FILED OCTOBER 1, 2008

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: **07-O-12023-LMA (07-O-12024; 07-O-12337; 07-O-12531; 07-O-15055)**
KIERAN JOSEPH BROTHERS	)	**DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**
Member No. 173437	)	
A Member of the State Bar.	)	

I. INTRODUCTION

In this disciplinary matter, Wonder J. Liang appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent KIERAN JOSEPH BROTHERS did not appear in person or by counsel.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred.

II. SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed on March 28, 2008, and was properly served on respondent on that same date at his official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section[1] 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned

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

marked "unclaimed."

On April 10, 2008, respondent was properly served at his official address with a notice advising him, among other things, that a status conference would be held on May 12, 2008. He did not appear at the status conference. On May 13, 2008, he was properly served with a status conference order at his official address by first-class mail, postage prepaid.

Respondent did not file a responsive pleading to the NDC. On May 30, 2008, a motion for entry of default was filed and properly served on respondent at his official address by certified mail, return receipt requested. The motion advised him that minimum discipline of disbarment would be sought if he was found culpable. Respondent did not oppose the motion.

On June 17, 2008, the court entered respondent's default and enrolled him inactive effective three days after service of the order. The order was filed and properly served on him at his official address on that same date by certified mail, return receipt requested. This correspondence was returned marked "unclaimed."

The State Bar's and the court's efforts to contact respondent were fruitless.[2] The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on July 9, 2008.[3]

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court's findings are based on the allegations contained in the NDC as they are

[2] The only contact from respondent was a fax he sent to the State Bar investigator on May 27, 2008. It did not directly address the issues but noted continuing health problems after heart surgery in 2007. He also said that he was obtaining help with his work from another attorney. He said he would satisfy the clients who complained to the State Bar and apologized to the investigator, the State Bar and to each of the clients he had neglected.

[3] Briefs were due by July 8, 2008.

deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar[4], rule 200(d)(1)(A).) The findings are also based on any evidence admitted.

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 12, 1994, and has been a member of the State Bar at all times since.

B. Case no. 07-O-12531(Long)

1. Facts

On or about June 30, 2006, Shannon Long ("Long") hired respondent to represent Ms. Long in a personal injury matter against Hellenia High as a result of an automobile accident that they were involved in on or about June 8, 2006.

On or about August 10, 2006, respondent sent a letter of representation to Ms. High's insurance company, 21st Century Insurance Company, stating that he was representing Ms. Long.

On or about October 20, 2006, respondent contacted Ms. Long to request a copy of her medical records. On or about December 1, 2006, Ms. Long faxed her medical records to respondent.

Between on or about December 1, 2006 and on or about June 7, 2007, respondent failed to perform any services for Ms. Long and failed to communicate with 21st Century Insurance Company or Ms. Long, despite Ms. Long's numerous attempts to contact him.

Between on or about December 1, 2006 and on or about June 7, 2007, Ms. Long

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[4] Future references to the Rules of Procedure are to this source.

telephoned respondent on numerous occasions at the telephone number respondent had given her. Each time that Ms. Long telephoned respondent, she left a message for respondent to contact her regarding her case. Respondent received these telephone messages, but failed to contact or communicate with Ms. Long. Between on or about December 1, 2006 and on or about June 26, 2007, respondent also failed to communicate with 21st Century Insurance, despite its representatives sending five letters to respondent requesting that he contact them regarding Ms. Long's matter. Respondent received these letters, but failed to contact or communicate with 21st Century Insurance. Respondent never sent to 21st Century Insurance any documents supporting any damages for Ms. Long, never settled or made an offer of settlement to 21st Century Insurance, and never filed a lawsuit on Ms. Long's behalf. Respondent failed to perform the services for which Ms. Long hired him.

Eventually Ms. Long tried to communicate directly with 21st Century Insurance to settle her case because respondent was not communicating with her. However, 21st Century Insurance would not communicate directly with Ms. Long because she was represented by counsel and Ms. Long was unable to obtain her files from respondent to give to a new attorney because respondent was not communicating with her.

On or about April 29, 2007, Ms. Long filed a complaint with the State Bar against respondent. On or about June 7, 2007, State Bar Complaint Analyst, Hugo Gonzalez, sent respondent a letter at his membership records address advising respondent of Ms. Long's complaint and requesting that respondent respond to the complaint by June 21, 2007. Respondent received this letter by on or about June 12, 2007, but failed to respond to the State Bar. On or about June 26, 2007, respondent left a telephone message for Ms. Long that respondent had been dealing with family issues. He promised to get "back on track" and complete Ms. Long's case.

Subsequently, respondent failed to perform the services for which he was hired and failed to communicate with Ms. Long. Respondent failed to complete Ms. Long's case as he had promised in his June 26, 2007 message to Ms. Long.

On or about July 31, 2007, 21st Century Insurance claims representative, Carolyn Paicely ("Paicely"), contacted respondent by telephone regarding the status of Ms. Long's case. Respondent represented to Ms. Paicely that Ms. Long's medical treatment was finished, even though he had not been in contact with Ms. Long. Ms. Paicely urged respondent to contact his client, Ms. Long.

On or about July 31, 2007, Ms. Long sent a letter to respondent at his membership records address requesting a copy of her files and documents. Respondent received this letter, but failed to provide Ms. Long with a copy of her files and documents.

On or about August 4, 2007, respondent telephoned Ms. Long and stated that he would finish her case when he returned from a vacation in two weeks. He requested some medical records from Ms. Long.

On or about August 23, 2007, Ms. Long faxed a note and a copy of her June 12, 2006 medical records. She had previously provided those and other medical records to respondent.

In or about 2007, Ms. Long requested copies of her medical records from her chiropractor so that she could provide them to Ms. Paicely. Ms. Long's chiropractor informed Ms. Long that her files were lost. Thus, respondent has the only known copies of Ms. Long's medical records.

