

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

In the Matter of	)	Case No.: <b>07-O-10328-PEM</b>
	)	<b>(07-O-14085; 07-O-14170</b>
<b>LARRY PAUL JAMES</b>	)	<b>07-O-14736; 08-O-11779)</b>
	)	<b>DECISION</b>
<b>Member No. 183769</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**I. Introduction**

In this disciplinary proceeding, respondent **Larry Paul James**, is charged with multiple acts of misconduct in five client matters. The charged misconduct includes (1) not performing with competence; (2) not refunding unearned fees; (3) not keeping clients reasonably informed of significant developments; and (4) not cooperating in a State Bar investigation.

This court finds, by clear and convincing evidence, that respondent is culpable in four client matters and seven acts of misconduct. Based upon the serious nature and the extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends that respondent be actually suspended for 90 days, among other things.

**II. Pertinent Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on October 6, 2009. On November 16, 2009, respondent filed a response to the NDC.

A seven-day trial was held on March 23 - 26; April 28 and 29; and July 6, 2010. The State Bar was represented by Deputy Trial Counsels (DTC) Wonder Liang and Sherrie McLetchie. Respondent was represented by Jonathan Arons. On July 6, 2010, following closing arguments, the court took this matter under submission.

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

The following findings of fact are based on the evidence, stipulations and testimony introduced at this proceeding.

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in California on November 28, 1996, and has been a member of the State Bar of California since that time.

#### **B. Case No. 07-O-10328 (Farakh and Akhtar)**

On July 5, 2005, Jamshaid Farakh and Mahjabeen Akhtar hired respondent to represent them before the Board of Immigration Review (BIA) in appellate proceedings and further proceedings thereafter, including preparing a notice of appeal and brief in support of the appeal and preparing documentation in support of the appeal. Pursuant to the contract, respondent was paid a flat fee of \$7,500.

On July 11, 2005, respondent filed notices of entry of appearance as attorney and of appeal to the BIA on behalf of Farakh and Akhtar. On January 23, 2006, the BIA scheduled the brief on behalf of Farakh and Akhtar to be due on February 13, 2006. On February 13, 2006, respondent filed a request for extension of time to file the brief, which was granted. Respondent was to file the opening brief by March 6, 2006. The request for an extension of time was based upon the failure of Farakh's and Akhtar's prior counsel to provide respondent with a case file.

Between February 14 and March 6, 2006, respondent did not file a brief on behalf of Farakh and Akhtar.<sup>1</sup> On June 2, 2006, the BIA affirmed the immigration judge's decision and dismissed the appeal. In dismissing the appeal the BIA held:

While current counsel asserts the need for original medical records in the possession of prior counsel, he has not indicated how such lack of evidence affected his capacity to file a timely brief. We, therefore, do not find that the alleged failure of prior counsel to turn over his records to current counsel negates the duty to submit a timely appellate brief.

Moreover, in a footnote the BIA noted that respondent is aware that opposing counsel also has a copy of the record of proceedings and he had not demonstrated that he had pursued any other means to obtain a copy of the proceedings or to review the record.

The decision was mailed on that same date and respondent received it. At a June 15, 2006 meeting with Farakh and Akhtar, respondent agreed to file a motion to reconsider with the BIA. He did not tell them that he never filed a brief. It appears to this court that the time to file the motion to reconsider would have been at the time an untimely brief was filed—here no brief was ever filed.

On September 1, 2006, respondent filed a motion to reconsider to the BIA. A motion to reconsider a decision must be filed with the BIA within 30 days after the mailing of the decision, so the motion to reconsider should have been filed in July. On September 18, 2006, the government opposed the respondent's motion to reconsider based on its untimeliness and because it also lacked any showing of error of law or fact in the BIA's June 2, 2006 decision

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<sup>1</sup> On the notice of the new briefing schedule there is a warning that the Board rarely grants more than one briefing extension to each party and, if one had been granted an extension, one should assume that further extensions will not be granted. If a brief is filed late, a motion for consideration of the untimely brief must be filed concurrently. There is no fee for such a motion. The motion must set forth in detail the reason that prevented timely filing of the brief and must be supported with affidavits, declarations or other evidence. Only one such motion will be considered by the Board.

where respondent failed to file a brief. On October 31, 2006, the motion to reconsider was denied by the BIA as untimely and, to the extent the motion to reconsider was treated as a motion to reopen, the BIA found it did not present a prima facie case for eligibility for relief from removal.

