or any one else, shall . . . give or assume to give legal advice or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter or advertisement . . . give general legal advice or counsel, or to act as attorney at law . . . or hold itself out as being engaged in, the business of supplying services of a lawyer or lawyers . . . .

Minnesota Rules of Professional Conduct (Minnesota RPC)

Minnesota RPC, rule 5.5: *Unauthorized Practice of Law; Multi-jurisdictional Practice of Law*

> (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so . . . .
> (b) A lawyer who is not admitted to practice in this jurisdiction shall not: [¶] (1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or [¶] (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Minnesota RPC, rule 7.1: *Communications Concerning a Lawyer's Services*

> A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Minnesota RPC, rule 7.5: *Firm Names and Letterheads*

> (a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1
>
> (b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

Comment [4] to Minnesota RPC, rule 5.5 states, in part: "[A] lawyer who is not admitted to practice generally in this jurisdiction violates [Minnesota RPC, rule 5.5(b)] if the lawyer establishes an office or other systematic and continuous presences in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction."

In *Gardner v. Conway* (1951) 234 Minn. 468 [48 N.W.2d 788], the Minnesota Supreme Court analyzed UPL and holding out as entitled to practice in the context of an accountant who advertised himself as an "Income Tax Consultant" and who rendered advice involving various legal questions such as partnership status and the legal status of a marriage for tax filing purposes. The court rejected an interpretation of the practice of law based upon whether the legal services were incidental because such a definition "ignores the public welfare." (*Id.* at p. 795.) Rather, in giving precedence to "the need for public protection" (*id.* at p. 794), the court adopted a more general definition and concluded that the accountant engaged in UPL because his conduct

involved giving advice and taking action that "reasonably demand[ed] the application of a trained legal mind." (*Id.* at p. 796.)

In the instant matter, respondent testified that he was responsible for drafting the Minnesota collection letters and determining which consumers should receive them. The letters failed to expressly disclaim that the law firm or the attorneys listed on the letterhead were not licensed to practice in Minnesota. Instead, the letters identified the sender as "Attorneys at Law," used legal terminology citing Minnesota law as authority, and threatened to impose penalties authorized by Minnesota statutes and/or to initiate legal proceedings against Minnesota consumers. (*Matter of Peterson* (Minn. 1979) 274 N.W.2d 922, 926 [disbarred attorney who identified himself to others as an attorney and had business cards identifying himself as an attorney was culpable of misrepresentation of his professional status and holding himself out as entitled to practice, which constituted UPL]; *In re Disciplinary Action Against Ray* (Minn. 1990) 452 N.W.2d 689, 692 [UPL occurs when a "non-lawyer acts in a representative capacity in protecting, enforcing, or defending the legal rights of another, and advises and counsels that person in connection with those rights"]; *In Re Jorissen* (Minn. 1986) 391 N.W.2d 822, 825 [suspended attorney engaged in UPL by, inter alia, negotiating for and counseling client in marital dissolution stipulation]; *Fitchette v. Taylor* (1934) 191 Minn. 582, 584 [254 N.W. 910, 911] ["Counsel as to legal status and rights and conduct in respect thereto" constitutes practice of law].)

Given the evidence in the record of the collection letters – as well as respondent's own assertion that he was exempt from state regulation as a collection agency because his debt collection activities in Minnesota involved the practice of law – we find there is a reasonable

probability that the prosecution will prevail as to the charges that respondent held himself out to the public as being entitled to practice law in Minnesota, misrepresented that he was an "attorney-at-law" in such a manner as to convey the impression that he is a legal practitioner in Minnesota and committed UPL in violation of Minnesota Statutes Annotated section 481.02 and Minnesota Rules of Professional Conduct, rules 5.5, 7.1 and 7.5.