Subsequent to on or about August 4, 2007, Respondent failed to complete the services for which he was hired. He failed to contact or communicate with 21st Century Insurance or provide it with the needed medical records and bills, failed to settle Ms. Long's matter, and failed to file a lawsuit on her behalf. Respondent also failed to communicate with Ms. Long and failed to provide Ms. Long with a copy of her files and records.

On or about September 18, 2007, Ms. Long sent a letter to respondent stating that she has been unable to reach respondent and requesting a personal meeting. Ms. Long's letter stated that she would find a new attorney if respondent did not return her message by October 20, 2007. Respondent received this letter by on or about September 23, 2007.

Subsequently, respondent failed to communicate with Ms. Long. Respondent never responded to Ms. Long's September 18, 2007 letter.

To date respondent has never returned Ms. Long's files and documents to her. She has been unable to make subsequent requests for her files and documents because respondent has failed to communicate with her.

On or about July 31, 2007, State Bar Investigator Amanda Gormley sent to respondent at his membership records address a second letter from the State Bar requesting that he respond to Ms. Long's allegations and provide certain documents to the State Bar by August 10, 2007. Respondent received this letter, but failed to respond to Ms. Gormley's July 31, 2007 letter. Respondent failed to cooperate in the State Bar's investigation of Ms. Long's complaint.

2. Conclusions of Law

a. Count 1A- Rule of Professional Conduct,[5] Rule 3-110(A) (Competence)

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

By failing to communicate with 21st Century Insurance, by failing to provide 21st Century Insurance with the medical records and bills, by failing to settle or file a lawsuit on Ms. Long's case, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

[5] Future references to rule are to this source.

b. Count 1B- Section 6068, subd. (m) (Communication)

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

By failing to communicate with Ms. Long and by failing to respond to Ms. Long's numerous telephone calls and letters, respondent failed to respond promptly to reasonable status inquiries of a client in wilful violation of section 6068, subdivision (m).

c. Count 1C- Rule 3-700(D)(1) (Return Client Papers and Property)

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

By failing to release Ms. Long's client files and documents to her, despite Ms. Long's request for the files and documents, respondent failed to promptly release to the client, at the request of the client, all the client's papers and property in wilful violation of rule 3-700(D)(1).

d. Count 1D - Rule 3-700(A)(2) (Improper Withdrawal)

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

By failing to perform any services for Ms. Long and failing to communicate with her, respondent constructively terminated his services for Ms. Long. Respondent, however, failed to

give due notice to Ms. Long that he was terminating his services and failed to give her time to employ other counsel.

By constructively withdrawing as Ms. Long's attorney of record without advising Ms. Long that he was terminating his services and giving her an opportunity to obtain new counsel, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of rule 3-700(A)(2).

e. Count 1E- Section 6068, subd. (i) (Participation in Investigation)

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

By not responding to the State Bar's June 7, 2007 and July 31, 2007 letters, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in wilful violation of 6068, subdivision (i).

B. Case no. 07-O-12023 (Harborth/Mitchell)

1. Facts

On or about March 29, 2006, Keri Harborth ("Harborth") and Ron Mitchell ("Mitchell") hired respondent to represent them in a personal injury case as a result of an automobile accident in which they were involved in or around February 2006.

Subsequently, respondent failed to perform the services for which he was hired. He failed to file a lawsuit on their behalf or take any actions on their behalf.

Soon after Harborth and Mitchell hired respondent, respondent stopped communicating with Harborth and Mitchell, despite their numerous attempts to contact him. Respondent also failed to perform any work on their case. Both Harborth and Mitchell telephoned respondent numerous times at the telephone number respondent had given them. Each time they telephoned,

they left messages requesting that respondent contact them. Respondent received these messages, but failed to contact Harborth or Mitchell or respond to any of the telephone messages left by Harborth or Mitchell.

In or about March 2007, Harborth and Mitchell hired attorney William Parish ("Parish") to assist them in obtaining their files and documents from respondent. They did so because they had not heard from respondent for about one year and he was not responding to their telephone messages. Respondent had failed to perform any services on their behalf for about one year.

On or about March 9, 2007, Mr. Parish sent to respondent at his membership records address a letter requesting that respondent return Harborth and Mitchell's files and documents. Respondent received this letter, but failed to respond to Mr. Parish's March 9, 2007 letter or return Harborth and Mitchell's client file to them or Mr. Parish.

After sending the March 9, 2007 letter to respondent, Mr. Parish attempted to telephone respondent to request Harborth and Mitchell's files and documents. Mr. Parish was unable to leave a message on respondent's mailbox because respondent's voice mail box was full.

On or about March 22, 2007, Mr. Parish sent to respondent at his membership address a second letter requesting that respondent return Harborth and Mitchell's files and documents. Respondent received this letter, but failed to respond to Mr. Parish's March 22, 2007 letter or return Harborth and Mitchell's files and documents to them or Mr. Parish.

On or about April 2, 2007, after receiving no response from respondent regarding Mr. Parish's requests for Harborth and Mitchell's files and documents, Mr. Parish filed a complaint with the State Bar. On or about June 4, 2007, State Bar investigator Amanda Gormley sent respondent at his membership records address a letter requesting that respondent contact her regarding Mr. Parish's complaint. Respondent received this letter by on or about June 9, 2007.

On or about June 11, 2007, respondent returned Harborth and Mitchell's client files and

documents to Mr. Parish. Thereafter, Mr. Parish forwarded the files and documents to Harborth and Mitchell.

2. Conclusions of Law

a. Count 2A- Rule 3-110(A) (Competence)

By performing no work on Harborth and Mitchell's case for about a year, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

b. Count 2B- Section 6068, subd. (m) (Communication)

By failing to communicate with Harborth and Mitchell or respond to any of their messages, respondent failed to respond promptly to reasonable status inquiries of his clients in a matter in which respondent had agreed to provide legal services in wilful violation of section 6068, subdivision (m).

c. Count 2C- Rule 3-700(D)(1) (Return Client Papers and Property)

By failing to deliver Harborth and Mitchell's client files and documents for about three months, respondent failed to promptly deliver to his clients, at the request of the clients, all the clients' papers and property in wilful violation of rule 3-700(D)(1).