Respondent's services to Farakh and Akhtar were so deficient as to be worthless. He did not earn nor refund any of the \$7,500 in advanced fees paid to him.

***Count 1(A): Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))<sup>2</sup>***

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

By not filing the brief with the Board of Immigration Appeals and by filing the motion to reconsider beyond the 30-day period permitted, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

At this hearing, respondent attempted to shift the blame to his client for not filing a timely appellate brief with the BIA and for not filing a timely motion to reconsider because he was unable to get a medical evaluation of Farakh and because of Farakh's failure to get releases for his children's medical records. This court rejects respondent's attempt to shift the blame to his client for his inaction. The failure to file a timely brief is inexcusable given that respondent had enough information to submit a brief. The late motion to reconsider that respondent eventually filed does not contain any more information than what was readily available to him prior to timely filing it. The fact that Farakh's children suffered from cerebral palsy was known the time of the original immigration hearing.

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<sup>2</sup> References to the rules are to the Rules of Professional Conduct, unless otherwise stated.

***Count 1(B): Failure to Inform Client of Significant Development Failure (Bus. & Prof. Code, §6068(m))***<sup>3</sup>

Section 6068(m) requires an attorney, in relevant part, to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

Between July and October 13, 2006, respondent did not inform Farakh and Akhtar that he did not file the appellate brief with the BIA and therefore, the BIA would, in all likelihood, summarily dismiss their appeal; that any motion to reconsider would have to state the reasons therefor, specifying the errors of fact or law in the prior BIA decision; and that, in such a case, a petition for review of either the original BIA decision or the BIA decision on the motion to reconsider would be limited to the reasons for the summary dismissal. By not informing Farakh and Akhtar that he had significantly impaired their opportunity to prevail in the Ninth Circuit Court of Appeal by not filing a timely brief or a timely motion for reconsideration, respondent did not keep his clients reasonably informed of significant developments in a matter in which he had agreed to provide legal services in wilful violation of section 6068(m).

***Count 1(C): Failure to Refund Unearned Fees (Rules of Prof. Conduct, rule 3-700(D)(2))***

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

By not returning \$7,500 to Farakh and Akhtar after not doing the work for which he was retained, respondent did not return an advanced, unearned fee in wilful violation of rule 3-700(D)(2).

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<sup>3</sup> References to section are to the Business and Professions Code, unless otherwise indicated.

**C. Case No. 07-O-14085 (Weinel Matter)**

Heather Weinel came to the United States in 1992. Weinel wanted to become a United States citizen so that she could petition for her married daughter to immigrate to the United States. On February 5, 2007, Weinel hired respondent to prepare an application for her naturalization and an alien relative petition on behalf of her daughter. Weinel paid respondent \$3,600 in advanced fees.

On August 23, 2007, Weinel attended her naturalization oath ceremony and became a United States citizen. On August 30, 2007, Weinel informed respondent that she would not need respondent to prepare an alien relative petition on behalf of her daughter due to a change in her daughter's circumstances.

In September 2007, respondent agreed to refund \$1,800 of the advanced fees to Weinel. On September 13, 2007, Weinel wrote a letter to respondent regarding the refund of advanced fees. Respondent received this letter on or about September 14, 2007.

Respondent's office was in disarray. He thought he had refunded the fees to Weinel. He dropped the ball and lost track of the matter. After a couple of calls, he told his staff members to call the clients and have them pick up the check, but he did not follow through on it. He did not know whether they came in. He did not get messages that Weinel had been trying to reach him. He forgot about it until the State Bar reminded him about it.

Finally, Weinel was paid after the State Bar intervened. On February 4, 2008, respondent refunded \$1,800 of the advanced fees to Weinel.

***Count 2(A): Failure to Refund Unearned Fees (Rules of Prof. Conduct, rule 3-700(D)(2))***

By not refunding the \$1,800 in unearned fees until February 4, 2008, respondent failed to promptly refund unearned fees in wilful violation of rule 3-700(D)(2).

**D. Case No. 07-O-14170 (Park Matter)**

On July 17, 2006, Seung Eun Park hired respondent to prepare an immigrant petition for alien worker (I-140) and an application for adjustment of status to lawful permanent resident (I-485) for her. At the time respondent was hired, he knew that time was of the essence.

