

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case No.: 07-O-13042-LMA  
)  
DAVID N. STEIN )  
) DECISION  
)  
Member No. 202448 )  
)  
)  
A Member of the State Bar. )

**I. Introduction and Pertinent Procedural History**

This default matter was submitted for decision on November 17, 2008. At the time of submission, the State Bar of California (“State Bar”) was represented in this matter by Deputy Trial Counsel Treva R. Stewart. Respondent David N. Stein (“respondent”) failed to consistently participate in this matter either in-person or through counsel.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on February 21, 2008. That same day, a copy of the NDC was properly served on respondent in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California.<sup>1</sup>

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<sup>1</sup> Unless otherwise indicated, all documents were properly served pursuant to the Rules of Procedure.

As respondent did not file a response to the NDC, on April 17, 2008, the State Bar filed and properly served on respondent a motion for the entry of respondent's default. When respondent failed to file a written response within ten days after service of the motion for the entry of his default, on May 6, 2008, the court filed an order of entry of default and involuntary inactive enrollment.<sup>2</sup> A copy of said order was properly served on respondent at his membership records address; however, it was subsequently returned to the court by the U.S. Postal Service as undeliverable. Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision on May 27, 2008.

However, on July 31, 2008, Carol M. Langford, Esq., filed, on respondent's behalf, a motion to set aside the default. On August 12, 2008, the State Bar filed an opposition to respondent's motion to set aside the default. On August 14, 2008, the court granted respondent's motion to set aside the default based on his excusable neglect, inadvertence, mistake or surprise. Accordingly, the court ordered the termination of respondent's involuntary inactive enrollment and vacated the submission date.

On August 20, 2008, Ms. Langford filed, on respondent's behalf, an answer to the NDC. On September 8, 2008, the court held a status conference. Ms. Langford appeared at the status conference, but respondent did not. Consequently, the court issued an order requiring that respondent appear in-person for a subsequent status conference on September 22, 2008. A copy of said order was properly served on respondent on September 8, 2008. This copy was not returned as undeliverable or for any other reason.

On September 22, 2008, respondent again failed to appear for the scheduled status conference. Therefore, that same day, the court issued an order to show cause why

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<sup>2</sup> Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

respondent's answer in the pending proceeding should not be stricken and his default entered. Respondent was ordered to file a response to the order to show cause on or before October 17, 2008. The court also scheduled another in-person status conference for October 27, 2008. A copy of said order was properly served on respondent on September 22, 2008. This copy was not returned as undeliverable or for any other reason.

Respondent subsequently failed to file a response to the NDC and failed to appear at the October 27, 2008 status conference. As a result, on October 28, 2008, the court filed an order of entry of default and involuntary inactive enrollment.<sup>3</sup> A copy of said order was properly served on respondent at his membership records address. This copy was not returned as undeliverable or for any other reason. Thereafter, the State Bar waived the hearing in this matter, and this matter was again submitted for decision on November 17, 2008.<sup>4</sup>

## **II. Findings of Fact**

### **A. Jurisdiction**

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. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on September 3, 1999, and has been a member of the State Bar of California at all times since that date.

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<sup>3</sup>Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e) was effective three days after the service of this order by mail.

<sup>4</sup>The State Bar also requested that the court take judicial notice of respondent's official membership records address history. The court grants this request.

**B. The Ruitter Matter (Case No. 07-O-13042)**

In or about April 2005, respondent was hired by Ling Ruitter to represent her in a divorce action filed against Mrs. Ruitter by her husband, Garry Ruitter, in a matter entitled *Ruitter v. Ruitter*, Contra Costa Superior Court, Case No. D04-05972. She paid respondent \$350 as advanced attorney fees. Mr. Ruitter was represented by David Lederman.

Mrs. Ruitter was born and raised in Beijing, China. She came to the United States in 2000 on a tourist visa. She met Mr. Ruitter in 2002. She and Mr. Ruitter married on September 18, 2002. Mrs. Ruitter's native language is Mandarin. While Mrs. Ruitter spoke some English, she had a limited understanding of English. She needed a translator to explain legal concepts to her.

