

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. <b>07-O-12506-RAH</b> (07-O-13689;
	)	08-O-10279; 08-O-10544;
<b>ANTONIO LLOYD COGLIANDRO,</b>	)	09-O-17491; 10-O-03825)
	)	
<b>Member No. 73756,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
A Member of the State Bar.	)	<b>ENROLLMENT</b>
	)	

---

**I. Introduction**

In this default disciplinary matter, respondent **Antonio Lloyd Cogliandro** is charged with multiple acts of professional misconduct in six client matters, including (1) failing to perform competently; (2) failing to communicate with client; (3) improper withdrawal from employment; (4) failing to obey court order; (5) failing to cooperate with the State Bar; (6) committing an act of moral turpitude; (7) failing to pay client funds promptly; (8) failing to return unearned fees; and (9) engaging in the unauthorized practice of law.

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

## **II. Pertinent Procedural History**

On August 4, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. On August 16, 2010, the State Bar received a return receipt signed by “Paul.” But respondent did not file a response. Instead, respondent sent an e-mail to the State Bar on September 3, 2010, saying, “I do not believe I have the emotional strength to participate in any further proceedings. Please do what you feel is necessary.”

Respondent’s default was entered on October 14, 2010, and respondent was enrolled as an inactive member on October 17, 2010. The matter was submitted on November 1, 2010, following the filing of State Bar’s brief on culpability and discipline.

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

All factual allegations of the NDC are deemed admitted upon entry of respondent’s default unless otherwise ordered by the court based on contrary evidence.

Respondent was admitted to the practice of law in California on April 13, 1977, and has since been a member of the State Bar of California.

### **A. The Losorelli/Sandoval Matter (Case No. 07-O-12506)**

On or about July 30, 2003, Ralph Losorelli, Antoinette Losorelli, and Laura Losorelli (collectively the “Losorellis”) as well as Lisa Marie Sandoval, Steven Sandoval, and Michael Thomas Sandoval (collectively the “Sandovals”) employed respondent to represent them on a contingency fee basis in personal injury claims arising out of a natural gas explosion at a neighbor’s home on or about August 13, 2002.

On or about August 8, 2003, respondent filed a complaint on behalf of the Losorellis and the Sandovals in the Los Angeles County Superior Court titled *Ralph Losorelli et al. v. Sempra*

*Energy, El Redondo Termite Control, Inc., Network Fumigation and Extermination Company, Inc., Bob Mimura, Helen Mimura et al.*, case No. YC047227 (the “Losorelli civil matter”).

On or about November 6, 2003, the Losorelli civil matter was consolidated with seven other cases seeking damages arising out of the same explosion. The defendants in the consolidated cases included American Meter Company (“AMC”), Network Fumigation and Extermination Company, Inc. (“Network Fumigation”), El Redondo Termite Control, Inc. (“El Redondo Termite Control”), and Sempra Energy.

On or about January 28, 2005, in lieu of formal discovery, the court in the consolidated cases ordered the plaintiffs jointly to submit to the defendants and the defendants jointly to submit to the plaintiffs a list of limited discovery requests prior to the first ordered mediation of the case. On or about January 28, 2005, respondent was served with a copy of the court’s minute order for the January 28, 2005 hearing.

On or about February 5, 2005, the defendants served respondent with a list of discovery requests to the Losorellis and the Sandovals.

On or about February 23, 2005, the court in the consolidated cases ordered that all discoveries currently planned and agreed to by the parties were to be completed within 45 days, or by April 9, 2005. On or about February 23, 2005, respondent was served with a copy of the notice of ruling.

Respondent did not provide responses to the defendants’ discovery requests on behalf of the Losorellis and the Sandovals.

On or about April 29, 2005, the court in the consolidated cases conducted a status conference. Respondent appeared by telephone. The court ordered that respondent provide responses to the defendants’ discovery requests by no later than on or about May 13, 2005. On or about April 29, 2005, respondent was served with a copy of the notice of ruling.

Respondent did not provide responses to the defendants' discovery requests as ordered by the court.

On or about July 14, 2005, El Redondo Termite Control filed a motion for sanctions (including terminating, issue, evidentiary, and monetary sanctions) against the Losorellis and the Sandovals and respondent. On or about July 14, 2005, respondent was served with a copy of the motion.

On or about July 15, 2005, AMC filed a motion for an order dismissing the complaint in the Losorelli civil matter, or in the alternative, issue and evidence sanctions. On or about July 15, 2005, respondent was served with a copy of the motion. Thereafter, Network Fumigation and Sempra Energy joined in the motion brought by AMC and each served notice of joinder on respondent.