On August 10, 2006, respondent submitted the I-140 on Park's behalf, without the prevailing wage determination. With the petition, respondent submitted a notice of filing dated November 14, 2003, originally posted on July 23, 2001, which was outside the prescribed time period required by U.S. Citizenship & Immigration Services (USCIS).

On November 7, 2006, respondent submitted the prevailing wage request and visa screen certificate on Park's behalf.

On July 25, 2007, USCIS issued its decision denying the I-140 petition based on the fact that the notice of filing was posted from July 23, 2001 and was, therefore, outside the posting times required. Respondent received the decision.

Also on July 25, 2007, USCIS also issued its decision denying the I-485 application based on the denial of her I-140 petition which made her ineligible to adjust her status.

On July 31, 2007, Park sent respondent a letter by certified mail. Park requested a full refund of advanced fees and costs paid on her immigration matter. Respondent received this letter.

***Count 3(A): Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))***

The court dismisses this count as the complaining witness did not testify. Therefore, the court does not have enough evidence to determine whether or not there was a failure on the part of respondent to perform competently.

***Count 3(B): Moral Turpitude (Bus. & Prof. Code, §6106)***

At trial, the State Bar moved to dismiss this count. The court granted the motion.

**E. Case No. 07-O-14737 (Chen Matter)**

On July 2, 2003, Chun-Ping Chen hired respondent to prepare the application for asylum and cancellation of removal, application for adjustment of status and to represent her before the Bureau of Citizenship and Immigration Services and the Executive Office of Immigration Review (Immigration Court) in removal and adjustment of status proceedings. Thereafter, respondent filed the application for asylum and cancellation of removal.

On May 4, 2004, Chen's application for asylum was denied. The right of appeal was reserved. Respondent did not request voluntary departure on behalf of Chen, so voluntary departure was not ordered. Chen was ordered removed from the United States on May 4, 2004. Chen did not depart. The notice of appeal had to be filed not later than June 3, 2004.

Respondent's contract with Chen did not call for him to represent her on appeal. However, Chen said respondent agreed to file an appeal. Clearly, at the hearing, respondent reserved the right to file an appeal. Respondent stated that Chen did not ask him to file an appeal until just before the filing date. Respondent further states that he agreed to undertake the appeal because he felt sorry for Chen. At any rate, on June 2, 2004, respondent wrote a check to the BIA for the appeal. This court finds that respondent agreed to file an appeal with the BIA on behalf of Chen. Once respondent agreed to undertake the appeal, he had an obligation as Chen's attorney to pursue it in a competent manner.

On June 4, 2004, respondent filed Chen's notice of appeal with the BIA, but, thereafter, took no steps to correct its late filing.<sup>4</sup> On June 22, 2004, the BIA denied the appeal because it

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<sup>4</sup> It is clear that, as of June 2, 2004, respondent agreed to undertake the appeal for Chen because he wrote a check to the BIA for the appeal on that date. He knew the brief was due on June 3. Maribel Herrera, Chen's new attorney after respondent, testified that there are different



was not filed timely. Respondent received notice of the denial on June 25, 2004. After the BIA denial, Chen called respondent and respondent told her not to worry and that he would take care of it.

Respondent did nothing to correct the untimeliness of the appeal nor did he explain the significance of losing the appeal to Chen.

In 2005, Chen met with respondent regarding adjustment of her status. Respondent had told her to wait until her husband's naturalization in September 2006. At that time, respondent did not tell her that her failure to leave the United States voluntarily had an effect on her adjustment of status. Chen wrongly assumed that because she was not picked up that respondent had taken care of the removal issue.

On July 1, 2007, respondent filed on behalf of Chen, a form I-485 application to adjust status, a form I-212 application to reapply for admission and a form I-765 application for employment authorization.

