

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of ) Case Nos: 07-O-12274-RAP;  
) 07-O-13854 (Cons.)  
**JAMES FOLEY LEFEBVRE** )  
) **DECISION AND ORDER OF**  
**Member No. 171779** ) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**  
A Member of the State Bar. )  
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**Introduction**<sup>1</sup>

In this default disciplinary matter, respondent **James Foley Lefebvre** is charged with six acts of professional misconduct in two client matters, including: (1) misrepresentations; (2) failure to avoid interests adverse to a client; (3) failure to obey a court order; (4) failure to report judicial sanctions; (5) failure to perform with competence; and (6) failure to communicate.

The court finds by clear and convincing evidence, that respondent is culpable of the alleged misconduct. In view of respondent's serious misconduct, the evidence in aggravation, and the lack of mitigating circumstances, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

### **Significant Procedural History**

**A. First Notice of Disciplinary Charges (Case Nos. 07-O-12274)**

On November 3, 2008, the State Bar of California, Office of the Chief Trial Counsel (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (first NDC) in case No. 07-O-12274. Respondent filed his answer to the November 3, 2008 NDC (first NDC) on November 26, 2008.

**B. Second Notice of Disciplinary Charges (Case No. 07-O-13854)**

On December 2, 2008, the State Bar filed and properly served on respondent at his official membership records address a NDC in case No. 07-O-13854 (second NDC). Respondent did not file a response to the second NDC.

Case No. 07-O-12274 and case No. 07-O-13854 were consolidated for all purposes by court order on January 13, 2009.

On May 19, 2009, the court issued an order of abatement in the consolidated matter, because respondent had tendered his resignation with charges pending to the Supreme Court on May 15, 2009. On November 17, 2010, the Supreme Court declined to accept respondent's voluntary resignation with charges pending and ordered the underlying disciplinary matter to proceed. On January 10, 2011, this court, on its own motion, unabated the matter.

On May 12, 2011, a status conference was held in the consolidated matter at which respondent appeared. On that same date, respondent filed a motion to continue the trial, which previously had been set for May 16, 2011. On May 13, 2011, the court filed a Status Conference Order, which among other things, granted respondent's motion to continue the trial, vacated the May 16, 2011 trial date, and set new trial dates for 9:30 a.m. on August 9 and 10, 2011. The court further ordered that respondent file a response to the second NDC by May 26, 2011.

Respondent did not file a response to the second NDC.

On August 9, 2011 respondent did not appear for trial as scheduled. The State Bar appeared, by and through Deputy Trial Counsel Hugh Radigan. Given respondent's nonappearance at trial and given that the requirements of rule 201 of the Rules of Procedure of the State Bar of California (Rules of Procedure)<sup>2</sup> had been met, the court entered respondent's default (Rule 201 - Failure to Appear) and Order of Involuntary Inactive Enrollment in case Nos. 07-O-12274; 07-O-13854 (Cons.). Pursuant to Business and Professions Code section 6007, subdivision (e), respondent's involuntary inactive enrollment was effective August 12, 2011, three days after the service of the Order of Involuntary Inactive Enrollment by mail.

A copy of the court's August 9, 2011 orders were properly served on respondent on August 9, 2011, by first class mail, addressed to respondent at his official membership records address. Another copy of the August 9, 2011 orders were served on respondent on August 9, 2011, by certified mail, return receipt requested, addressed to respondent at an alternative address in New Hampshire that appeared on the pleadings that respondent had filed with the court on May 12, 2011.

On August 9, 2011, the court also admitted into evidence the State Bar's Exhibits 1-39.

The court took the consolidated matter under submission on August 9, 2011.<sup>3</sup>

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<sup>2</sup> Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. The court, however, orders the application of the former Rules of Procedure in this consolidated hearing department matter based on its determination that injustice would otherwise result. (See Rules Proc. of State Bar (eff. January 1, 2011), Preface.) Therefore, all references to the Rules of Procedure in this decision are to the former rules of procedure, which were in effect prior to January 1, 2011, unless otherwise stated.