Respondent did not inform the Losorellis or the Sandovals of the motions for sanctions filed by AMC and Sempra Energy.

On or about September 2, 2005, the court in the consolidated cases held a hearing on the motions for sanctions. The court ordered that respondent pay sanctions in the amount of \$911.30 to AMC and El Redondo Termite Control within 20 days of September 2, 2005. The court also ordered respondent to comply with prior discovery orders. On or about September 7, 2005, respondent was served with a copy of the notice of ruling.

In or about September 2005, respondent provided AMC with verified responses to the court-ordered joint discovery requests of the defendants in the consolidated cases.

To date, respondent has not paid the monetary sanctions awarded against him on or about September 2, 2005. To date, respondent has not taken any action to modify or vacate the sanctions.

In or about November 2006, respondent settled the claims of the Losorellis and the Sandovals against AMC and sent each of his clients individually \$1,000 in settlement of their claim against AMC.

On or about November 22, 2006, respondent filed an amended complaint against the remaining defendants in the Losorelli civil matter.

On or about November 26, 2006, respondent sent the Losorellis a document to be signed by them and the Sandovals, indicating that they rejected Network Fumigation's settlement offer. This was the last communication that respondent had with the Losorellis and the Sandovals.

In or about December 2006, respondent ceased all further action on behalf of the Losorellis and the Sandovals and took no further steps to represent them in the Losorelli civil matter. At no time did respondent inform his clients that he was withdrawing from further representation.

In or about May 2007, the Losorellis telephoned respondent several times at his office telephone number and left messages on his voicemail. Respondent received the messages but did not respond to the messages.

On or about May 21, 2007, the Losorellis mailed a certified letter addressed to respondent's office address inquiring about the status of their case. The United States Postal Service returned the letter as unclaimed.

On or about June 6, 2007, Sempra Energy filed six motions to dismiss the Losorelli civil matter for respondent's failure to prosecute the case. On or about June 6, 2007, Sempra Energy properly served respondent with all six motions to dismiss the claims of the Losorellis and the Sandovals. Respondent did not inform the Losorellis and the Sandovals of the motions to dismiss.

On or about June 22, 2007, El Redondo Termite Control filed 13 motions seeking an order to deem requested facts admitted, to compel responses to interrogatories, and to join in the motion to dismiss filed by Semptra Energy. On or about June 22, 2007, El Redondo Termite Control properly served respondent with the aforementioned motions. Respondent did not inform the Losorellis or the Sandovals of the motions.

On or about June 27, 2007, the Losorellis and the Sandovals employed attorney Amy Solomon (“Solomon”) of the law firm of Girardi/Keese to represent them in the Losorelli civil matter.

On or about June 27, 2007, Solomon mailed a letter to respondent’s office address via certified mail informing respondent that she was substituting in the Losorelli civil matter on behalf of the Losorellis and the Sandovals. The United States Postal Service returned the letter as unclaimed.

On or about July 5, 2007, Solomon wrote a second letter to respondent and enclosed with it her June 5, 2007 letter, as well as a Substitution of Attorney Form. Solomon mailed the letter to respondent’s address via certified mail and First Class Mail. The United States Postal Service returned the certified letter unclaimed; the letter mailed by First Class mail was not returned. Respondent did not respond to the letter. At no time did respondent provide Solomon with a signed Substitution of Attorney.

On or about July 18, 2007, Solomon moved the court for an order to recuse respondent and for an order to substitute in as the Losorellis and the Sandovals counsel of record. On or about July 18, 2007, the motion was properly served on respondent. Respondent did not respond to the motion. Subsequently, the court granted the motion.

On or about June 12, 2007, Ralph Losorelli filed a complaint against respondent with the State Bar.

On or about July 9 and August 2, 2007, a State Bar investigator mailed a letter regarding Losorelli's complaint to respondent at his address of record with the State Bar and to his home address. The letters requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Losorelli's complaint. Respondent received the letters.

Respondent did not respond in writing to the letters from the State Bar or otherwise cooperate in the investigation.

### **Conclusions of Law**

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

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

By repeatedly failing to provide responses to discovery requests on behalf of his clients and by failing to respond to the court's order compelling him to comply with the discovery requests, respondent intentionally or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

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

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

By failing to inform his clients of the motions filed against them (motion for sanctions and motion to dismiss), respondent failed to keep a client informed of significant developments

---

<sup>1</sup> References to rules are to the Rules of Professional Conduct, unless otherwise indicated.

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

in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

***Count 3: Failure to Obey a Court Order (Bus. & Prof. Code, § 6103)***

By failing to pay the September 2, 2005 court-ordered monetary sanction award of \$911.30 against him, respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

***Count 4: Improper Withdrawal from Employment (Rules Prof. Conduct, Rule 3-700(A)(2))***

Rule 3-700(A)(2) states: “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.”