On October 10, 2007, Chen arrived at the USCIS for her interview with respect to these applications. At that meeting, she was informed that the USCIS did not have jurisdiction because she was already in removal proceedings. Respondent stipulated that because Chen had already been ordered removed, the USCIS did not have jurisdiction. The only reason she was not taken into custody immediately was that she had brought her baby to the interview. The next day, Chen met with respondent and he told her that he would find someone to help her. He then set up another appointment for the following day. Respondent did not show up for that

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ways of proceeding if one knows of a potential late filing of a brief. For example, if the brief is due the next morning, a courier service can be called to confirm or call the board itself. If, on the day one calls, the brief has not arrived, one may contact a courier or law firm in Virginia that offers services to fax the materials to them and they can hand deliver it the BIA, which, at a later time, will ask for an original. Also, if one does not realize until the day after that the appeal did not arrive in a timely manner, then immediately refer the client to another attorney to see if there is any way he or she can fix the mistake as one cannot file an ineffective assistance of counsel motion on one's own work.

appointment. Because respondent did not show up for the appointment, Chen decided to hire attorney Maribel Herrera.

On November 15, 2007, Maribel Herrera filed a motion to reopen with the Executive Office for Immigration Review based on respondent's ineffective assistance of counsel. On that same date, Chen was granted a stay of removal until an order on the motion to reopen had been given. On December 17, 2007, Chen's motion to reopen was granted. The court order stated that: "There is a colorable claim to ineffective assistance of counsel by Respondent's first attorney."

***Count 4(A): Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))***

By not filing the notice of appeal by June 3, 2004 and by not taking any steps to correct the untimely filing of the notice of appeal, respondent intentionally recklessly or repeatedly failed to perform legal services with competence.<sup>5</sup>

***Count 4(B): Failure to Inform Client of Significant Development Failure (Bus. & Prof. Code, §6068(m))***

There is not clear and convincing evidence that respondent wilfully violated section 6068(m). On June 10, 2004, respondent's administrator wrote a letter to Chen informing her that the BIA acknowledged receipt of the notice of appeal. The letter did not mention the late filing of the appeal. However, Chen knew the appeal was not timely filed because on June 30, 2004, respondent wrote her a letter and sent the notice/decision regarding the appeal from the BIA. The first sentence of the order stated that the appeal was untimely. Chen's command of English was sufficient for her to understand that. Accordingly, she was reasonably informed of a

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<sup>5</sup>The court is not addressing the issue of respondent's competence in advising Chen to file the I-485 and I-212 on July 1, 2007, when the USCIS had no jurisdiction. It is this court's understanding that, at the time, the law in the Ninth Circuit was in a state of flux. (See *Gonzales v. Department of Homeland Security* (9<sup>th</sup> Cir 2007) 508 F.3d 1227 which overruled *Perez-Gonzales v. Ashcroft*, 379 F.3d 783 (9<sup>th</sup> Cir. 2004).)

significant development in her case. Moreover, issues regarding the pointless nature of filing the I-485 and the I-212 forms are more related to competence and have been addressed above.

**F. Case No. 08-O-11779 (Fouial Matter)**

In July 2007, respondent represented Abdelouahid Fouial before the BIA in an asylum matter. On July 23, 2007, respondent received the BIA's July 19, 2007 order in Fouial's matter dismissing his appeal and granting him voluntary departure within 60-days from the date of the order.

At the end of August 2007, Fouial received a letter from the BIA containing the July 19, 2007 order. As soon as Fouial received the letter, he called respondent and told him he was engaged and going to marry an American citizen. At that time, respondent told Fouial that he had 90 days to file a motion to open or else leave the United States.

On August 27, 2007, Fouial married a United States citizen, Rawdah Jazairy. On August 28, 2007, Fouial called and employed respondent to prepare and file an alien relative petition on behalf of Jazairy for the benefit of Fouial; prepare a motion to reopen the removal proceedings with the BIA for Fouial; prepare documentation in support of the petition and motion; and represent Jazairy and Fouial in the proceedings. At the time, respondent knew that the BIA had sent Fouial a letter dated July 19, 2007, informing him that his appeal had been denied and that he had 60 days from the date of the letter to depart the United States. However, respondent told Fouial that he had 90 days from the date of the BIA letter to file a motion to reopen. The court believes that respondent told respondent that he had 90 days from the date of denial because he expressly states in his motion to reopen that Title 8 C.F.R. § 1003.2(c)(2) provides that a motion to reopen must be filed no later than 90 days from the date on which the final administrative decision was rendered. Moreover, he did not tell Fouial that he had to depart the United States

by September 17, 2007 unless he filed a request for a stay prior to the expiration of the 60 days. Respondent admits that he did not request for a stay before the motion to reopen.<sup>6</sup>

On September 10, 2007, a formal attorney-client fee contract was signed between respondent and Fouial.