<sup>3</sup> At 9:41 a.m., on August 9, 2011, the court received a facsimile from respondent, which consisted of a request for a continuance of the trial, stating that while it was respondent's intent to attend the scheduled hearing on that day, he awoke with nausea, a headache, and an inability to drive or tolerate motion. With the facsimile was an "Excuse Slip" from West Point Medical Center Urgent Care, asking that respondent be excused from work due to "illness."

## Findings of Fact and Conclusions of Law

### **Case No. 07-O-12274 – The Carpenter Matter**

All factual allegations of the first and second NDCs are deemed admitted upon entry of respondent's default. (Rules Proc. of State Bar, rule 201.)

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on October 25, 1994, and has been a member of the State Bar of California at all times since that date.

#### **Facts**

In or about July or August of 1995, Grace Carpenter (Carpenter) retained respondent to pursue an unlawful detainer action with respect to a property owned by her brother, Hiroshi Funakoshi (Funakoshi). Carpenter had a valid power of attorney to allow her to pursue the requested relief on her brother's behalf.

On or about August 16, 1995, respondent filed an unlawful detainer action, entitled *Hiroshi Funakoshi v. Scott Day, et al.*, in the Riverside County Municipal Court, case No. 269571 (the Funakoshi action).

On or about September 6, 1995, the parties to the Funakoshi action agreed to a stipulated judgment. The stipulated judgment provided for a total award of \$6,137 to the plaintiff, as well as restoration of the premises to the plaintiff. Respondent, on behalf of the prevailing party, was to prepare the formal judgment. Respondent failed to prepare or file the formal proposed judgment. Judgment was entered pursuant to the agreed stipulation on September 6, 1995, in the amount of \$6,137.

In or about 1996, respondent represented to Carpenter that the total award secured in the unlawful detainer action was \$25,000. Respondent additionally informed Carpenter that the defendants agreed to satisfy the stipulated judgment with a monthly payment plan. At this same

time, respondent advised Carpenter that he had filed a lien against real property owned by one of the unlawful detainer defendants for the judgment amount, which he represented as being \$25,000. At the time that respondent made the afore-stated representations to Carpenter, he knew that they were false. Respondent knew that the total award secured in the unlawful detainer action was not \$25,000. Respondent knew that the defendants had not agreed to satisfy any award with a payment plan or otherwise. And, respondent also knew that he had not filed a lien against any real property owned by one of the defendants in the unlawful detainer matter.

Pursuant to the alleged agreed payment schedule, respondent transmitted to Carpenter a series of \$500 checks drawn on his personal account, dated September 10, 1999, November 17, 1999, and June 20, 2000.

Sometime in 2004, respondent advised Carpenter that one of the unlawful detainer defendants, Dominic Russo (Russo), had died. Respondent advised Carpenter that he intended to satisfy the \$25,000 stipulated judgment from Russo's estate by virtue of the lien he filed against Russo's real property. At the time that respondent made these representations to Carpenter, he knew that they were false. Respondent knew that the judgment in the unlawful detainer action was not \$25,000 and knew that he had not filed a lien.

In or about August, 2006, respondent had Carpenter execute an application to renew the alleged \$25,000 unlawful detainer judgment. The application incorrectly indicated the amount of the judgment value as \$25,000, as opposed to the correct value of \$6,137. Respondent never filed the application with the court.

Shortly thereafter, respondent advised Carpenter that he had failed to timely execute the judgment against Russo's estate and that as a result, the judgment was unenforceable.

Respondent then offered to file a claim against his errors and omissions policy of insurance in the amount of \$25,000, representing to Carpenter that in this manner the alleged full amount of the judgment would be restored/satisfied.

In or about October 2006, respondent advised Carpenter that his errors and omissions carrier had agreed to satisfy the claim in the requested amount, but that the actual payment would be delayed. At the time respondent made these representations to Carpenter, he knew that they were false and that his errors and omissions carrier had not agreed to satisfy a claim for \$25,000 or any amount.

Respondent next requested a personal loan from Carpenter. In or about October 2006, respondent advised Carpenter that he required a personal loan of \$25,000. Carpenter agreed to loan the requested sum to respondent anticipating that he would repay that amount together with the proceeds from his errors and omissions carrier. At the time of the loan, respondent and Carpenter had a long-standing relationship, during the course of which respondent had provided legal services to Carpenter.