IV. EVIDENCE OF SUBSTANTIAL HARM TO PUBLIC

In reaching the ultimate finding that an attorney's conduct poses a substantial threat of harm, section 6007, subdivision (c)(2)(A) requires a finding of clear and convincing evidence that the attorney "has caused or is causing substantial harm." Thus, we review the instant record for evidence that respondent presently is or has "already caused . . . substantial harm." (*Conway v. State Bar, supra,* 47 Cal.3d at p. 1117.)

A. Findings of Fact

Substantial harm to the public is established by the thousands of consumer complaints. These are not disparate or random complaints and concerns. Rather, they focus repeatedly on respondent's overreaching and his misuse of his status as an attorney. The Minnesota Attorney General succinctly described the concern: "JBC and BLO emphasize the threat of legal action by sending dunning letters to consumers on attorney letterhead with a facsimile signature of '*Attorneys at Law.*'" (Original italics.) These complaints evidence a recurrent pattern of overreaching of consumer debtors involving letters written or authorized by respondent that threaten statutory penalties and legal action (both civil and criminal) under the aegis of his wholly-owned law firms. The record also establishes emotional distress accompanied by

financial intimidation of consumers, some of whom acceded to respondent's demands, even though they disputed the debts, simply to avoid further harassment or involvement in a lawsuit.

This outpouring of consumer grievances has resulted in over 100 lawsuits, myriad state investigations and at least ten enforcement actions by New York, Minnesota, West Virginia, Maryland, North Dakota, Maine, and Idaho. Some of the lawsuits and enforcement actions are still pending. This barrage of complaints has thus resulted in additional harm due to the use of public resources and increased the burden on state and federal courts as well as state administrative agencies.

B. Conclusions of Law

The past and present harm to the public and the administration of justice simply cannot be underestimated in this matter. We conclude there is clear and convincing evidence that respondent has caused or is causing substantial harm to the public.

V. LIKELIHOOD PUBLIC WILL SUFFER GREATER INJURY

Another factor in determining if an attorney's conduct poses a substantial threat of harm to the public is proof that the public is likely to suffer greater injury from the denial of the involuntary inactive enrollment of the attorney than the attorney is likely to suffer if it is granted. (§ 6007, subd. (c)(2)(B).)

A. Findings of Fact

For a number of years prior to becoming an attorney in 1999, respondent was involved in the debt collection business in New Jersey. Recently, in the Minnesota enforcement action, respondent averred that "eighty to ninety percent of [JBC Legal's] revenue is derived from its collection practice whereas the remainder is derived from its practice of real estate, contracts and

litigation." The record also establishes that between half to three-fourths of BLO's revenues are related to debt collection. Finally, although respondent is licensed only in California, he spends but a few days a month in California attending to his practice.

B. Conclusions of Law

Having found widespread harm to the public as the result of respondent's actions, we conclude that an order of inactive enrollment will cause less harm to respondent's ability to generate revenues, as he can continue to engage in his debt collection activities, just as he did before and after he received his law license. What our order of inactive enrollment will hopefully accomplish is the removal of the threat to consumers of legal action by a lawyer with the imprimatur of legitimacy and power which his law license conveys. "A debt collection letter on an attorney's letterhead conveys authority and credibility. [Citation.]" (*Crossley v. Lieberman, supra,* 868 F.2d at p. 570.)

We believe an order of inactive enrollment will accomplish the underlying goal of protecting the public during the pendency of this disciplinary proceeding (*Conway v. State Bar of California, supra,* 47 Cal.3d. at pp. 1114, 1117), without impeding respondent's ability to pursue legitimate debt collection activities as a non-lawyer. More importantly, an order enrolling respondent as an inactive member will prevent him from wielding his California law license as a sword against consumer debtors while also using it as a shield against liability under state debt collection statutes regulating collection agencies.

The clear and convincing evidence in the record establishes that the balance weighs heavily in favor of the public, which has suffered far-reaching harm. Counterpoised against the

public harm is the significantly lesser harm respondent is likely to suffer if he cannot practice law during his inactive enrollment.