On September 17, 2007, Fouial did not voluntarily depart the United States as required. On September 19, 2007, Fouial and Jazairy signed the forms and sent them to respondent, who received them on or about September 20, 2007. Fouial was at all times aware how time-sensitive the matter was. He was sending emails to respondent correcting documents that respondent's office was sending him. The court rejects respondent's attempt to shift the blame for his late filing of the motion to reopen on Fouial. Moreover, Fouial credibly testified that he called respondent's office several times between August 28 and September 6, 2007 to make sure that documents were corrected.

On September 24, 2007, respondent filed the alien relative petition on behalf of Jazairy and for the benefit of Fouial. On October 17, 2007, respondent filed the motion to reopen with the BIA. The forms prepared by respondent did not request a stay from removal or voluntary departure. On October 18, 2007, the BIA rejected the motion to reopen for failure to include the filing fee. On November 2, 2007, respondent submitted a request to the BIA to accept the motion to reopen. The BIA accepted it.

On February 11, 2008, the BIA issued an order denying the motion to reopen based on Fouial's failure to depart the United States which made him statutorily ineligible for discretionary relief. On February 16, 2008, respondent telephoned Fouial and told him that the

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<sup>6</sup> Prior to 2009, one could seek a stay during the voluntary departure period in asylum cases and then one did not have to worry about being subject to a final removal order. In *Azarte v. Ashcroft* (9<sup>th</sup> Cir. 2005) 394 F.3d 1278, the court held that in cases in which a removal or voluntary departure is requested, the voluntary departure period is tolled during the period the board is considering the motion.

motion to reopen filed and re-submitted on November 2, 2007, had been denied and that he would send him a copy of the BIA order. On March 17, 2008, Fouial received a copy of the BIA order.

Respondent's services to Fouial were so deficient as to be worthless. He did not earn nor refund any of the \$3,600 in fees paid to him.

On April 24, 2008, the State Bar opened an investigation, case no. 08-O-11779, concerning respondent's representation of Fouial. On May 19, 2008, a State Bar investigator wrote to respondent requesting that he respond in writing to specified allegations of misconduct being investigated by the State Bar in the Fouial matter. On June 6, 2008, respondent informed the investigator that he would provide his written response not later than June 9, 2008. No written response was received.

On June 23, 2008, the State Bar investigator again wrote to respondent regarding the Fouial matter, enclosing a copy of the May 19, 2008 letter; advising respondent of his obligation to cooperate in a State Bar investigation; and requesting that he respond in writing. Respondent did not respond to the investigator's letter or otherwise communicate with the investigator.

***Count 5(A): Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))***

By not filing the motion to reopen with the BIA by September 17, 2007, and by not requesting a stay from removal or voluntary departure, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A). In *Azarte v. Ashcroft* (9<sup>th</sup> Cir. 2005) 394 F.3d 1278, the court held that, in cases in which a removal or voluntary departure is requested, the voluntary departure period is tolled during the period the board is considering the motion. In the present case, on July 19, 2007, the BIA granted the respondent 60 days voluntary departure (until September 17, 2007), and the respondent did not file his motion to reopen until November 2,

2007. Even if the BIA considered the filing date to be October 17, 2007, the date on which the motion was first submitted (it was rejected on October 18, 2007, and then resubmitted on November 2, 2007), the motion was still not filed within the voluntary departure period. *Azarte v. Ashcroft, supra*, does not apply because respondent filed the motion to reopen after the voluntary departure period. In short, it was incompetent of respondent not to file the motion to reopen within the voluntary departure period. Even if the court considered October 17, 2007, to be the date by which the motion should have been filed, respondent was still late. Between September 18 and October 17, Fouial cannot be blamed for any untimely motion. Moreover, Fouial cannot be blamed for respondent's failure to request a stay to toll the voluntary departure time.

***Count 5(B): Failure to Inform Client of Significant Development Failure (Bus. & Prof. Code, §6068(m))***

The charge that respondent wilfully violated section 6068(m) by: not informing Fouial of the need to either file the motion to reopen or voluntarily leave by September 17, 2007; or that respondent did not request a stay of removal or voluntary departure; or that the motion to reopen filed on October 17, 2007 and re-submitted on November 2, 2007 did not stay the July 19, 2007 order is duplicative. It is the basis of the respondent's failure to act incompetently, accordingly, the court will not recommend additional discipline on that basis.