C. Case no. 07-O-12024 (Kellum)

1. Facts

On or about December 14, 2006, Jack Kellum ("Kellum") hired respondent to represent him in a personal injury matter arising from an automobile accident on or about November 14, 2006. At the same time, respondent also agreed to represent Mr. Kellum in a fee dispute with the dating service, It's Just Lunch. Mr. Kellum complained that It's Just Lunch had made promises regarding date selections that were not honored. Respondent agreed to attempt to negotiate a settlement of this dispute for Mr. Kellum.

On or about January 25, 2007, respondent sent a letter to Jodi Guierra of It's Just Lunch asking if they could informally resolve the dispute.

On or about March 5, 2007, respondent and Linda Grandlund ("Grandlund"), owner of It's Just Lunch, spoke by telephone and discussed resolving the matter by It's Just Lunch providing Mr. Kellum one additional date.

On or about March 5, 2007, Ms. Grandlund sent a letter to respondent confirming her discussion with respondent and making a specific offer to settle the dispute by lt's Just Lunch providing Mr. Kellum with one additional date. Respondent received that letter. In her March 5, 2007 letter, Ms. Grandlund wrote in relevant part:

> "I believe that we have fulfilled the agreement with Mr. Kellum, however I will accommodate your request of providing him with I additional introduction out of good faith/business. We have enjoyed our relationship with Mr. Kellum and only wish him the best. We will reach out to Mr. Kellum upon your and your client's acceptance of the terms, as to release Granlund Partners, dba It's Just Lunch, from any future obligations or legal action. I will await your response and then we will move forward."

Subsequently, respondent failed to inform Mr. Kellum of Ms. Grandlund's offer to settle the matter and the terms of the offer. Respondent failed to inform Mr. Kellum of Ms. Grandlund's letter, send him a copy of the letter, or obtain Mr. Kellum's agreement to the terms of the settlement offer. Respondent also failed to have further communications with Ms. Grandlund or any other representatives of It's Just Lunch.

Subsequent to on or about March 5, 2007, respondent failed to communicate with Mr. Kellum, despite his numerous attempts to contact respondent. Mr. Kellum telephoned respondent at the telephone number respondent had provided Mr. Kellum. Mr. Kellum left messages for respondent to contact him. Respondent failed to respond to these messages or communicate with Mr. Kellum. On or about April 10, 2007, Mr. Kellum filed a complaint against respondent with the State Bar because respondent was not communicating with him.

On or about July 1, 2007, almost four months after Ms. Grandlund sent respondent her written settlement offer, Mr. Kellum contacted Ms. Grandlund directly and learned about the settlement offer. This was the first time that Mr. Kellum learned of the settlement offer and its terms. Subsequently, Mr. Kellum accepted Ms. Grandlund's offer and settled the matter with It's Just Lunch.

Subsequent to on or about March 5, 2007, respondent failed to communicate with Mr. Kellum regarding both his personal injury matter and his dispute with It's Just Lunch, despite Mr. Kellum's numerous attempts to contact him. Mr. Kellum made numerous telephone calls to respondent to inquire as to the status of both his personal injury case and the It's Just Lunch matter. Mr. Kellum would leave messages for respondent to contact him. Respondent received these messages, but failed to contact or communicate with Mr. Kellum.

From on or about December 14, 2006 to on or about March 25, 2007, respondent failed to perform any work on Mr. Kellum's personal injury matter.

Subsequent to on or about March 5, 2007, respondent failed to communicate with Mr. Kellum regarding both his personal injury matter and his dispute with It's Just Lunch, despite Mr. Kellum's attempts to contact him. He failed to advise Mr. Kellum of the settlement offer by It's Just Lunch, he failed to complete the settlement with It's Just Lunch, and he failed to perform any work on Mr. Kellum's personal injury case, including failing to contact the other driver's insurance company.

In or about March 2007, Mr. Kellum hired a new attorney, Lawrence Limm ("Limm") to represent him in the personal injury matter. Mr. Kellum hired Mr. Limm because respondent was not communicating with him, and not performing the services in the matters for which he had agreed to provide legal services.

On or about March 25, 2007, Mr. Limm sent to respondent at his membership address a letter notifying respondent that Mr. Kellum was terminating respondent's services in the personal injury matter and hiring Mr. Limm to take over the personal injury matter. The letter also requested that respondent send Mr. Kellum's files and documents to Mr. Limm. Attached to this letter was Mr. Kellum's signed authorization informing respondent that Mr. Kellum had terminated his services and hired Mr. Limm to substitute into the personal injury matter and requesting that all his files, papers, and documents be transferred to Mr. Limm. Respondent received this letter, but failed to respond to Mr. Limm or Mr. Kellum or send Mr. Kellum's files and documents to Mr. Limm or Mr. Kellum.

Subsequent to on or about March 25, 2007, when Mr. Limm sent his letter to respondent requesting that respondent send Mr. Kellum's files and documents to Mr. Limm, neither Mr. Limm nor Mr. Kellum heard or received anything from respondent.

From late March 2007 through April 2007, Mr. Limm attempted to contact respondent by telephone at the telephone number on respondent's business cards. Mr. Limm left several messages for respondent to contact Mr. Limm regarding Mr. Kellum's matter. Respondent received these messages, but failed to contact Mr. Limm.

On or about April 10, 2007, Mr. Limm filed a complaint against respondent with the State Bar. He did so because Mr. Limm was unable to communicate with respondent to discuss the return of Mr. Kellum's files and documents, and respondent was not responding to Mr. Limm's letter or telephone messages.

On or about June 16, 2007, respondent sent Mr. Kellum's files and documents to Mr. Limm. This was over three months after Mr. Kellum and Mr. Limm first requested the files and documents.

2. Conclusions of Law

a. Count 3A - Section 6103.5 (Communicate Written Settlement Offer)

In relevant part, section 6103.5 requires an attorney to promptly communicate to his or her client all amounts, terms and conditions of a written settlement offer made by or on behalf of an opposing party.