Prior to accepting of the loan, respondent did not reduce the terms of the transaction to a written contract, and as such, failed to disclose the terms of the transaction in writing to Carpenter in a manner she could reasonably have understood. Nor did respondent advise Carpenter in writing that she could seek the advice of an independent attorney of her choice. Additionally, respondent failed to allow Carpenter a reasonable opportunity to seek independent legal advice. Moreover, prior to accepting the loan, respondent did not obtain Carpenter's written consent to the terms of the loan.

The terms of the loan did not require respondent to provide any security to Carpenter to ensure repayment of the loan and made no provision for interest. And, respondent did not

provide any security for the loan. The terms of the loan were unfair and unreasonable to Carpenter, because the loan was unsecured and did not require payment of interest.

On or about October 20, 2006, Carpenter executed and delivered a check to respondent in the amount of \$25,000 payable to respondent. Based upon what respondent had told her, it was Carpenter's understanding that respondent would repay Carpenter in the total amount of \$50,000 comprised of the loan proceeds plus the alleged \$25,000 unlawful detainer judgment satisfied by respondent's errors and omissions carrier. Simultaneous with the tender of the \$25,000 check, a simple promissory note, evidencing respondent's obligation to pay Carpenter \$50,000, was prepared by respondent and executed by respondent and Carpenter. While the promissory note was prepared and executed contemporaneously with the tender of the \$25,000 check, the note incorrectly evidenced a date of June 6, 1996.

On or about November 1, 2006, respondent prepared and executed a check, number 970, drawn upon his attorney client trust account at Inland Community Bank, account number 122241831 2101758, in the amount of \$50,000 payable to Carpenter. Written on the memo line of the check were the words, "repay loan 6/96." At the time that respondent tendered the check to Carpenter, he asked her not to attempt to negotiate the check for two weeks.

On or about November 16, 2006, Carpenter endorsed the \$50,000 check and deposited it in her account. Shortly thereafter, Carpenter's bank advised her that the check was drawn on a closed account. Carpenter immediately contacted respondent, who offered a replacement check.

On or about December 1, 2006, respondent tendered to Carpenter a \$50,000 check that was drawn on the personal account of Marjorie Barrios (Barrios), respondent's wife. The check was made payable to Carpenter. On or about December 4, 2006, Carpenter endorsed this check and deposited it into her account. On or about December 6, 2006, a stop payment was placed on the check by the maker, Barrios.

On or about December 14, 2006, Barrios delivered to Carpenter a cashier's check in the amount of \$5,000, made payable to Carpenter, which listed respondent as remitter on the check. Carpenter endorsed and deposited this instrument without incident.

On or about January 3, 2007, Carpenter wrote a letter to respondent, wherein she acknowledged the payment of \$5,000 and demanded payment of the remaining \$45,000 by January 31, 2007. Carpenter's January 3, 2007 letter was mailed to respondent via the United States Postal Service, first class postage prepaid, in a sealed envelope properly addressed to Respondent at 11185 Mountain View Ave., Ste. 5, Loma Linda, California 92354-3868, which was respondent's then State Bar membership records address. The letter was not returned as undeliverable or for any other reason by the United States Postal Service. Respondent received the letter. To date, respondent has failed to respond to Carpenter's demand letter and no additional payments to Carpenter have been made.

### **Conclusions**

#### ***Count One – (§6106 [Moral Turpitude])***

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

By misrepresenting to Carpenter the amount of the judgment obtained in the unlawful detainer action; by preparing an application for renewal of judgment, which he knew reflected the wrong amount of the judgment; by misrepresenting to Carpenter his intent to file the application; by misrepresenting to Carpenter his intent to pursue the estate of Russo to satisfy the judgment and his failure to timely perfect his claim against the estate; by misrepresenting to Carpenter his intent to pursue a claim against his errors and omissions policy; by subsequently misrepresenting that the errors and omission carrier honored the claim and that payment would be delayed; by requesting a loan from Carpenter in the amount of \$25,000 and promising to

repay the loan with a \$50,000 check, which was to include \$25,000 paid by respondent's errors and omissions carrier; by issuing and postdating a client trust account check in the amount of \$50,000 from a closed account; and by knowingly misrepresenting for years the status of the matter in order to mislead Carpenter into believing that there had been a judgment obtained in the unlawful detainer action, respondent committed acts involving moral turpitude, dishonesty and corruption in willful violation of Business and Professions Code section 6106.