Prior to hiring respondent, Mrs. Ruitter employed Bonnie Johnson to represent her in her divorce. During Ms. Johnson's representation, Ms. Johnson needed to use a Mandarin translator to explain various legal concepts to Mrs. Ruitter.

On or about December 1, 2004, Mr. Ruitter filed for divorce. Subsequently, both Mr. and Mrs. Ruitter asserted spousal abuse claims against each other. Mr. Ruitter has a PhD in Community Medicine and owned his own real estate office. Mrs. Ruitter has a Bachelor's Degree in Machinery Design from Beijing University and training in computer science from Northwestern Polytechnic University. Mr. Ruitter asserted that most of his property was earned before marriage and was not community assets. The divorce was acrimonious.

On or about November 3, 2005, Mr. Lederman advised respondent both orally and by letter that Mr. Ruitter's business owed \$60,000 to the Internal Revenue Service ("IRS") in taxes. Mr. Lederman informed respondent that Mrs. Ruitter's share of the taxes was \$22,500 and contended that she also owed the return of \$5,000 from an

equalization payment. Mr. Lederman, on behalf of Mr. Ruiters, proposed to respondent a settlement where Mr. Ruiters would accept the return of a \$5,000 equalization payment that he paid Mrs. Ruiters in December 2004 and an immediate termination of all spousal support. In exchange, Mr. Ruiters would accept all responsibility for the unpaid taxes and pay Mrs. Ruiters a lump sum payment of \$7,500. As part of the agreement, Mrs. Ruiters would be required to sign the Ruiters' tax returns in order to receive the \$7,500. Mr. Lederman also advised respondent that should Mrs. Ruiters not accept these terms, Mr. Ruiters would seek an equal share of the debts, which would total \$27,500, and attorney's fees for \$20,000. Mr. Lederman gave Mrs. Ruiters until noon the next day, November 4, 2005, to accept these terms.

On or about November 4, 2005, respondent accepted Mr. Lederman's offer on Mrs. Ruiters' behalf. Prior to accepting the offer, respondent did not fully explain the terms and implications of the offer to Mrs. Ruiters. Respondent essentially notified Mrs. Ruiters that he and Mr. Lederman had reached a settlement in her case. Respondent, however, did not take the time to fully explain to Mrs. Ruiters the terms of the proposed agreement so that she could understand it. Despite the importance of Mrs. Ruiters knowing and understanding the terms of the offer and despite respondent knowing that Mrs. Ruiters' native language was Mandarin and that she had a limited understanding of English, respondent did not have a Mandarin translator explain the terms of the offer or its implications to Mrs. Ruiters in her native language. Mrs. Ruiters did not understand the terms and implications of the offer.

Subsequently, Mr. Lederman sent respondent a written stipulation for Mrs. Ruiters' signature containing the terms to which they had agreed. On or about November 8, 2005, respondent signed the written stipulation. On or about November 16, 2005,

respondent came to Mrs. Ruiter's place of employment and told her that she had to sign the stipulation prepared by Mr. Lederman. Mrs. Ruiter signed it on November 16, 2005. Mrs. Ruiter, however, did not understand the terms of the stipulation or its implications when she signed it. Respondent never provided her with a copy of the stipulation or a translation in her native language.

The signed Stipulation required Mr. Ruiter to pay Mrs. Ruiter a lump sum of \$7,500 in lieu of continuing spousal support within 14 days of Mrs. Ruiter signing the stipulation and signing the Ruiters' 2002, 2003, and 2004 tax returns. The signed stipulation also acknowledged the \$5,000 equalization payment had been received by Mrs. Ruiter, but did not require her to return it. On November 18, 2005, the Stipulation for Judgement was filed with the superior court by Mr. Lederman with a proposed Judgement of Dissolution.

On November 18, 2005, the superior court signed and filed the Judgement of Dissolution with the signed Stipulation For Judgement. Subsequently, respondent failed to provide Mrs. Ruiter with a copy of the stipulation.