By failing to communicate Ms. Grandlund's written offer of settlement to Mr. Kellum, respondent wilfully failed to promptly communicate a written offer of settlement, including all terms and conditions made by or on behalf of an opposing party in wilful violation of section 6103.5.

b. Count 3B Section 6068, subd. (m) (Communication)

By not communicating with Mr. Kellum or responding to Mr. Kellum's telephone messages, respondent wilfully failed to respond promptly to reasonable status inquiries of a client in wilful violation of section 6068, subdivision (m).

c. Count 3C- Rule 3-110(A) (Competence)

By not completing the settlement and by not performing any work on Mr. Kellum's personal injury matter, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

d. Count 3D- Rule 3-700(D)(1) (Return Client Papers and Property)

By failing to release Mr. Kellum's files and documents for about three months, respondent failed to promptly release to the client, at the request of the client, all the client papers and property in wilful violation of rule 3-700(D)(1).

D. Case no. 07-O-12337(Ready)

1. Facts

On or about May 23, 2006, Dan Ready ("Ready") hired respondent to represent him in a personal injury matter against Joseph Hernandez as a result of an automobile accident that Mr. Ready was involved in on or about May 20, 2006.

Subsequently, Mr. Ready sent respondent all of his records pertaining to the accident, including medical records and accident report and photos.

On or about August 30, 2006, respondent sent California State Automobile Association ("CSAA") a letter informing them that he was representing Mr. Ready against CSAA's insured, Mr. Hernandez.

On or about September 26, 2006, CSAA sent to respondent at respondent's membership records address a letter of acknowledgment. In that letter, CSAA requested a medical authorization form signed by Mr. Ready and a list of Mr. Ready's medical providers. Respondent received this letter. He failed to inform Mr. Ready of this request. Subsequently, respondent failed to respond to or communicate with CSAA, failed to provide it with any documents, failed to provide a signed medical authorization to CSAA, and failed to provide CSAA with a list of Mr. Ready's medical providers.

In or around October 2006, respondent spoke with Mr. Ready by telephone and misrepresented to Mr. Ready that respondent had submitted a settlement demand to CSAA. In fact and in truth, respondent had never submitted a settlement demand to CSAA and had not communicated with CSAA, except on August 30, 2006 to advise CSAA that he was representing Mr. Ready. He never provided any documents to CSAA and, therefore, CSAA could not evaluate the case and reach a settlement in this matter.

Subsequent to in or about October 2006, respondent failed to perform any services for Mr. Ready. Respondent failed to communicate with CSAA, despite respondent receiving CSAA's request for documents.

After in or about October of 2006, respondent also failed to communicate with Mr. Ready, despite Mr. Ready's numerous attempts to contact respondent. Mr. Ready telephoned respondent numerous times at the telephone number respondent had given Mr. Ready. Mr. Ready would leave messages for respondent to contact him. Sometimes when Mr. Ready would telephone respondent, he was unable to leave voicemail messages because respondent's voice mailbox was full. Other times, he was able to leave a message. Respondent received the messages left by Mr. Ready, but failed communicate with Mr. Ready or respond to his messages.

On or about May 2, 2007, CSAA sent to respondent at respondent’s membership records address a second letter requesting Mr. Ready's medical records and bills. Respondent received this letter. Respondent failed to respond to CSAA's May 2, 2007 letter, provide the medical records, or communicate with CSAA. He also failed to inform Mr. Ready of CSAA's request.

On or about July 30, 2007, CSAA sent to respondent at respondent’s membership records address a third letter requesting a complete set of Ready's medical bills and records regarding Ready's claim. Respondent received this letter. Respondent failed to respond to CSAA's July 30, 2007 letter, provide the medical records, or communicate with it. He also failed to inform Mr. Ready of CSAA's request.

On or about May 31, 2007, Mr. Ready was able to contact respondent when he telephoned respondent, but respondent immediately hung up after Mr. Ready identified himself. Respondent refused to talk to Mr. Ready and discuss his case with him.

On or about May 31, 2007, Mr. Ready filed a complaint against respondent with the State Bar. He did so because respondent was refusing to communicate with him and had immediately

hung up on him that day when he identified himself. On or about June 25, 2007, State Bar Investigator Amanda Gormley sent to respondent at his membership records address a letter advising him of Mr. Ready's complaint and requesting a response. Respondent received this letter by on or about June 5, 2007. Subsequently respondent failed to respond to this letter.

In or about June 2007, respondent telephoned Mr. Ready and stated that respondent would finish Mr. Ready's case and obtain a settlement. Respondent, however, failed to respond to the State Bar, or cooperate in its investigation.

Subsequently, respondent failed to perform any services for Mr. Ready, failed to communicate with CSAA or obtain a settlement, failed to take any action on Mr. Ready's behalf, failed to complete the matter, and failed to communicate with Mr. Ready. Mr. Ready did not hear from respondent again and the case was not completed.

Respondent failed to perform the services for which he was hired. He failed to respond to CSAA, settle Mr. Ready's case, file a lawsuit on his behalf, or complete his matter.

In or about June 2007, respondent telephoned Mr. Ready and stated that respondent would finish Mr. Ready's case and obtain a settlement. Subsequently, respondent did not communicate with Mr. Ready, despite his numerous attempts to contact respondent. Mr. Ready did not hear from respondent again and the case was not completed. Respondent constructively terminated his services on behalf of Mr. Ready without advising Mr. Ready that he was terminating his services.

Subsequent to in or about late June 2007, Mr. Ready telephoned respondent and left messages for respondent requesting that he return Mr. Ready's files and documents so that Mr. Ready could either pursue his own case or hire another attorney. Respondent received these messages from Mr. Ready. Respondent did not respond to Mr. Ready's messages regarding the client's files and documents, and respondent did not provide Mr. Ready with his files and documents. To date, respondent has failed to deliver Mr. Ready's files and documents to him.