By failing to complete the services for which respondent was employed and ceasing all further work on behalf of his clients in December 2006, respondent willfully violated rule 3-700(A)(2) by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client.

***Count 5: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney.

By failing to respond to the State Bar's July 9 and August 2, 2007 letters and failing to cooperate in the State Bar's investigation of the Losorelli complaint, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).



**B. The Davis Matter (Case No. 07-O-13689)**

On or about June 14, 2005, defendant's counsel filed a notice of appeal from the criminal conviction of Solomon Davis ("Davis") in the Los Angeles County Superior Court, case number BA24922.

On or about November 22, 2005, Davis substituted respondent as his counsel in the Court of Appeal, case No. B183878 (the "criminal appeal"). Davis was referred to respondent by attorney Carl A. Capozzola ("Capozzola").

Between on or about November 22, 2005, and on or about April 4, 2006, respondent filed five motions for extension of time to file an opening brief on behalf of Davis in the criminal appeal. The court granted respondent's motions, giving him until on or about May 1, 2006, to file an opening brief.

At no time did respondent file an opening brief on behalf of Davis in the criminal appeal.

On or about August 24, 2006, the Court of Appeal dismissed the criminal appeal for lack of prosecution. The Court of Appeal properly served respondent with notice of the dismissal of the criminal appeal.

On or about October 25, 2006, the Court of Appeal issued the remittitur in the criminal appeal.

At no time did respondent advise Davis that the criminal appeal was dismissed on or about August 24, 2006.

In or about February 2007, Davis's wife, Judy Hunter-Davis, spoke with respondent on the telephone. Respondent represented to her that the opening brief in the criminal appeal was going to be filed imminently and that he would provide her with a copy of the opening brief.

In or about February 2007, when respondent made these representations to Judy Hunter-Davis, he knew, or was grossly negligent in not knowing, that the criminal appeal had been dismissed.

On or about July 5, 2007, James Davis, Davis's brother, met with respondent at Capozzola's office. Respondent represented that the opening brief in the criminal appeal had been filed. On July 5, 2007, Judy Hunter-Davis spoke with respondent on the telephone. Respondent represented that the opening brief in the criminal appeal had been filed.

On or about July 5, 2007, respondent knew, or was grossly negligent in not knowing, that he had not filed an opening brief on behalf of Davis.

In or about 2006, Judy Hunter-Davis, at respondent's suggestion, issued a check to respondent in the sum of \$3,000. Respondent represented to Judy Hunter-Davis that the funds would be held in trust until respondent employed a handwriting expert in connection with the criminal appeal.

At no time did respondent employ a handwriting expert in connection with the criminal appeal.

On or about December 3, 2007, and on or about March 3, 2008, Judy Hunter-Davis wrote respondent letters requesting that respondent return \$3,000 which he had claimed to be holding in trust for the purpose of hiring a handwriting expert. Respondent received the letters. At no time did respondent respond to the letter, or return the funds to Judy Hunter-Davis or to Davis.

On or about September 24, 2007, Davis filed a complaint against respondent with the State Bar.

On or about October 15 and October 30, 2007, a State Bar investigator mailed a letter regarding Davis's complaint to respondent at his home address. The letters requested that

respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Davis's complaint. Respondent received the letters.

Respondent did not respond to the State Bar's letters or otherwise cooperate in the investigation.

## **Conclusions of Law**

### ***Count 6: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))***

By failing to file an opening brief on behalf of Davis in the criminal appeal, respondent intentionally or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

### ***Count 7: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

By failing to inform Davis that his criminal appeal was dismissed, respondent failed to keep a client informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

### ***Count 8: Moral Turpitude (Bus. & Prof. Code, § 6106)***

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

By misrepresenting to his client's wife and brother in February and July 2007 that the opening brief had been filed when, in fact, respondent knew or should have known that the appeal was dismissed on August 24, 2006, and that he had not filed any opening brief, respondent committed acts involving moral turpitude in willful violation of section 6106.

### ***Count 9: Failure to Promptly Pay Client Funds (Rules Prof. Conduct, Rule 4-100(B)(4))***

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver any funds or properties in the possession of the attorney which the client is entitled to receive.

By failing to return, as requested by his client's wife, the advanced costs of \$3,000 for the purpose of hiring a handwriting expert, which respondent never did, respondent failed to promptly pay the funds in respondent's possession which the client is entitled to receive, in willful violation of rule 4-100(B)(4).