***Count Two – (Rule 3-300 [Avoiding Interests Adverse to a Client])***

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless the transaction or acquisition is fair and reasonable to the client, is fully disclosed to the client, the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so, and the client thereafter consents in writing to the transaction or acquisition.

The purpose of this rule is to “recognize the very high level of trust a client reposes in his attorney and to ensure that that trust is not misplaced. [Citations.] Sadly, this case stands with too many others as an example of an attorney's preference of his personal interests in manifest disregard of the interests of his client.” (*In the Matter of Kittrell* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 615, 623.)

Here, respondent entered into loan and received \$25,000 from his client without ever repaying the funds. By entering into a loan with Carpenter, while failing to fully disclose that the loan was not secured, by failing to advise her in writing that she may seek the advice of an independent attorney, by failing to give Carpenter a reasonable opportunity to seek that legal advice, and by failing to obtain Carpenter's written consent to the loan, all of which rendered the

loan transaction unfair and unreasonable, respondent entered into a business transaction and acquired an interest adverse to his client in willful violation of rule 3-300.

**Case No. 07-O-13854 – The Bassi, Mann and Sidhu Matter**

**Facts**

On or about February 28, 2007, attorney Carlo Fisco (Fisco) represented the plaintiff in the lawsuit *Varinder Sidhu v. Surjit Bassi, Sarbjit Mann, Harbant Sidhu, Jaswinder Singh and Does 1 through 20, inclusive*, case No. EC 043 600, in the Superior Court of Los Angeles, North-Central District.

On February 28, 2007, Fisco served Form Interrogatories and Requests for Admissions upon defendants Bassi, Mann and Sidhu (the defendants), who at the time were representing themselves in propria persona.

On or about April 2, 2007, respondent caused substitutions of attorney to be filed on behalf of Bassi, Mann and Sidhu, thereby becoming attorney of record on their behalf.

On or about April 12, 2007, Fisco sent a meet and confer letter to respondent, wherein he requested the defendants' discovery responses no later than April 20, 2007, at risk of a motion to compel. The April 12, 2007 meet and confer letter was mailed to respondent via the United States Postal Service, first class mail, postage prepaid, in a sealed envelope addressed to respondent at his address of record in the lawsuit, which was also his official State Bar membership records address at the time: 11155 Mountain View Avenue, Suite 113, Loma Linda, California 92354 (address of record). The April 12, 2007 letter was not returned as undeliverable or for any other reason by the United States Postal Service. Respondent received the April 12, 2007 meet and confer letter. Respondent, however, failed to respond on behalf of the defendants.

As a result, on April 30, 2007, Fisco filed a motion to compel against the defendants. The motion was properly served on respondent at his address of record. Respondent received the motion to compel, but failed to serve and file any written response to the motion on behalf of the defendants. He also failed to advise his clients that the motion was served and filed.

The motion to compel was heard on June 1, 2007, at which time respondent appeared and indicated that the defendants' responses to the outstanding discovery would be forthcoming. The court granted plaintiff's motion to compel and ordered that the defendants' discovery responses be served within ten days. Respondent received notice of the court order, as he was present in court when the order was made. Nonetheless, respondent failed to serve the defendants' discovery responses within ten days, as ordered by the court.

Having received no timely responses, on July 26, 2007, Fisco filed a Motion to Deem Admitted Requests for Admission and a Motion for Terminating Sanctions against the defendants for failure to comply with the June 1, 2007 court order compelling interrogatory responses. The motions were set for hearing on August 24, 2007. The motions, which were properly served upon respondent at his address of record, were received by respondent. Respondent, however, did not notify his clients about the motions. Nor did respondent file an opposition on behalf of the defendants to either the Motion to Deem Admitted Requests for Admission or the Motion for Terminating Sanctions. Moreover, respondent did not appear at the August 24, 2007 hearing of those motions.