Respondent constructively terminated his services by failing to perform and communicate with Mr. Ready, but would not advise CSAA of his withdrawal. Subsequent to in or about June 2007, Mr. Ready contacted respondent and left messages requesting that respondent contact CSAA and inform them that he was no longer representing Mr. Ready. Mr. Ready made this request so that he could either pursue his own case or hire another attorney. Respondent did not inform CSAA that he was no longer representing Mr. Ready, even though he received Mr. Ready's request that he do so, and he had constructively terminated his services for Mr. Ready.

Mr. Ready attempted to contact CSAA about Mr. Ready's case, but CSAA would not discuss the case with Mr. Ready because respondent had notified CSAA that respondent represented Mr. Ready in this matter, and had not advised them that he had withdrawn as Mr. Ready's attorney and was no longer representing Mr. Ready.

On June 25, 2007, State Bar Investigator, Amanda Gormley, sent to respondent at his membership records address a letter notifying respondent of Mr. Ready's complaint and requesting a written response by July 10, 2007. Respondent received Ms. Gormley's letter, but failed to respond to Ms. Gormley's letter, and failed to cooperate in the State Bar's investigation.

On July 31, 2007, Ms. Gormley sent to respondent at his membership records address a second letter requesting a written response to Mr. Ready's allegations and supporting documentation by August 10, 2007. Respondent received this letter, but failed to respond to Ms. Gormley's July 31, 2007 letter. Respondent failed to cooperate in the State Bar's investigation of Mr. Ready's complaint.

2. Conclusions of Law

a. Count 4A- Rule 3-110(A) (Competence)

By failing to pursue Mr. Ready's claims and by not responding to CSAA's requests for Ready's medical records and bills, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

b. Count 4B- Section 6068, subd. (m) (Communication)

By not communicating with Mr. Ready, by failing to return Mr. Ready's telephone calls and messages, and by hanging up on Mr. Ready when he identified himself, respondent failed to respond promptly to reasonable status inquiries of a client, in a matter in which respondent had agreed to provide legal services in wilful violation of section 6068, subdivision (m).

c. Count 4C- Section 6106 (Moral Turpitude)

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

By misrepresenting to Mr. Ready that respondent had made a settlement demand in his case, when respondent had not made a settlement demand, respondent committed an act or acts involving moral turpitude, dishonesty or corruption in wilful violation of section 6106.

d. Count 4D- Rule 3-700(D)(1) (Return Client Papers and Property)

By not providing Mr. Ready with his files and documents after Mr. Ready requested the files and documents, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property in wilful violation of rule 3-700(D)(1).

e. Count 4E - Rule 3-700(A)(2) (Improper Withdrawal)

By failing to perform and not withdrawing as attorney of record or otherwise contacting CSAA to communicate that respondent was no longer representing Mr. Ready in his personal injury case, despite Mr. Ready's requests that he advise CSAA he was no longer representing Mr. Ready, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of rule 3-700(A)(2).

f. Count 4F- Section 6068, subd. (i) (Participation in Investigation)

By failing to respond to Ms. Gormley's June 25, 2007 and July 31, 2007 letters requesting a response to Mr. Ready's allegations, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in wilful violation of 6068, subdivision (i).

E. Case no. 07-O-15055 (Montoya)

1. Facts

On or about August 5, 2003, Laura Montoya and her mother, Susan Montoya aka Sue Montoya, were involved in an automobile accident with Lamar Mitchell. Laura was the driver of one of the vehicles involved in the automobile accident and Sue was Laura's passenger.

Both Laura and Sue were injured in the accident. Prior to the accident, Sue was suffering from other illnesses.

Shortly after the accident, in or about early August 2003, both Laura and Sue went to Dr. Lisa Lawson, a chiropractor, for treatment of their injuries in the automobile accident. They found Dr. Lawson through the yellow pages. Upon meeting Dr. Lawson, Dr. Lawson informed Laura and Sue that she would provide ongoing treatment to them only if they hired an attorney known to Dr. Lawson. Dr. Lawson named respondent as that attorney. Dr. Lawson was acting as an agent for respondent in soliciting clients for respondent.

Dr. Lawson arranged for Laura and Sue to meet with respondent at Dr. Lawson's medical office that very day. Respondent then came to Dr. Lawson's medical office to meet Laura and Sue. This was the first time Laura and Sue met respondent. Previously, they had not met or known of respondent. Respondent had not previously represented them.

At that first meeting with respondent at Dr. Lawson's medical office, Laura and Sue discussed their case with respondent and hired respondent to represent them. At that meeting, respondent had Laura and Sue sign a fee agreement with respondent to represent them in their personal injury case arising from the automobile accident on August 5, 2003. Respondent failed to provide Laura or Sue with a copy of that fee agreement.

Dr. Lawson's acting as respondent's agent and soliciting Laura and Sue to hire respondent at Dr. Lawson's medical offices, Dr. Lawson's conditioning her continued treatment of Laura and Sue on the condition that they hire respondent, and respondent's then coming to Dr. Lawson's medical office to meet and solicit Laura and Sue to hire him at Dr. Lawson's request violated Business & Professions Code section 6152(a)'s prohibition against an attorney using a runner or capper to solicit any business for an attorney or to solicit any business for any attorney in or about any private hospitals or in or about any private institution or upon private property of any character whatsoever.

Respondent's motive in soliciting employment from Laura and Sue and using Dr. Lawson to solicit business for respondent's practice was for respondent's own pecuniary gain.

Respondent failed to disclose and explain to Laura and Sue the potential conflict of interest in his representing both the driver and passenger in an automobile accident and that representing two joint clients waived the attorney client privilege as to each other under Evidence Code section 962. Respondent also failed to obtain from either Laura or Sue their informed written consent to respondent's potential conflict of interest in representing both the passenger and driver in their automobile accident.

Subsequent to in or about August 2003, respondent obtained a property settlement for Laura's car for her of approximately $1,100, but failed to promptly take any other action on her and Sue's claims arising from their injuries.