***Count 10: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

By failing to respond to the State Bar's October 15 and 30, 2007 letters and failing to cooperate in the State Bar's investigation of the Davis matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

**C. The McMurray Matter (Case No. 08-O-10279)**

On or about May 16, 2002, Shannon McMurray (“McMurray”) employed respondent to represent her on a contingency fee basis in a medical malpractice case with respect to any and all injuries arising out of a surgery conducted on her right foot on or about September 7, 2001.

On or about September 12, 2002, respondent filed a complaint on behalf of McMurray in Los Angeles County Superior Court titled *Shannon McKenzie McMurray v. Allyson Fried, Eric Kloustermann*, case number SC073883 (the “McMurray medical malpractice case”).

On or about July 16, 2003, counsel for defendant Eric Kloustermann (“Kloustermann”) mailed discovery requests to respondent. Respondent received the discovery requests but did not respond to the requests.

On or about October 28, 2003, Kloustermann’s counsel filed a motion to compel interrogatories from McMurray. Respondent received a copy of the motion but did not file a response to the motion.

On or about December 1, 2003, the court held a hearing on Kloustermann’s motions in the McMurray medical malpractice matter. At that time, the court ordered that verified

responses to the subject interrogatories be provided to Kloustermann without objection on or before December 8, 2003. The court also awarded sanctions in the amount of \$625.30 against respondent and McMurray, jointly and severally, payable to Kloustermann's counsel on or before December 8, 2003. On or about December 5, 2003, respondent received notice of the court's ruling.

At no time did respondent inform McMurray of the court's December 1, 2003 ruling.

On or about July 21, 2003, counsel for defendant Allyson Fried ("Fried") mailed discovery requests to respondent. Respondent received the discovery requests but did not respond to Fried's discovery requests.

On or about August 4, 2004, Fried's counsel filed motions to compel responses from McMurray to Fried's interrogatories and document requests, and a motion to deem admitted Fried's requested admissions. Respondent received a copy of the motions. Respondent did not respond to the motions.

On or about September 7, 2004, the court held a hearing on Fried's motions. At that time, the court ordered that verified responses to Fried's interrogatories and document requests be provided to her, without objection, before on or about September 13, 2004. The court further ordered that Fried's requests for admissions be deemed admitted. The court also awarded sanctions in the amount of \$1,296.40 against respondent and McMurray, jointly and severally, payable to Fried's counsel on or before on or about September 13, 2004. On or about September 8, 2004, respondent received notice of the court's ruling.

At no time did respondent advise McMurray of the court's September 7, 2004, orders.

On or about October 18, 2004, counsel for Fried filed a motion for terminating sanctions or, in the alternative, issue and evidentiary sanctions, and an award of monetary sanctions against

McMurray. Respondent received a copy of the motion but did not file a response to the motion or inform McMurray of Fried's motion.

On or about October 20, 2004, counsel for Fried filed a motion for summary judgment. Respondent received a copy of the motion. Respondent did not inform McMurray of Fried's summary judgment motion or file any response to the motion.

On or about October 22, 2004, counsel for Kloustermann also filed a motion for summary judgment. Respondent received a copy of the motion. Respondent did not inform McMurray of Kloustermann's summary judgment motion or file any response to the motion.

On or about December 15, 2004, the court held a hearing on Fried's motion for terminating sanctions or, in the alternative, issue and evidentiary sanctions. The court denied Fried's motion for terminating sanctions and for issue and evidentiary sanctions. The court awarded sanctions in the amount of \$1,562.50 against respondent and McMurray, jointly and severally, payable to Fried's counsel via certified or bank check within five court days of personal or facsimile service of the ruling. On or about December 16, 2004, respondent received notice of the ruling.

At no time did respondent inform McMurray of the court's December 15, 2004 ruling.

On January 7, 2005, the court held a hearing on Kloustermann and Fried's motions for summary judgment. Respondent advised the court telephonically that he would not be appearing at the hearing. The court granted the motions for summary judgment. On or about January 25, 2005, respondent received notice of the court's entry of judgment in favor of Kloustermann and Fried.

At no time did respondent inform McMurray of the court's order granting Kloustermann and Fried's motions for summary judgment.

On or about June 6, 2005, respondent filed a motion to vacate the judgment in the McMurray malpractice matter pursuant to Code of Civil Procedure section 473. Respondent did not inform McMurray that he had filed the motion.

On or about July 21, 2005, the court held a hearing on the motion to vacate the judgment in the McMurray malpractice matter. Respondent telephonically informed the court that he would not be appearing at the hearing. The court denied the motion to vacate. On or about July 26, 2005, respondent received notice of the court's ruling. Respondent did not inform McMurray of the court's July 26, 2005, ruling.