VI. LIKELIHOOD HARM WILL REOCCUR OR CONTINUE

An alternative factor in determining if an attorney's conduct poses a substantial threat of harm to the public is proof by clear and convincing evidence that there is a reasonable likelihood that harm will reoccur or continue. (§ 6007, subd. (c)(2)(B).)

A. Findings of Fact

As noted above, the most recent complaints in the record occurred in 2007, with no evidence the complaints, or respondent's conduct, have subsided. What the record *does* disclose is that many of the most recent complaints are about BLO's telephonic collection activities, which several consumers characterized as "rude," "annoying" or "harassing." One consumer attested that she "was yelled at, insulted, intimidated, and treated badly." An elderly Kansas consumer with a heart condition received over 20 calls from BLO regarding a debt she "was certain" she did not owe, including a phone call at 1 a.m. that awakened her and was "very startling." An Illinois consumer received approximately 50 phone calls from BLO, sometimes three per day, from June to October 2005, about a debt she disputed.

Respondent also continued to send tens of thousands of collection letters to consumers nationwide, fully aware that he was subject to injunctions or cease and desist orders and that his collection practices were under investigation in several states. In at least one state, Connecticut, the Attorney General was required to file a second enforcement action within two years after the first action was settled because respondent continued the same collection practices under the guise of another wholly-owned law firm. His persistence with the challenged collection practices is

particularly troubling because he should have "understood that such conduct was offensive and could jeopardize his ability to practice law." (*In re Gossage* (2000) 23 Cal.4th 1080, 1101.)

B. Conclusions of Law

Given Boyajian's history of ignoring and/or circumventing state regulation of his activities, and the evidence of continued practices of serious concern, we find there is a reasonable likelihood that substantial harm to the public will reoccur or continue.[24]

VII. CONCLUSION

Having reviewed the factors set forth in section 6007, subdivision (c)(2) and the record adduced below, we find the evidence clearly and convincingly demonstrates there is a substantial threat of harm to the public if, during the adjudication of the State Bar's charges, respondent is allowed to continue his collection activities under the guise of the practice of law and to utilize his wholly-owned law firms as vehicles to achieve his debt collection objectives. Given the overwhelming evidence of harm and the probability that the State Bar will prevail on its charges that respondent has been engaged in UPL, holding out and misrepresentations in connection with his debt collection activities, we must find the hearing judge erred in denying the inactive enrollment of respondent.

ORDER

It is hereby ordered that respondent, Jack H. Boyajian, be enrolled inactive pursuant to section 6007, subdivision (c)(1), effective 20 days after service of this order by mail (Rules

---

[24]Ordinarily, the evidence of a pattern of behavior causes the burden to shift to the attorney to show there is no likelihood that the harm will reoccur or continue. (§ 6007, subd. (c)(2)(B).) This did not occur in the instant case, which we deem as harmless error because even though the State Bar assumed the burden of proof in the proceedings below, it more than met that burden.

Proc. of State Bar, rule 466(c)), and that appropriate notice be given to the Clerk of the Supreme Court pursuant to section 6081. The State Bar shall initiate disciplinary proceedings on an expedited basis as provided by the State Bar Rules of Procedure, rule 480 et seq.

EPSTEIN, J.

We concur:

REMKE, P. J.

WATAI, J.

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on April 15, 2008, I deposited a true copy of the following document(s):

ORDER GRANTING APPLICATION FOR INVOLUNTARY INACTIVE ENROLLMENT FILED APRIL 15, 2008

in a sealed envelope for collection and mailing on that date as follows:

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JUNE D. COLEMAN
ELLIS COLEMAN ET AL LLP
555 UNIVERSITY AVE #200
SACRAMENTO, CA 95825

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

KIMBERLY G. ANDERSON, Enforcement, Los Angeles
PAUL T. O'BRIEN, ENFORCEMENT, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 15, 2008**.

Rosalie Ruiz
Case Administrator
State Bar Court