The judgement and settlement agreement required Mrs. Ruiter to sign the Ruiters' joint tax returns for 2002 through 2004. These returns were provided to respondent by Mr. Lederman for Mrs. Ruiter's signature on November 4, 2005. Subsequently, Mrs. Ruiter refused to sign the tax returns when they were presented to her. She did not want to file joint tax returns and did not understand why she should have to or that she was required to do so under the stipulated agreement.

Even after she refused to sign the tax returns, respondent failed to explain in a language that Mrs. Ruiter could understand that she was required to do so under the

agreement she signed. Consequently, Mrs. Ruiter did not understand that she had to sign the tax returns in order to receive her lump sum payment.

Subsequently, Mrs. Ruiter kept receiving letters from the IRS regarding the unpaid taxes. She advised respondent of these letters from the IRS and he informed her that he would handle it.

Respondent again failed to explain to Mrs. Ruiter that she was required to sign the tax returns in order to receive her lump sum payment. He never explained to Mrs. Ruiter that she was required to sign the tax returns pursuant to her agreement with Mr. Ruiter. Instead, on or about June 29, 2006, respondent filed an Order to Show Cause and Affidavit for Contempt (“OSC”) for Attorney Fees and Costs and for enforcement of the Judgement/Taxes/Payment of Monies Owed against Mr. Ruiter. Respondent filed this OSC requesting that the \$7,500 be paid to Mrs. Ruiter even though he knew that she had refused to sign the tax returns and that the Stipulation/Judgement required that the \$7,500 be paid only after she signed the tax returns. Respondent failed to disclose to the court that Mrs. Ruiter refused to sign the tax returns and, thus, it was she, and not Mr. Ruiter, who violated the settlement agreement. Instead, he alleged in the petition that the taxes had been filed electronically and so Mr. Ruiter cannot argue that she did not keep her word. The matter was set for August 21, 2006.

Subsequently, respondent failed to serve Mr. Ruiter with the June 29, 2006 petition for an OSC. On August 21, 2006, two months after filing the petition for an OSC, respondent requested a continuance of the hearing because he had still not served Mr. Ruiter with the petition for an OSC.

On or about January 18, 2007, respondent filed a new petition for an OSC and Affidavit for Contempt. In this new petition for an OSC Affidavit, respondent again

asserted that, although the tax returns were filed, respondent had not paid the taxes and had not paid Mrs. Ruiter her lump sum. Respondent again failed to disclose to the court that Mrs. Ruiter had failed and refused to sign the Ruiters' tax returns or that she was required to do so by the settlement agreement. The hearing was set for February 22, 2007.

On February 13, 2007, Mr. Lederman sent respondent a letter notifying him that Mr. Ruiter had substantially paid off the tax debt to the IRS and that Mrs. Ruiter's failure to comply with the Judgement and Stipulation by signing the tax returns caused substantial additional IRS penalties, which Mr. Ruiter had paid and is paying, and that her signing the tax returns was an explicit condition for Mr. Ruiter's payment of the lump sum spousal support payment. Mr. Lederman contended that the \$7,500 spousal support payment should be considered offset by the additional damages caused by Mrs. Ruiter's failure to sign the tax returns. Mr. Lederman requested that respondent and Mrs. Ruiter withdraw the "frivolous" OSC motion or he would seek sanctions. Respondent failed to respond to Mr. Lederman's letter. He also failed to withdraw the OSC petition.

Subsequently, the February 22, 2007 hearing was continued, on respondent's request, to April 5, 2007, and then again, on respondent's request, to June 14, 2007. On March 23, 2007, Mr. Lederman filed his own Motion for Attorney Fees and for Summary Adjudication OSC for Contempt. In Mr. Lederman's pleading, Mr. Lederman informed the court that Mrs. Ruiter had refused to sign the tax returns and thus violated the conditions of the judgement/stipulation so that she was not entitled to the \$7,500 and that her refusal to sign had caused additional penalties of \$20,000. Mr. Lederman requested sanctions because Mrs. Ruiter had failed to sign the tax returns and due to the frivolous nature of her OSC motion.