As a result, on August 24, 2007, the court dismissed the answers of defendants Bassi, Sidhu and Mann and entered defaults as to each of them. Additionally, the court found that:

. . . the Defendants have repeatedly failed to comply with their discovery obligations because they did not respond to Defendants [sic] discovery plus they did not comply with this Court's discovery order issued on June 1, 2007. In addition, the Court finds no evidence that the Defendants are willing to comply with their discovery obligations by correcting their past

discovery misuse or by responding to future discovery. Finally, the Court finds that no sanction less than a terminating sanction is appropriate. . . .

The court also imposed a monetary sanction of \$1,770 jointly and severally against the defendants and their attorney of record, i.e., respondent, payable within ten days, for misuse of discovery.

On August 27, 2007, attorney Fisco prepared and properly served a notice of ruling reflecting the court's August 24, 2007 order upon respondent at his address of record. Respondent received the notice of ruling.

Respondent neither appealed the sanctions awarded by the court on August 24, 2007, nor paid them within ten days as ordered by the court, or at any time. Respondent failed to advise his clients that the court struck their answers and entered their defaults on August 24, 2007. Respondent also failed to advise his clients that the court had imposed sanctions against the clients and respondent, jointly and severally, in the amount of \$1,770.

On or about October 30, 2007, Fisco properly served upon respondent, at his address of record in the lawsuit, a Request to Enter Default as to the three defendants represented by respondent. Respondent received the Request to Enter Default.

On November 5, 2007, the court clerk entered the requested defaults as to the three defendants represented by respondent.

On or about December 12, 2007, Fisco properly served upon respondent a Request for Court Judgment as to the three defendants represented by respondent, as well as a proposed judgment against the three defendants in the amount of \$47,520. Respondent received the Request for Court Judgment and the proposed judgment. Respondent failed to notify his clients.

On January 15, 2008, Judgment by Court by Default, in the amount of \$47,520, was filed as to the three defendants represented by respondent. Respondent failed to advise his clients that

their defaults had been entered or that judgments had been entered against them. Nor did respondent take any action to set aside the defaults entered against his clients.

In December 2007, defendant Sidhu, frustrated with his inability to make contact with respondent, contacted attorney Robert Reamer (Reamer) to determine the status of the case. Upon learning from Reamer that their answers had been stricken, defaults entered, and sanctions awarded against them, the defendants retained Reamer for purposes of setting aside the defaults. Respondent consented to the substitution on or about January 29, 2008.

Thereafter, the defendants paid the \$1,770 sanction by check No. 1852, which was drawn on the Bank of America account of Satluj Enterprises LLC.

Respondent provided a declaration that was executed January 29, 2008, in support of Defendants' Motion to Set Aside Order Striking Answers, Entry of Defaults and Judgments (motion). The motion was heard March 21, 2008. Within the declaration, respondent stated that: (1) he had told his clients that he would do everything necessary to protect their interests; (2) for various (unstated) reasons, he did not discharge his duties to his clients; (3) he had failed to prepare discovery responses on behalf of the defendants; (4) the failure to prepare discovery responses was solely his fault; (5) he failed to communicate with attorney Fisco; (6) he failed to make court appearances; (7) he failed to schedule a mediation; (8) he failed to advise his clients of the sanction motions; (9) he failed to respond to the sanction motion; (10) he failed to correct his errors and seek to set aside the resulting defaults; (10) he did not inform his clients of Fisco's efforts to enforce the sanction award; and (11) because of his actions, his clients were unable to understand or appreciate the true status of their case.

On March 21, 2008, the court granted defendants' motion to set aside: (1) the defaults that had been entered on November 5, 2008; (2) the default judgment entered January 15, 2008; and (3) the August 24, 2007 court order, imposing terminating sanctions. The court additionally

ordered that respondent pay \$5,000 to plaintiff Sidhu, pursuant to California Code of Civil Procedure section 473(b) within ten days of the ruling.