***Count 5(C): Failure to Cooperate in State Bar Investigation (Bus. & Prof. Code, §6068(i))***

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

By not providing a written response to the allegations in the Fouial matter or otherwise cooperating in its investigation, respondent failed to cooperate in a disciplinary investigation in wilful violation of section 6068(i).

## **IV. Mitigating and Aggravating Circumstances**

### **A. Mitigation**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Professional Misconduct, standard 1.2(e).)<sup>7</sup>

The absence of a prior record of discipline over many years of practice prior to the commencement of the misconduct is a mitigating factor. (Standard 1.2(e)(i).) Respondent practiced about 8-1/2 years prior to the commencement of the misconduct.

Extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the misconduct may be mitigating factors. (Std. 1.2(e)(iv).) In 2008, respondent, an only child, was dealing with the knowledge that his mother has been diagnosed with congestive heart issues and that she did not have long to live. In 2008, his mother had bypass surgery and died. In addition, his father suffered a massive stroke in 2008 and in 2009, he had to lay off his entire office staff. Furthermore, respondent was struggling financially as his house was underwater and his loan modification was not approved. Respondent was overwhelmed by these events and his own health issues. The court gives some mitigating weight to these issues.

### **3. Character evidence:**

An extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct is a mitigating factor. (Std. 1.2(e)(vi).) The court found the witnesses credible and gives this evidence mitigating weight.

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<sup>7</sup> All further references to standards are to this source.

**a. Anthony Palik**

Anthony Palik is a criminal defense attorney, practicing in the Vietnamese and Latino communities primarily, admitted in 1997 and has no public discipline. He and respondent are professional acquaintances. He has consulted with respondent regarding immigration cases six or seven times in the last two years and referred many people to him, none of whom had complained about him. He has read the NDC.

Palik stated that respondent is one of the few attorneys he could trust. He recounted that respondent has been through a difficult divorce and death of a parent in recent years and knows that he has some health issues related to high blood pressure.

**b. Hau Bui**

Hau Bui is a self-employed immigration consultant who worked with respondent for 10 years. He serves as a Vietnamese translator and as a paralegal for Anthony Palik. He fills out forms for people.

Hau Bui has met with respondent once or twice a week and refers cases to him. He believes that respondent is a good and honest lawyer. All of his clients are happy with him. He is sure that he is honest and trustworthy. Hau Bui has a good reputation in his country and would not want to ruin his reputation by referring cases to an incompetent attorney.

**c. Moten Holt**

Moten Holt is a self-employed attorney, admitted in 1962, practicing in Citrus Heights. He has a record of discipline, a private reproof. He knows respondent since 1992 or 1993 as a law clerk with the Barker Association. They both belong to the Gideon Movement.

Moten Holt has read the NDC and believes the conduct it describes is aberrational. He has a family law practice and if he had a problem with an immigration matter, he would call respondent. He would trust him with any client he referred to him.



**d. Alfred Yeatts**

Alfred Yeatts is a retired engineer. He belongs to Gideon's International. He is a church member. Yeatts sees respondent at Arcade Baptist Church once a week. He has referred people to him for legal services. He has no reason to question his honesty.

**e. Peter Gurmeza**

Peter Gurmeza is self-employed and has a janitorial service. He asked respondent to help him in becoming a United States citizen, which he obtained in 2009. They met in late 2006 and early 2007. Both are members of Gideon International which places bibles in places around the world. They talk three times a week on a social basis. Gurmeza stated that respondent went the extra mile for him. He is satisfied about everything that was done for him. He knows what the disciplinary charges are. He trusted respondent from the first time they met.

**f. Michael D. Lokteff**

Michael D. Lokteff was a high school teacher from 1969 until 1979. He is the former president of Word to Russia. He has been in the United States for 60 years.

Respondent did a few immigration cases for him. Lokteff sought his counsel pro bono. They first met in a church 12-15 years ago. In the last six years, Lokteff saw him once or twice a year. He referred clients to him last year. He is familiar with the charges brought against respondent. He never had any reason to distrust him. All the people that he referred to him have never complained.

**g. Gae Geram**

Gae Geram is an immigration bond agent, self-employed. She has done immigration bonds for 10 years and regular bail bonds for seven years. Her clients have had him as an attorney and she has made referrals to his office. She has known him since June or July 2000. They speak monthly and participate in social events. She has referred as many as fifty (50)

clients to him since 2000. She never had any reason to question his trustworthiness. She has read the stipulated facts and pretrial statements of both parties.