Between in or about August 2003 and on or about August 5, 2005, respondent failed to promptly perform the services for which he was hired. Respondent also failed to promptly respond to Laura and Sue's attempts to communicate with respondent, despite Laura and Sue's numerous attempts to contact respondent to learn the status of their case. Occasionally, he responded when they threatened to terminate his services.

On or about August 5, 2005, two years after they hired him, respondent filed on Laura and Sue's behalf, a lawsuit entitled *Laura Montoya and Sue Montoya v. Lamar Mitchell,* Sacramento Superior Court Case No. 05AM06197.

Subsequently, respondent failed to promptly serve Mr. Mitchell with the lawsuit. For over a year, respondent failed to perform any services on the Montoyas' behalf. On September 20, 2006, over a year after filing the Montoyas' lawsuit, respondent finally caused Mr. Mitchell to be served with the lawsuit. Respondent failed to inform his clients that he had failed to serve the defendant for over a year or that he failed to perform any services for over a year.

On or about October 12, 2006, the court continued the scheduled case management conference in *Laura Montoya and Sue Montoya v. Lamar Mitchell,* Sacramento Superior Court Case No. 05AM06197 and ordered the parties to appear for a Case management conference on December 21, 2006. Respondent was served with the court's order at his membership records address. Respondent received this order.

Subsequently, respondent failed to file a case management statement as required by Local Rule 11.055 (CMP). Respondent failed to inform Laura or Sue that he had failed to file the case management statement.

On or about December 21, 2006, respondent failed to appear at the scheduled case management conference, as ordered. The court continued the case management conference to February 8, 2007 and sanctioned respondent $300 for his failure to appear at the conference and for his failure to file the case management statement as required by the local rules. The court served the December 21, 2006 order on respondent at his membership address. Respondent received this Order.

Respondent failed to inform Laura or Sue that he had failed to file the case management statement, that he failed to appear at the case management conference, that he had been sanctioned $300 for these failures, and failed to inform them of the new date, February 8, 2007, ordered for the case management conference.

Subsequently, respondent failed to file the case management conference Statement. On or about February 8, 2007, respondent failed to appear at the case management conference. The court then issued an order for respondent to appear at an OSC re failure to appear on March 22, 2007. On February 13, 2007, the court's order re OSC was sent to respondent at his membership records address. Respondent received this order. Respondent failed to inform Laura or Sue that he had failed to file the case management conference statement, failed to appear at the February 8, 2007 case management conference, failed to inform them that he had been sanctioned by the court in December 2007, and failed to inform them that the court ordered him to appear on March 22, 2007 at an OSC for his failure to appeal at the February 8, 2007 conference.

On or about March 22, 2007, respondent failed to appear at the OSC. The court ordered Laura and Sue's matter against Mr. Mitchell dismissed for respondent's failure to appear at the OSC. This order was mailed to respondent on or about March 22, 2007 at his membership address. Respondent received the order, but failed to take any action to reinstate Laura and Sue's case. He also failed to inform Laura or Sue that the matter had been dismissed.

Sue died on August 14, 2007.

Subsequent to Sue's death, respondent failed to communicate with Laura, despite her numerous attempts to contact respondent. Laura left messages for respondent to contact her, but he failed to contact or communicate with her.

In or about October 2007, Laura, not knowing that her case had been dismissed, hired another attorney, John Hallissy, to take over the case. On October 16, 2007, Mr. Hallissy sent a letter to respondent at his membership address informing him that respondent's services had been terminated and requesting that he sign the enclosed substitution of attorney form and deliver to Mr. Hallissy the Montoyas' files. Respondent received this letter, but failed to return a signed substitution of attorney form, deliver the files, or inform Mr. Hallissy or Laura that the matter had been dismissed.

On or about October 30, 2007, Mr. Hallissy sent a letter to respondent at his membership records address informing him that respondent's services had been terminated and requesting that he sign the enclosed substitution of attorney form and deliver to Mr. Hallissy the Montoyas' files and documents. In his October 30, 2007 letter, Mr. Hallissy informed respondent that if he did not receive a response he would contact the State Bar. Respondent received this October 30, 2007 letter, but failed to return a signed substitution of attorney form, failed to deliver the files and documents, and failed to inform Mr. Hallissy or Laura that the matter had been dismissed.

On or about October 31, 2007, respondent sent Mr. Hallissy a letter acknowledging receipt of the previous letters and promising to deliver the files shortly. He, however, failed to advise Mr. Hallissy or Laura that the matter had been dismissed. He, thus, misrepresented that the matter was still pending.

Subsequently, respondent failed to deliver the files and documents to Mr. Hallissy.

On or about November 9, 2007, Mr. Hallissy sent a letter to respondent at his membership records address again requesting that he sign the substitution of attorney form and return the files and documents or Mr. Hallissy would have to contact the State Bar. In the November 9, 2007 letter, Mr. Hallissy gave respondent until November 13, 2007 to return the files and documents. Respondent received this letter.

Subsequently, respondent contacted Mr. Hallissy by telephone and misrepresented to him that he had mailed the files and documents to him. In truth and in fact, respondent had not mailed the files and documents. Again, respondent failed to inform Mr. Hallissy that the Montoyas' lawsuit had been dismissed. He, thus, misrepresented that the matter was still pending.

By on or about November 21, 2007, almost two weeks after respondent had promised that he had mailed the files and documents, Mr. Hallissy had not received them. On or about November 21, 2007, Mr. Hallissy sent another letter to respondent at his membership records address again asking for the files and documents. Respondent received this letter.

Subsequently, respondent failed to return the files and documents or the substitution of attorney form, and failed to communicate with Mr. Hallissy. On or about December 13, 2007, Mr. Hallissy again sent a letter to respondent at his membership records address requesting the files and documents and substitution of attorney form. Respondent received this letter, but failed to provide the requested files and documents and failed to communicate with Mr. Hallissy.