In or about May or June 2005, respondent spoke on the telephone with McMurray and her husband, David McMurray. During the telephone conversation, respondent represented to the McMurrays that the McMurray medical malpractice case was still pending and that the parties were conducting discovery.

In or about May or June 2005, when respondent represented to the McMurrays that the McMurray medical malpractice case was still pending and that the parties were conducting discovery, he knew, or was grossly negligent in not knowing, that his representation was false.

On or about February 26, 2007, McMurray mailed respondent a letter advising him that on or about January 26, 2007, the Social Security Administration issued a Decision finding that McMurray had been disabled since on or about September 7, 2001, and was eligible for disability insurance benefits. McMurray enclosed a copy of the Decision with the letter. In the letter, McMurray asked respondent to contact her after he had reviewed the Decision. Respondent received the letter. Respondent did not respond to the letter or inform McMurray that the McMurray medical malpractice case had been dismissed for over two years.

On or about June 19, 2007, David McMurray mailed a letter to respondent on behalf of McMurray in which he expressed concern about the McMurrays' inability to communicate with

respondent, and inquired about the status of the McMurray medical malpractice case.

Respondent received the letter. Respondent did not respond to the letter or otherwise inform the McMurrays that the McMurray medical malpractice case had already been dismissed.

To date, neither respondent nor McMurray had paid any of the monetary sanctions awarded to Kloustermann's counsel and to Fried's counsel in the McMurray medical malpractice matter. To date, respondent has not taken any action to modify or vacate any of the monetary sanctions awarded to the counsel for Koustermann and Fried in the McMurray medical malpractice matter.

On or about January 11, 2008, McMurray filed a complaint against respondent with the State Bar.

On or about February 12 and March 12, 2008, a State Bar investigator mailed a letter regarding McMurray's complaint to respondent at his address of record with the State Bar. The letters requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by McMurray's complaint. Respondent received the letters.

Respondent did not respond to the State Bar's letters or otherwise cooperate in the investigation.

## **Conclusions of Law**

### ***Count 11: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))***

By failing to respond to multiple discovery requests, motions to compel responses, motion for sanctions, and motions for summary judgment and by failing to appear in a court hearing, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).



***Count 12: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

By failing to inform McMurray of the discovery motions, the court orders granting the motions and imposing sanctions, the motions for terminating sanctions and summary judgment, and the court orders granting summary judgment and denying respondent's motion for relief, respondent failed to keep a client informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

***Count 13: Moral Turpitude (Bus. & Prof. Code, § 6106)***

By misrepresenting to McMurray in May or June 2005 that the case was still pending and that the parties were conducting discovery when, in fact, he knew or should have known that summary judgment had already been entered in January 2005 against his client, respondent committed an act involving moral turpitude in willful violation of section 6106.

***Count 14: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

By failing to respond to his client's 2007 letters and to inform McMurray that her case had been dismissed for more than two years, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 15: Failure to Obey a Court Order (Bus. & Prof. Code, § 6103)***

By failing to pay the court ordered monetary sanctions, respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

***Count 16: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

By failing to respond to the State Bar's February 12 and March 12, 2008 letters and failing to cooperate in the State Bar's investigation of the McMurray matter, respondent willfully

failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

**D. The Robles Matter (Case No. 08-O-10544)**

At all relevant times to the allegations herein, respondent represented Ramon Robles (“Robles”) in a criminal matter filed in the Los Angeles County Superior Court titled *People of the State of California v. Ramon Robles*, case number VA097961 (the “Robles criminal matter”).

On or about August 29, 2007, following a jury trial in the Robles criminal matter, Robles was found guilty of two counts of attempted murder. The court set a probation and sentencing hearing for October 9, 2007.

On or about October 9, 2007, respondent appeared on behalf of Robles at the probation and sentencing hearing. The hearing was continued to November 8, 2007.

On or about November 8, 2007, respondent did not appear at the probation and sentencing hearing. Respondent did not contact the court. On or about November 8, 2007, respondent telephoned the District Attorney and informed him that he was too ill to appear and requested that the Robles criminal matter be continued to the next day. The court continued the matter to on or about November 9, 2007.

On or about November 9, 2007, respondent did not appear at the probation and sentencing hearing. Respondent did not contact the court. On or about November 9, 2007, respondent telephoned the District Attorney and stated that he was going to check himself into the hospital. They continued the probation and sentencing hearing to November 28, 2007. The court also ordered that respondent provide the court with proof of his medical illness at the November 28, 2007 hearing. On or about November 9, 2007, a copy of the minute order was served on respondent at his official membership records address. Respondent received a copy of the minute order.