On March 25, 2008, Reamer prepared and served a notice of ruling reflecting the court's March 21, 2008 ruling. The notice of ruling was properly served upon respondent via the United States Postal Service, first class mail, postage prepaid, in a sealed envelope addressed to respondent at 25812 Barton Road PMB 360, Loma Linda, California 92354, the address that respondent provided to Reamer at or about that time. The notice of ruling was not returned as undeliverable or for any other reason by the United States Postal Service. Respondent received the notice of ruling.

Respondent failed to pay the sanctions in the amount of \$5,000 within ten days as ordered by the court, or at any time, and did not appeal the sanction order.

The sanctions, imposed, jointly and severally, against respondent and his clients on or August 24, 2007, were not for the failure to make discovery, but rather, for the misuse of discovery, and were imposed in conjunction with the entry of respondent's clients' defaults. The sanctions ordered March 21, 2008, were imposed under California Code of Civil Procedure section 473(b) and were premised upon respondent's affidavit of fault submitted in conjunction with the Motion to Set Aside the Defaults.

Respondent failed to report the August 24, 2007 sanctions and the March 21, 2008 sanctions to the State Bar in writing within 30 days of his knowledge of their imposition. He never reported either sanction to the State Bar.

Respondent has admitted repeated failures to perform on behalf of his clients. Respondent substituted into a case in which discovery had already been propounded and thereafter, after assuring his clients that he would do so, failed to take any steps to protect their interests, up to and including allowing terminating sanctions and default judgments to be entered

against them. To date, respondent has not reimbursed his clients for the monetary sanctions they paid as a result of his conduct.

## **Conclusions**

### ***Count One – (§6103 [Failure to Obey Court Orders])***

Section 6103 requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

It is well-established that “[o]bedience to court orders is intrinsic to the respect attorneys...must accord the judicial system. . . . In the case of court-ordered sanctions, the attorney is expected to follow the order or proffer a formal explanation by motion or appeal as to why the order cannot be obeyed.” (*In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389,403; see also *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal.State Bar Ct. Rptr. 862, 868.)

Respondent neither appealed the \$1,770 sanctions that the court on August 24, 2007, ordered him to pay within 10 days for the misuse of discovery, nor did he pay the \$1,770 sanctions within 10 days or at any time. And respondent did not appeal the \$5,000 sanctions that the court on March 21, 2008, ordered him to pay to plaintiff Sidhu within 10 days of its ruling; nor did respondent pay the \$5,000 sanctions to plaintiff Sidhu within 10 days of the court’s ruling or or pay them at any time.

Respondent’s failure to pay the sanctions was in willful disobedience of the court’s orders, requiring him to do acts connected with or in the course of his profession which he ought to have done in good faith. Thus, respondent willfully violated section 6103.

### ***Count Two – (§6068, Subd. (o)(3) [Failure to Report Court Sanctions])***

Section 6068, subdivision (o)(3), requires an attorney to report to the State Bar the imposition of judicial sanctions, in writing, within 30 days of the time the attorney has

knowledge of the imposition of any judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000.

By failing to report to the State Bar, in writing, within 30 days of the time he had knowledge of the August 24, 2007 sanctions, or at any time, and by failing to report to the State Bar, in writing, within 30 days of the time he had knowledge of the March 21, 2008 sanctions, or at any time, respondent willfully failed to report the imposition of judicial sanctions against him in willful violation of section 6068, subdivision (o)(3).

***Count Three – (Rule 3-110(A) [Failure to Perform Competently])***

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

By failing to respond to discovery, by failing to respond attorney Fisco's April 2007 meet and confer letter; by failing to respond to motions to compel; by failing to provide discovery responses even after notifying the court that responses would be forthcoming and again after having been ordered by the court on June 1, 2007 to provide the responses; by failing to respond to the July 26, 2007 motion for terminating sanctions and the motion to deem admitted the matters in the requests for admission; by failing to appear at the August 24, 2007 hearing on the motion for terminating sanctions; and by failing to take any action to set aside his clients' defaults prior to being substituted out of the case, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