On June 4, 2007, respondent filed a responsive declaration, again asserting that Mr. Ruitter had failed to pay the taxes and deliver the \$7,500 to Mrs. Ruitter.

On June 14, 2007,<sup>5</sup> the court held hearings on respondent's petition for an OSC. At that hearing, the court provided a Mandarin translator for Mrs. Ruitter. At that hearing, the court dismissed the contempt charges against Mr. Ruitter and granted Mr. Lederman's motion.

On June 20, 2007, Mrs. Ruitter telephoned respondent and left a message requesting that he contact her to discuss her case. Respondent received that message, but failed to respond to that request and failed to communicate with Mrs. Ruitter. On that same day, Mrs. Ruitter sent respondent, at his membership records address, a letter terminating his services as Mrs. Ruitter's attorney. Between June 20, 2007 and June 29, 2007, respondent failed to communicate with Mrs. Ruitter.

On June 29, 2007, Mrs. Ruitter sent respondent a letter at his membership records address requesting that he provide her with all her court documents. Respondent received this letter. Subsequently, respondent failed to respond to this letter and failed to communicate with Mrs. Ruitter, despite her numerous attempts to contact him by telephone. He also failed to provide Mrs. Ruitter with any of her files and documents.

From in or about June 20, 2007 through in or about August 2007, both Mrs. Ruitter and her friend, Fred Rivera, left several messages for respondent to contact her. They left these messages both on his answering machine and with his office assistant. Respondent received these messages, but failed to communicate with Mrs. Ruitter and failed to provide her with her files and documents, as she had requested.

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<sup>5</sup> The NDC contains a typographical error listing this date as June 14, 2006. The court finds that this minor typographical error is not prejudicial to respondent.

On or about July 9, 2007, Mrs. Ruiter faxed respondent a substitution of attorney form. Respondent received this fax and substitution of attorney form, but failed to communicate with Mrs. Ruiter and failed to return the form or any of her documents. Despite receiving further letters and requests from Mrs. Ruiter for her files and documents, respondent failed to return Mrs. Ruiter's client files and documents.

In or about early July 2007, Mrs. Ruiter sent respondent a registered letter that was returned because nobody picked it up from respondent's office. On July 30, 2007, Mr. Rivera sent respondent a fax with a substitution of attorney form and requesting respondent to sign and return it. Respondent received this fax and substitution of attorney form. Subsequently, respondent failed to communicate with Mrs. Ruiter, sign the substitution of attorney form, return the substitution of attorney form, or deliver Mrs. Ruiter's files and documents to her, as she requested.

On August 3, 2007, Mr. Rivera sent another fax to respondent requesting that he return the substitution of attorney form. Respondent received this fax but still failed to communicate with Mrs. Ruiter, provide the substitution of attorney form, or deliver her files and documents to her.

On or about June 16, 2007, Mrs. Ruiter filed a complaint with the State Bar of California regarding respondent's representation of her.

On July 13, 2007, State Bar Complaint Analyst Karen Ilich sent respondent a letter regarding Mrs. Ruiter's claims of misconduct. This letter was sent to respondent at 433 Estudilio Ave, #205, San Leandro CA 94577.<sup>6</sup> The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal

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<sup>6</sup> Respondent's membership records address at this time was 433 Estudillo Ave., Ste 205, San Leandro, CA 94577-4915. Despite the minor typographical error, the court finds, as noted *ante*, that respondent received this letter.

Service in the ordinary course of business on or about the date of the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Respondent received the letter by or about July 18, 2007.

Ms. Ilich's letter requested that respondent respond in writing on or before July 27, 2007, to specified allegations of misconduct being investigated by the State Bar regarding his representation of Mrs. Ruiter. After receiving Ms. Ilich's letter, respondent failed to provide any response to Mr. Ilich's letter or cooperate in the State Bar's investigation.