On or about November 28, 2007, respondent did not appear at the probation and sentencing hearing for the Robles criminal matter. Respondent did not contact the court or the District Attorney. New counsel appeared at the hearing on behalf of Robles and represented to the court that respondent had not returned his phone calls. At no time did respondent file a substitution of attorney. The probation and sentencing hearing in the Robles criminal matter was continued to January 30, 2008, to allow new counsel to obtain the trial transcript and attempt to obtain discovery from respondent. The court also ordered that respondent provide the court with proof of his medical illness at the January 30, 2008 hearing. On or about November 28, 2007, a copy of the minute order was served on respondent at his official membership records address. Respondent received a copy of the minute order.

On or about January 30, 2008, respondent did not appear at the probation and sentencing hearing for the criminal matter. Respondent did not contact the court. Robles's new attorney informed the court that he telephoned respondent several times and was unable to speak with him, but that Robles's family was able to obtain Robles's file from respondent. The probation and sentencing hearing for the Robles criminal matter was continued to March 3, 2008. On or about January 30, 2008, a copy of the minute order was served on respondent at his official membership records address. Respondent received a copy of the minute order.

On or about January 31, 2008, Michelle Vermilye ("Vermilye"), the judicial assistant for the court in the Robles criminal matter, filed a complaint with the State Bar against respondent.

On or about February 25 and March 11, 2008, a State Bar investigator mailed a letter regarding Vermilye's complaint to respondent at his address of record with the State Bar. The letters requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Vermilye's complaint. Respondent received the letters. Respondent did not respond to them or otherwise cooperate in the investigation.

On or about February 25, 2008, the State Bar investigator also sent respondent an e-mail regarding Vermilye's complaint. The e-mail also requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Vermilye's complaint. Respondent received the e-mail. Respondent did not respond to it or otherwise cooperate in the investigation.

### **Conclusions of Law**

#### ***Count 17: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))***

By failing to appear at the November 28, 2007 and January 30, 2008 probation and sentencing hearing, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

#### ***Count 18: Failure to Obey a Court Order (Bus. & Prof. Code, § 6103)***

By failing to provide the court with proof of his medical illness as ordered on November 9 and November 28, 2007, respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

#### ***Count 19: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

By failing to respond to the State Bar's February 25 and March 11, 2008 letters and failing to cooperate in the State Bar's investigation of the Robles matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

### **E. The Hales Matter (Case No. 09-O-17491)**

On or about January 29, 2008, Donnie Hales ("Hales") employed respondent to represent him in a criminal case involving allegations that Hales was driving while under the influence of alcohol.

On or about February 11, 2009, Hales was found guilty following a jury trial in Los Angeles County Superior Court, in the matter titled *People of the State of California v. Donnie Kimball Hales*, case No. 8DY01956 (the “Hales criminal matter”).

On or about February 15, 2009, Hales employed respondent to represent him in an appeal of the Hales criminal matter. Thereafter, Hales paid respondent at least \$7,000 to represent him in the appeal of the Hales criminal matter.

On or about March 12, 2009, respondent filed, or caused to be filed, the notice of appeal of the Hales criminal matter. On or about April 3, 2009, respondent deposited, or caused to be deposited, with the court funds for the reporter’s transcript. On or about April 9, 2009, the Hales criminal matter was forwarded to the Appellate Division of the Superior Court.

At no time did respondent file an opening brief in the appeal of Hales criminal matter.

On or about July 14, 2009, the Appellate Division of the Superior Court dismissed the Hales criminal matter for respondent’s failure to prosecute the appeal, i.e., file an opening brief.

On or about September 21, 2009, the Appellate Division of the Superior Court issued a remittitur in the Hales criminal matter.

At no time did respondent inform Hales that the appeal of the Hales criminal matter was dismissed.

In or about September 2009, Hales obtained the docket for the Hales criminal matter and discovered that the appeal of the Hales criminal matter was dismissed.

On or about October 14, 2009, Hales mailed a letter to respondent requesting a refund of the unearned fees that he had paid to respondent. Hales mailed the letter to a “Mail Box, Etc.” address used by respondent. Respondent received the letter. Respondent did not respond to it or otherwise provide Hales with a refund of any unearned fees.

Respondent failed to perform any services of value on behalf of Hales in connection with the appeal of the Hales criminal matter. Respondent did not earn any of the \$7,000 that Hales paid to him to prosecute the appeal of the Hales criminal matter.