***Count Four – (§6068, Subd. (m) [Failure to Communicate])***

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of

significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to advise his clients: (1) that respondent did not respond to discovery; (2) that respondent did not respond to Fisco's meet and confer letter; (3) that the plaintiff filed a motion to compel against the clients on April 30, 2007; (4) that respondent did not respond to the motion to compel; (5) that on June 1, 2007, the court issued an order, requiring the clients' discovery responses to be served within 10 days; (6) that respondent did not serve the discovery responses within 10 days as ordered by the court; (7) that on July 26, 2007, the plaintiff filed a motion to deem admitted the matters raised in the plaintiff's requests for admission and a motion for terminating sanctions against respondent's clients; (8) that respondent did not respond to the plaintiff's motions; (9) that respondent did not appear for the August 24, 2007 hearing on the plaintiff's motions; (10) that the court struck the clients' answers on August 24, 2007; (11) that on August 24, 2007, the court imposed sanctions against the clients and respondent in the amount of \$1,770; (12) that the plaintiff filed requests for entry of defaults against the clients on October 30, 2007, which defaults the court entered on November 5, 2007; and (13) that the court entered default judgments against the clients on January 15, 2008, respondent failed to inform his clients of significant developments in a matter in which he had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

#### **Aggravation<sup>4</sup>**

##### **Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent committed multiple acts of misconduct, including: committing acts of moral turpitude; failing to avoid interests adverse to a client; failing to obey court orders; failing to

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<sup>4</sup> All further references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

report judicial sanctions to the State Bar; failing to perform services competently; and failing to inform clients of significant developments.

**Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)**

Respondent's misconduct significantly harmed his clients. The parties to the *Funakoshi* action agreed to a stipulated judgment of \$6,137 to plaintiff Funakoshi, on whose behalf Carpenter, was pursuing the requested relief. Respondent, who was to prepare the formal judgment, did not do so. Nor did respondent repay \$20,000 of the \$25,000 loan, which he received from Carpenter, thereby depriving her of her money.

And, in the *Bassi, Mann, and Sidhu* Matter, respondent's misuse of discovery and his failure to perform competently, resulted in: (1) the court ordering \$1,770 sanctions against respondent's clients and respondent, jointly and severally, which the clients paid and (2) defaults being entered against respondent's clients. The clients, therefore, had to retain new counsel for the purpose of setting aside the defaults.

**Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)**

Respondent's failure to repay the loan that he received from his client, Carpenter, his failure to reimburse the defendants, whom he represented in *Varinder Sidhu v. Surjit Bassi, Sarbjit Mann, Harbant Sidhu, Jaswinder Singh*, for the \$1,770 sanctions that they paid as a result of his misuse of discovery and failure to perform, and his failure to pay the \$5,000 sanctions that the court on March 21, 2008, ordered him to pay to plaintiff Sidhu demonstrate indifference toward rectification of or atonement for the consequences of his misconduct.

**Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)**

Respondent's failure to cooperate with the State Bar before the entry of his default, by failing to file an answer to the second NDC, as well as his failure to participate at trial in this matter constitutes an additional factor in aggravation. (Std. 1.2(b)(vi).)

## **Mitigation**

### **No Prior Record (Std. 1.2(e)(i).)**

Respondent's slightly more than one year of trouble-free practice at the time his misconduct began is far too short to constitute mitigation. [Where an attorney had practiced for only four years prior to his misconduct, his lack of prior discipline was not mitigating. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456.)]

## **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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.3, 2.4, 2.6, and 2.8 apply in this matter.

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.) As 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(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.3 provides that culpability of an act of moral turpitude, fraud or intentional dishonesty must result in actual suspension or disbarment.

Standard 2.4(b) provides that culpability of a member's willful failure to perform services and willful failure to communicate with a client must result in reproof or suspension, depending upon the extent of the misconduct and the degree of harm to the client.

Standard 2.6 provides that culpability of certain provisions of the Business and Professions Code must result in disbarment or suspension depending on the gravity of the offense or the harm to the victim.

Standard 2.8 provides that culpability of a willful violation of rule 3-300 must result in suspension unless the extent of the misconduct and the harm to the client are minimal, in which case, the degree of discipline must be reproof.

The State Bar urges disbarment. The court agrees.