**h. Bridgette Rau**

Bridgette Rau has an immigration consulting business. She sees respondent frequently, 8 to 12 times annually. She has gone to court with him as an interpreter. She has referred about 20-30 clients to him. The clients have come back to thank her for the referral. She has no reason to question his trustworthiness. The misconduct would not affect her willingness to refer clients to him.

**i. Daniel Karalash**

Daniel Karalash is a lawyer, licensed in 1995, with no record of discipline. He and respondent met in law school in 1991. He sees him daily because he rents an office in his building. He has no reason to question respondent's honesty and integrity. He has referred cases to him, including his mother who was a Canadian alien resident. Karalash has known him to work diligently. Respondent has given him advice concerning the consequences of criminal convictions on immigrants' rights. He believes that respondent is an extremely competent attorney. He attributes respondent's client problems with the fact that respondent was beginning to have problems with his mother and the fact that his wife lost her employment.

**B. Aggravation**

Respondent committed multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) Farakh and Akhtar had to find other counsel at a cost of \$15,000. Farakh has two handicapped children and is financially depressed. These events took a personal toll on their family. Weinel suffered a direct loss of not being paid in a timely matter. Fouial had to hire another attorney and pay him \$15,000.

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct in that he tried to shift blame for his misconduct to his clients Farakh and Akhtar and Fouial.

## V. Discussion

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

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

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

Standards 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067

and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to the purposes of imposing discipline.

Respondent has been found culpable in four client matters of violating rules 3-110(A) (three counts) and rule 3-700(D)(2) (two counts) and sections 6068 subdivisions (i) and (m) (one count each). Aggravating factors include multiple acts of misconduct, client harm and indifference. Mitigation includes good character evidence, no prior discipline and emotional issues.

The court believes that, in consideration of the nature of the misconduct, the parties' contentions and the aggravating and mitigating factors, 90 days' actual suspension, in accordance with standard 2.6(a) is sufficient to protect the public in this instance. Respondent has presented sufficient mitigation, including credible good character testimony from attorneys, to outweigh the aggravating circumstances. In addition, the misconduct and aggravating factors herein are less than in instructive cases such as *Cannon v. State Bar* (1990) 51 Cal.3d 1103; *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498; and *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416. Accordingly, after considering all of the factors in this case, the court believes that an actual suspension of 90 days, among other things, is sufficient to protect the public and maintain the high standards in the legal profession in this instance.

## **VI. Recommended Discipline**

Accordingly, the court hereby recommends that respondent LARRY PAUL JAMES be suspended from the practice of law for one year, that said suspension be stayed, and that respondent be placed on probation for two years on the following conditions:

1. Respondent must be actually suspended from the practice of law for the first 90 days of probation;

2. During the period of probation, respondent must comply with the State Bar Act and the Rules of Professional Conduct;

3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, **and** to the State Bar Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the State Bar Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than thirty (30) days, that report must be submitted on the next following quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the probation period and no later than the last day of the probation period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the State Bar Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with the conditions contained herein;

6. Respondent must make restitution to:

(a) Jamshaid Farakh and Mahjabeen Akhtar in the amount of \$7,500 plus 10% interest per annum from July 5, 2005 (or to the Client Security Fund to the extent of any payment from

the fund to Jamshaid Farakh and Mahjabeen Akhtar, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and

(b) Abdelouahid Fouial in the amount of \$3,600 plus 10% interest per annum from August 24, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Abdelouahid Fouial, plus interest and costs, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

7. Within one year of the effective date of the discipline herein, respondent must provide to the State Bar Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.);

8. The period of probation will commence on the effective date of the order of the Supreme Court imposing discipline in this matter.

9. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for one year will be satisfied and that suspension will be terminated.

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar

Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation within one year of the effective date of the discipline herein.

**Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.**

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20(a) of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.<sup>8</sup>

#### VII. Costs

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

Dated: September \_\_\_\_\_, 2010

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PAT McELROY  
Judge of the State Bar Court

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<sup>8</sup> Rule 9.20 of the California Rules of Court was previously numbered rule 955. Noncompliance with former rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 9.20(c) affidavit even if he or she has no clients to notify. (Cf. *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)