On or about January 22, 2010, the Supreme Court issued an Order (S178065, State Bar Court Nos. 06-O-13132 et al.) (“Disciplinary Order”) suspending respondent from the practice of law for three years, stayed, subject to conditions including a two-year actual suspension and until respondent made restitution, moved the State Bar Court for an order terminating his suspension pursuant to former rule 205 of the Rules of Procedure of the State Bar of California and the State Bar Court granted the motion, and complied with standard 1.4(c)(ii) of the Standards for Attorney Sanctions For Professional Misconduct.

The Supreme Court also ordered respondent to comply with California Rules of Court, rule 9.20(a) and (c) within 30 and 40 calendar days, respectively, of the effective date of the Disciplinary Order.

On or about March 1, 2010, Cogliandro filed, or caused to be filed, with the State Bar Court a declaration in compliance with California Rules of Court, rule 9.20(c) under the Disciplinary Order (Compliance Declaration).

In the rule 9.20 Compliance Declaration, respondent declared under penalty of perjury that as of March 1, 2010, he had earned all fees paid to him by clients. In fact, as of March 1, 2010, respondent had not earned any of the fees paid to him by Hales to prosecute the appeal of the Hales criminal matter. On or about March 1, 2010, respondent knew, or should have known, that he had not earned any of the at least \$7,000 in attorney fees paid to him by Hales to prosecute the appeal of the Hales criminal matter.

On or about October 16, 2009, Hales filed a complaint against respondent with the State Bar.

On or about March 4, 2010, a State Bar investigator mailed a letter regarding Hales's complaint to respondent at his address of record with the State Bar. The letter requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Hales's complaint. On or about March 22, 2010, the United States Postal Service returned the letter.

On or about March 24, 2010, respondent notified the State Bar of a new address. On or about April 16, 2010, the State Bar investigator mailed a second letter to respondent addressed to his current membership records address. The letter requested that respondent respond in writing to specified allegations of misconduct under investigation by the State Bar raised by Hales's complaint. Respondent received the letter. Respondent did not respond to the letter or otherwise cooperate in the investigation.

### **Conclusions of Law**

#### ***Count 20: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))***

By failing to file an opening brief in the Hales criminal appeal matter, respondent intentionally or recklessly failed to perform legal services with competence in willful violation of rule 3-110(A).

#### ***Count 21: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))***

By failing to inform Hales that his appeal was dismissed, respondent failed to keep a client informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of section 6068, subdivision (m).

#### ***Count 22: Failure to Return Unearned Fees (Rules Prof. Conduct, rule 3-700(D)(2))***

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

By failing to refund any portion of the \$7,000 attorney fees paid by Hales, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

***Count 23: Moral Turpitude (Bus. & Prof. Code, § 6106)***

By declaring under penalty of perjury to the State Bar Court in the rule 9.20 Compliance Declaration, that as of March 1, 2010, he had earned all fees paid to him by clients, when in fact, he knew or should have known that he had not earned any of the \$7,000 fees paid to him by Hales, respondent committed an act involving moral turpitude in willful violation of section 6106.

***Count 24: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

By failing to respond to the State Bar's March 4 and April 16, 2010 letters and failing to cooperate in the State Bar's investigation of the Hales matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

**F. The Simonetti Matter (Case No. 10-O-03825)**

On or about July 14, 2009, respondent failed to appear before the State Bar Court for a disciplinary trial (case numbers 06-O-13132 et al.). Consequently, on or about July 14, 2009, the State Bar Court filed an order pursuant to section 6007, subdivision (e), ordering respondent involuntarily inactive from the practice of law in California. On or about July 14, 2009, the State Bar Court properly served the order on respondent.

On or about July 17, 2009, respondent was enrolled inactive and was not entitled to practice law in California. At no time since that date has respondent been entitled to practice law in California.



On or about July 22, 2009, respondent appeared in the Los Angeles Superior Court as counsel for Charles Vincent Simonetti (“Simonetti”) in a criminal matter titled *People of the State of California v. Charles Vincent Simonetti*, case number 9SY01730 (the “Simonetti criminal matter”). At that time, respondent represented Simonetti pursuant to Penal Code section 977 and informed the court that Simonetti pleaded nolo contendere to violating Vehicle Code section 23152(B).

On or about July 22, 2009, when respondent appeared on behalf of Simonetti at the Simonetti criminal matter, he knew, or was grossly negligent in not knowing, that he was not entitled to practice law in the State of California.

On or about March 2, 2010, the State Bar opened an investigation against respondent based on information that respondent had engaged in the unauthorized practice of law in the Simonetti criminal matter.

On or about June 14, 2010, a State Bar investigator mailed a letter to respondent regarding allegations that he appeared on behalf of Simonetti at a hearing in the Simonetti criminal matter while he was not entitled to practice law in California. Respondent received the letter. Respondent did not respond to it or otherwise cooperate in the investigation.