On or about December 14, 2007, Mr. Hallissy went to the courthouse and reviewed the court files in *Laura Montoya and Sue Montoya v. Lamar Mitchell*, Sacramento Superior Court Case No. 05AM06197. Upon reviewing the court files, Mr. Hallissy learned that Laura and Sue's matter had been dismissed on March 22, 2007. This was the first time Mr. Hallissy or Laura had ever learned of the dismissal.

On or about December 14, 2007, Mr. Hallissy sent respondent at his membership records address a letter stating that he had learned the matter was dismissed on March 22, 2007 for respondent's repeated failures to appear at case management conferences, and that he failed to inform his clients of this. Mr. Hallissy also asked in this letter if respondent had malpractice insurance and requested that respondent contact him so he could prepare a declaration under Code of Civil Procedure, section 473 to support a motion to set aside the dismissal. Respondent received this December 14, 2007 letter. Subsequently, Respondent failed to respond to the letter and failed to provide the clients' files.

On or about January 11, 2008, Mr. Hallissy sent a letter to respondent at his membership records address again asking that he reply to his previous letter. Respondent received this letter. Respondent failed to respond to this letter, communicate with Mr. Hallissy or Laura or return Laura's files and documents to her or Mr. Hallissy. Respondent's misconduct and failure to perform caused the dismissal of Laura and Sue's case, harmed Laura and Sue, and caused them to lose their claims for their injuries.

Respondent constructively terminated his services by failing to perform and communicate with Laura and Sue, including failing to advise them that the lawsuit had been dismissed. However, he failed to inform his clients that he was withdrawing from the representation and provide them with time to employ new counsel prior to respondent's misconduct causing the dismissal of their lawsuit.

On or about December 18, 2008, Laura filed a complaint with the State Bar.

On or about January 17 2008, State Bar Investigator, Amanda Gormley, sent to respondent at his membership records address a letter notifying respondent of Laura's complaint and requesting a written response by February 4, 2008. Respondent received Ms. Gormley's letter, but failed to respond to Ms. Gormley's letter, and cooperate in the State Bar investigation.

On or about February 16, 2008, Ms. Gormley sent to respondent at his membership records address a second letter requesting a written response to the allegations by the Montoyas and supporting documentation by March 3, 2008. Respondent received this letter, but failed to respond to Ms. Gormley's November 9, 2007 letter. Respondent failed to cooperate in the investigation of the Montoyas' complaint.

2. Conclusions of Law

a. Counts 5A and 5B - Rules 1-120 (Assisting, Soliciting or Inducing Violations) and 1-400(C) (Solicitation)

Respondent is charged with violating rule 1-120, which prohibits an attorney from knowingly assisting in, soliciting or inducing any violation of the Rules of Professional Conduct or the State Bar Act. It is alleged that he did so, among other things, by using Dr. Lawson as a runner or capper or as an agent to solicit clients for himself in violation of section 6152, subdivision (a). The gravamen of this violation is duplicative of the charge that respondent violated rule 1-400(C).

Rule 1-400(C) states, in relevant part that "[A] solicitation shall not be made by or on behalf of a member or law firm to a prospective client with whom the member or law firm has no family or prior professional relationship, unless the solicitation is protected from abridgment" by the United States or California Constitutions.

By using Dr. Lawson as his agent to orally solicit on respondent's behalf respondent's employment by Laura and Sue when respondent had not previously had a professional relationship with Laura or Sue, respondent wilfully solicited employment from potential clients concerning the availability of employment in which a significant motive was pecuniary gain when respondent had no prior professional relationship with them.

b. Count 5C -Rule 1-400(D) (Solicitation Using Improper Conduct)

Rule 1-400(D)(5)[6] provides, in relevant part, that a communication or solicitation, as

[6] The NDC set forth the language of rule 1-400(D)(5) but only cited to rule 1-400(D).

defined, shall not be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation, threats or vexatious or harassing conduct.

By soliciting clients at a medical office, by using Dr. Lawson as his agent to solicit clients at a medical office, and by Dr. Lawson, respondent's agent, conditioning continued medical treatment on employing respondent as Laura and Sue's attorney, respondent transmitted a solicitation or communication for professional employment in a manner which involves intrusion, coercion, duress, compulsion, intimidation, threats, or vexatious or harassing conduct.

c. Count 5D -6106 (Moral Turpitude)

By using Dr. Lawson to act as his agent for soliciting Laura and Sue to hire respondent at Dr. Lawson's medical offices, by Dr. Lawson's soliciting Laura and Sue to hire respondent at Dr. Lawson's medical office, by Dr. Lawson, respondent's agent, conditioning Laura and Sue's medical treatment on hiring respondent, by Dr. Lawson contacting respondent and having him come to her medical office to meet Laura and Sue to solicit them as his clients, and by respondent then meeting and having Laura and Sue hire him at Dr. Lawson's medical office, and by soliciting and using Dr. Lawson as his agent to solicit employment for pecuniary gain from clients for whom he had not previously had a relationship at a medical office, respondent engaged in an act or acts involving moral turpitude, dishonesty, or corruption. However, as the same facts support this and the violation of rule 1-400(C) and (D), the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of 6106. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155.)

e. Count 5E -Rule 3-310(C)(1) (Potential Conflict)

Rule 3-310(C)(1) prohibits an attorney from accepting representation of more than one client in a matter in which the interests of the clients potentially conflict without the informed written consent of each client.