On or about September 5, 2007, respondent notified the State Bar through the Office of Membership Records of a change of membership address. Respondent informed the State Bar that his new membership address was 1501 Broadway #201, Walnut Creek, CA 94596. Respondent, however, did not respond to Ms. Ilich's letter.

On or about August 29, 2007, State Bar Investigator Amanda Gormley sent a letter to respondent regarding Mrs. Ruiter's allegations of misconduct and requesting information and documents required to complete the State Bar's investigation. This letter was sent to respondent at 1501 North Broadway #201, Walnut Creek, CA 94598.<sup>7</sup> The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date of the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Ms. Gormley's letter requested a response on or before September 11, 2007, however, it is unclear whether respondent actually received this letter.

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<sup>7</sup> As of August 29, 2007, this was not respondent's membership records address. It is unclear from the record whether this is a typographical error or if this letter was intentionally sent an address other than respondent's membership records address.

On or about September 21, 2007, Ms. Gormley sent another letter to respondent regarding Mrs. Ruiter's allegations. This letter was sent to respondent at 1501 North Broadway #201, Walnut Creek, CA 94598.<sup>8</sup> The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business on or about the date of the letter. The United States Postal Service did not return the letter sent to respondent as undeliverable or for any other reason. Respondent received the letter by or about September 26, 2007.

The investigator's letter requested that respondent respond in writing to specified allegations of misconduct on or before October 2, 2007. Subsequently, respondent failed to respond to this letter or cooperate in the State Bar's investigation.

### **III. Conclusions of Law**

#### **A. Count One: Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)<sup>9</sup> [Failure to Perform with Competence]**

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

Respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A), by failing to fully advise Mrs. Ruiter of the terms and implications of the proposed offer and written stipulation before obtaining her approval to and signature on the written stipulation; by failing to explain the terms of the stipulation in a language that she could understand so that she understood that she had to sign the Ruiters' tax returns; and by failing to respond to Mr. Lederman's letter demanding that the OSC petitions be dismissed.

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<sup>8</sup> Respondent's membership records address at this time was 1501 Broadway, #201, Walnut Creek, CA 94596. Despite the minor typographical errors, the court finds, as noted *ante*, that respondent received this letter.

<sup>9</sup> All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

**B. Count Two: Section 6068, Subdivision (m) [Failure to Communicate]<sup>10</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 respond to any of Mrs. Ruiter's communications from June 20, 2007 to August 2007, respondent failed, in a matter in which he agreed to provide legal services, to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).<sup>11</sup>

**C. Count Three: Section 6106 [Moral Turpitude]**

Section 6106 provides that the commission of any act involving moral turpitude, dishonesty or corruption constitutes a cause for suspension or disbarment. The State Bar has alleged that respondent committed an act involving moral turpitude by failing to disclose to the superior court in his petitions for an OSC that Mrs. Ruiter had refused to comply with the settlement agreement by refusing to sign the tax statements.

The court, however, finds that the State Bar has not proven, by clear and convincing evidence, that respondent's factual omission rises to the level of moral turpitude. Further, the court finds that said conduct has been more appropriately charged

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<sup>10</sup> All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

<sup>11</sup> The court declines to find, as alleged by the State Bar, that respondent's failure to explain the terms of the stipulation in a language that Mrs. Ruiter could understand constituted a failure to keep a client reasonably informed of significant developments. Said misconduct has already been relied upon by the court to establish a violation of rule 3-110(A). It is generally inappropriate to find duplicative violations because "the appropriate level of discipline for an act of misconduct does not depend upon how many rules of professional conduct or statutes proscribe the misconduct. [Citation.]" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.)

as a failure to maintain only legal or just actions. (See Count Four.) Therefore, Count Three is dismissed with prejudice.

**D. Count Four: Section 6068, Subdivision (c) [Maintaining an Unjust Action]**

Section 6068, subdivision (c), provides that it is the duty of an attorney to counsel or maintain those actions, proceedings, or defenses only as to appear to him or her legal or just.<sup>12</sup>

By filing the OSC petitions and affidavits of contempt when respondent knew that it was his client, Mrs. Ruiter, who had violated the stipulated judgement by refusing to sign tax returns, respondent failed to counsel or maintain such action, proceedings, or defenses only as appear to him legal or just in willful violation of section 6068, subdivision (c).