### **Conclusions of Law**

#### ***Count 25: Unauthorized Practice of Law (Bus. & Prof. Code, §§ 6068, Subd. (a), 6125 and 6126)***

Section 6068, subdivision (a), provides that a member of the State Bar has the duty to support the Constitution and laws of the United States and of the State of California.

The State Bar charges that respondent violated section 6068, subdivision (a), by practicing law and holding himself out as entitled to practice law when he was not an active member of the State Bar in violation of sections 6125 and 6126.

Section 6125 provides that no person may practice law in California unless he or she is an active member of the State Bar. Section 6126, subdivision (b), provides that any person who has been involuntarily enrolled as an inactive member of the State Bar or who has been suspended from practice and thereafter practices or attempts to practice law, advertises or holds himself out as practicing or otherwise entitled to practice law is guilty of a crime.

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 126.)

By appearing in court as counsel for Simonetti, respondent held himself out as entitled to practice law and actually practiced law when he was not entitled to do so, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of section 6068, subdivision (a).

***Count 26: Moral Turpitude (Bus. & Prof. Code, § 6106)***

By appearing on behalf of a defendant in a criminal matter when he knew or should have known that he was not entitled to practice law, respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

***Count 27: Failure to Cooperate With the State Bar (Bus. & Prof. Code, § 6068, Subd. (i))***

By failing to respond to the State Bar's June 14, 2010 letter and failing to cooperate in the State Bar's investigation of the Simonetti matter, respondent willfully failed to cooperate and participate in the disciplinary investigation, in willful violation of section 6068, subdivision (i).

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

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>3</sup> stds. 1.2(e) and (b).)

##### **A. Mitigation**

No mitigation was submitted into evidence. (Std. 1.2(e).)

##### **B. Aggravation**

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

Respondent has one prior record of discipline. (Std. 1.2(b)(i).) On January 22, 2010, respondent was suspended for three years, stayed, and actually suspended for two years and until he makes restitution and until the State Bar Court terminates his suspension for his professional misconduct in three client matters. (Supreme Court case No. S178065; State Bar Court case Nos. 06-O-13132; 07-O-12604; 07-O-13383.)

Respondent committed multiple acts of wrongdoing by abandoning five clients and engaging in the unauthorized practice of law in another matter. (Std. 1.2(b)(ii).)

Respondent's misconduct significantly harmed his clients in that court sanctions were imposed and cases were dismissed due to respondent's failures to respond to discovery requests, file briefs and appear in court. (Std. 1.2(b)(iv).) And Hales paid \$7,000 and Davis paid \$3,000 to respondent for services that he never performed.

Respondent's failure to cooperate with the State Bar before the entry of his default, including filing an answer to the NDC, is also a serious aggravating factor. (Std. 1.2(b)(vi).)

---

<sup>3</sup> Future references to standard(s) or std. are to this source.

## V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible 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 2.2, 2.3, 2.4, 2.6, and 2.10 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.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(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 1.7(a) provides that if the member has a record of one prior imposition of discipline, the degree of discipline in the current proceeding should be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust. Here, respondent's prior

discipline was imposed in January 2010 for misconduct that occurred from 2002 through 2007 involving three client matters.

Standard 2.2(b) provides that the commission of a violation of rule 4-100, including commingling, must result in at least a three-month actual suspension, irrespective of mitigating circumstances.

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.

Finally, standard 2.10 provides that culpability of other provisions of the Business and Professions Code or Rules of Professional Conduct not specified in these standards must result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.

The State Bar urges disbarment. The court agrees.

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.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that this will not happen again. Instead of

cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Although respondent advised the State Bar that he did not “have the emotional strength to participate in any further proceedings,” the court has no information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct absent his participation in this 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.) Therefore, based on the severity of the offense, the serious aggravating circumstances, in particular, his multiple acts of client abandonment, and the lack of any mitigating factors, the court recommends disbarment.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent **Antonio Lloyd Cogliandro** 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.

### **B. Restitution**

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

- 1. Judy Hunter-Davis** in the amount of \$3,000 plus 10% interest per annum from the December 3, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Judy Hunter-Davis, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
- 2. Donnie Hales** in the amount of \$7,000 plus 10% interest per annum from October 14, 2009 (or to the Client Security Fund to the extent of any payment from the fund to

Donnie Hales, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

**C. 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>4</sup>

**D. 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.

**VII. 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: January \_\_\_\_, 2011

---

**RICHARD A. HONN**  
Judge of the State Bar Court

---

<sup>4</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.)