By representing both the passenger and the driver in an automobile accident without explaining to the clients the potential conflict of interest in such representation, without providing written disclosure of such conflict of interest, and without obtaining the clients' informed written consent to such representation, respondent accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without obtaining the clients' informed written consent.

f. Count 5F[7]- Section 6068, subd. (m) (Communication)

By failing to respond to Laura's numerous attempts to communicate with respondent about her case and by failing to advise the clients of his failure to serve the lawsuit for over a year, by failing to advise his clients that he had failed to perform any services for over a year, by failing to inform his clients of the case management conferences; by failing to inform the clients that respondent was sanctioned for his failure to appear at the case management conferences, and by failing to inform the clients that their lawsuit had been dismissed, respondent wilfully failed to respond promptly to reasonable status inquiries of a client and wilfully failed to keep a client reasonably informed of significant developments in matters in which respondent had agreed to provide legal services in wilful violation of section 6068, subdivision (m).

g. Count 5G- Rule 3-110(A) (Competence)

By failing to promptly perform the services for which he was hired, including failing to file the Montoyas' lawsuit for two years, by failing to serve the lawsuit on the defendant, Mr. Mitchell, for over a year after filing the lawsuit, by failing to perform any services after serving the defendant with the lawsuit, by failing to file a case management statement, by failing to appear at the case management conferences or the OSC, causing the dismissal of the Montoyas' lawsuit, and by failing

[7] This count was misnumbered as "Six (F)" in the NDC.

to perform the services for which he was hired, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

h. Count 5H Section 6103 (Violation of Court Order)

In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney to wilfully disobey or violate a court order requiring him to do or to forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear.

By failing to file case management statements, by failing to appear at the case management conferences, and by failing to appear at the OSC, respondent wilfully failed to obey court orders in violation of section 6103. However, as these same facts support the violation of rule 3-110(A), the court will not attach any additional weight in determining the appropriate discipline to the wilful violation of 6103.

i. Count 5I- Rule 3-700(D)(1) (Return Client Papers and Property)

By not providing Mr. Hallissy or Laura with his clients' files after Mr. Hallissy requested the file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client's papers and property in wilful violation of rule 3-700(D)(1).

j. Count 5J - Rule 3-700(A)(2) (Improper Withdrawal)

By constructively terminating his services and not informing his clients that he was terminating his services and not giving them time and an opportunity to hire new counsel, and, instead letting their lawsuit be dismissed, respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client in wilful violation of rule 3-700(A)(2).

k. Count 5K -6106 (Moral Turpitude)

By failing to disclose to Laura, Sue, and Mr. Hallissy that the lawsuit was dismissed and by misrepresenting to Mr. Hallissy that the clients' files and documents had been mailed to him,

respondent engaged in an act or acts involving moral turpitude, dishonesty, or corruption in wilful violation of section 6106.

l. Count 5L- Section 6068, subd. (i) (Participation in Investigation)

By not responding to Ms. Gormley's January 17, 2008 and February 16, 2008 letters requesting a response to Ms. Ready's allegations, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in wilful violation of 6068, subdivision (i).

F. All Cases

1. Facts

As set forth in the foregoing matters, respondent habitually failed to perform the services for which he was hired, habitually failed to communicate with his clients, and habitually disregarded the interests of his clients, respondent engaged in acts of moral turpitude, dishonesty, or corruptions.

2. Conclusions of Law

a. Count 6A - 6106 (Moral Turpitude)

There is clear and convincing evidence that respondent violated section 6106 by habitually failing to perform or communicate with his clients and by habitually disregarding his clients' interests. Accordingly, he committed acts of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

IV. LEVEL OF DISCIPLINE

A. Aggravating Circumstances

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct[8], std. 1.2(b).)

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

[8] Future references to standard or std. are to this source.

Respondent's misconduct significantly harmed clients and the administration of justice. (Std. 1.2(b)(iv).) For example, Long tried to settle her case herself but was unable to do so because she was still represented by counsel and because she was unable to obtain her files. The Montoyas' case was dismissed and their personal injury claims were lost. The court in the Montoya case repeatedly had to take action to set conferences and other proceedings because of respondent's failure to perform.

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

B. Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors other than the absence of a disciplinary record in approximately 9 years of practice prior to the beginning of his misconduct in 2003. (Std. 1.2(e)(i)).

C. Discussion

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of

imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.3, 2.4(b), 2.6 and 2.10 apply in this matter. The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment for culpability of an act of moral turpitude, fraud, intentional dishonesty or of concealment of a material fact from a court, client or other person, depending on the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

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

Respondent has been found culpable, in five client matters, of not performing or communicating; abandoning clients; not returning their files; solicitation; representing potentially adverse interests; not cooperating in disciplinary investigations; and committing acts of moral turpitude. In aggravation, the court considered multiple acts of misconduct and harm to clients and the administration of justice. The sole mitigating factor was nine years of blemish-free conduct prior to the commencement of misconduct.

The State Bar recommends disbarment. The court agrees.

The court found *McMorris v. State Bar* (1983) 35 Cal.3d 77 instructive. In *McMorris*, the attorney was disbarred for habitually disregarding his clients' interests. In seven matters for

five clients over a period of nine years, Respondent McMorris was found culpable of failing to perform and to communicate, improperly withdrawing from representation and committing an act of moral turpitude in violation of section 6106. Client harm was found in aggravation, including the entry of a default judgment and the need for the client to retain other counsel to have it set aside. He did not participate in the discipline hearing and had three prior instances of discipline.

The Supreme Court noted: "'As we have repeatedly stated, willful failure to perform legal services for which an attorney has been retained in itself warrants disciplinary action, constituting a breach of the good faith and fiduciary duty owed by the attorney to his clients. [Citations.]' (Citation omitted.) Moreover, habitual disregard by an attorney of the interests of his or her clients combined with failure to communicate with such clients constitute acts of moral turpitude justifying disbarment. (Citations omitted.)" (*McMorris v. State Bar*, *supra*, 35 Cal.3d at p. 85.)

Mc Morris is similar to the present case but is distinguishable primarily because that attorney had three prior instances of discipline and respondent herein has none. However, a prior record of discipline is not required to recommend disbarment. (Std. 1.7(c).)

Lesser discipline than disbarment is not warranted. The serious and unexplained nature of the misconduct and the lack of participation in these proceedings suggest that respondent is capable of future wrongdoing and raise concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court so recommends.

V. DISCIPLINE RECOMMENDATION

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

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

VI. COSTS

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

VII. ORDER REGARDING INACTIVE ENROLLMENT

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

Dated: October _____, 2008

LUCY ARMENDARIZ
Judge of the State Bar Court