**E. Count Five: Rule 3-700(D)(1) [Failure to Release File]**

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property.

By failing to deliver to Mrs. Ruiter her files and documents, including copies of the court pleadings, despite her requests for them, respondent failed to release promptly, upon termination of employment, to his clients, at the request of the client, all the clients' papers and property, in willful violation rule 3-700(D)(1).

**F. Count Six: Section 6068, Subdivision (i) [Failure to Cooperate]**

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

Respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i), by failing to provide a response to any of the State Bar's letters or to the allegations of Mrs. Ruiter.

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<sup>12</sup> This section does not apply to the defense of a person charged with a public offense

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

### **A. Mitigation**

No mitigating factors were submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)<sup>13</sup> While respondent has no prior record of discipline in six years of practice prior to the present misconduct, such a short period of discipline-free practice is not significant mitigation. (See *In the Matter of Tindall* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 652, 664.)<sup>14</sup>

### **B. Aggravation**

Respondent was found culpable of five acts of misconduct. Multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).)

## **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.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. In this case, the standards call for the imposition of a minimum sanction ranging from suspension to disbarment. (Standard 2.6.)

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<sup>13</sup> All further references to standard(s) are to this source.

<sup>14</sup> Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of respondent's membership records.

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.) 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.)

The State Bar has requested, among other things, that respondent be actually suspended for ninety days. The court agrees with this recommendation. In reaching this conclusion, the court finds *Harris v. State Bar* (1990) 51 Cal.3d 1082, to be particularly instructive.

In *Harris*, the attorney was retained to process a slip-and-fall case and file a related wrongful death action. Except for filing the wrongful death lawsuit and serving it on the defendant, the attorney, in over four years, performed virtually none of the duties for which she had been retained. The attorney also repeatedly failed to communicate with her client. In aggravation, the attorney showed a lack of candor to her client, demonstrated indifference toward the consequences of her misconduct, and caused harm to her client. In mitigation, the attorney had no prior record of discipline and suffered from typhoid fever during a portion of the period of her misconduct. Ultimately, the California Supreme Court recommended that the attorney be suspended from the practice of law for three years, stayed, with a three-year period of probation including a 90-day actual suspension.

While the misconduct surrounding respondent’s failure to perform is not as extensive as that found in *Harris*, the present case involves a wider range of misconduct including violations of section 6068, subdivisions (c) and (i). Further, the present case



contains none of the mitigation found in *Harris*; and, although the present case involves less aggravation than *Harris*, the court finds significant aggravation in respondent's failure to participate. For his sporadic participation in the present proceedings demonstrates respondent's indifference to his professional obligations and a substantial risk to the public. (See *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 406.)

Consequently, the court finds that the present circumstances warrant, among other things, a period of actual suspension of 90 days and until the court grants a motion to terminate respondent's actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California.

#### **VI. Recommended Discipline**

Accordingly, the court recommends that respondent **DAVID N. STEIN** be suspended from the practice of law for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. It is further recommended that execution of the above suspension be stayed, and that respondent be actually suspended from the practice of law for 90 days and until the court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California.

If the period of actual suspension reaches or exceeds two years, it is further recommended that respondent remain actually suspended until he has shown proof satisfactory to the State Bar Court of rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards

for Attorney Sanctions for Professional Misconduct. (See Rules Proc. of State Bar, rule 205(b).)

It is also recommended that respondent be ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension.

The court further recommends that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>15</sup>

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination given by the National Conference of Bar Examiners and provide proof of passage to the Office of Probation, within one year after the effective date of the discipline herein or during the period of his actual suspension, whichever is longer.

## VII. Costs

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

Dated: February \_\_\_\_\_, 2009

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LUCY ARMENDARIZ  
Judge of the State Bar Court

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<sup>15</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)