Respondent has been found culpable of serious misconduct in two client matters, including committing acts of moral turpitude, failing to avoid interests adverse to a client, failing to report court sanctions, failing to obey court orders failing to perform with competence, and failing to inform clients of significant developments.

Respondent's misconduct reflects a blatant disregard of professional responsibilities. He has flagrantly breached his fiduciary duties to his clients and abused their trust as their attorney.

It is settled that an attorney-client relationship is of the highest fiduciary character and always requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43 Cal.3d 802, 813.) The Supreme Court noted that "[t]he essence of a fiduciary or

confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.” (*Id.*)

In this matter, respondent abused his clients’ trust, causing significant harm. His conduct was grievously improper and continued over many years. Respondent made numerous misrepresentations to his client, Carpenter, during a period of at least 10 years. In 1996, respondent represented that the amount of the stipulated judgment obtained in the unlawful detainer action was \$25,000, and the defendants agreed to satisfy that judgment with a monthly payment plan. At the same time respondent informed his client that he had filed a lien against real property owned by one of the unlawful detainer defendants for the judgment amount of \$25,000. When he made these representations to his client, respondent knew that the award secured in the unlawful detainer action was not \$25,000, that the defendants had not agreed to satisfy any award with a payment plan or otherwise, and that he had not filed a lien against any real property in the unlawful detainer action.

Sometime in 2004, respondent advised Carpenter that one of the unlawful detainer defendants had died and that he intended to satisfy the \$25,000 stipulated judgment from the decedent’s estate by virtue of a lien that he had filed against the decedent’s s real property. At the time that respondent made these representations to his client, he knew that they were false.

In 2006, respondent offered to file a claim against his errors and omissions policy of insurance in the amount of \$25,000, representing to Carpenter that in this manner the full amount of the judgment would be restored/satisfied. In or about October 2006, respondent advised Carpenter that his errors and omissions carrier had agreed to satisfy the claim in the requested amount, but that the actual payment would be delayed. At the time respondent made these

representations to Carpenter, he knew that they were false and that his errors and omissions carrier had not agreed to satisfy a claim for \$25,000 or any amount.

In October 2006, respondent advised Carpenter that he required a personal loan of \$25,000. Carpenter agreed to loan the requested sum to respondent, anticipating that respondent would repay that amount. At the time of the loan, respondent and Carpenter had a long-standing relationship, during the course of which respondent had provided legal services to Carpenter. As set forth, *ante*, respondent did not repay the loan. Rather, respondent abused his client's trust and deprived her of \$20,000.

Respondent's acts of dishonesty "manifest an abiding disregard of the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice." (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.)

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) Respondent's abuse of his client's trust and his grievously improper conduct, including misrepresentations that spanned a 10-year period, violate basic notions of honesty and endanger public confidence in the legal profession. Moreover, respondent has offered no indication that he will not continue to engage in such heinous misconduct. Rather, he has defaulted in this disciplinary proceeding.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) His failure to participate in this hearing leaves the court without information about the underlying cause of his offenses or of any mitigating circumstances surrounding his misconduct. Therefore, based on the standards and the case law, the severity of the misconduct,

the serious aggravating circumstances and the lack of any mitigating factors, the court recommends disbarment.

### **Recommendations**

Accordingly, the court recommends that respondent **James Foley Lefebvre** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

### **Restitution**

It is also recommended that respondent make restitution to the following:

1. **Grace Carpenter** in the amount of \$20,000<sup>5</sup> plus 10% interest per annum from October 20, 2006 (or to the Client Security Fund to the extent of any payment from the fund to Grace Carpenter, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
2. **Varinder Sidhu** in the amount of \$5,000 (or to the Client Security Fund to the extent of any payment from the fund to Varinder Sidhu, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

### **California Rules of Court, Rule 9.20**

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>6</sup>

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<sup>5</sup> The court is not recommending that respondent pay restitution to Carpenter in connection with the judgment award in the Funakoshi action, as there is no evidence that respondent received any money related to that judgment.

<sup>6</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**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.

**Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and new rule 5.111(D) of the Rules of Procedure of the State Bar, effective January 1, 2011. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: September 26, 2011.

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RICHARD A. PLATEL  
Judge of the State Bar Court