

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 07-O-14779-PEM
)	(08-O-11111; 09-O-10958)
JOHN EDMUND JONES)	DECISION
)	
Member No. 69051)	
)	
A Member of the State Bar.)	

I. Introduction

In this disciplinary proceeding, respondent **John Edmund Jones**, is charged with multiple acts of misconduct in two client matters as well as a failure to pay and report judicial sanctions. The charged misconduct also includes (1) failing to perform with competence; (2) failing to respond to client inquiries; (3) failing to inform a client of significant developments; (4) failing to unearned fees; (4) seeking to mislead a judge; (5) committing acts of moral turpitude (6) failing to maintain respect for the court; (7) failing to cooperate in a State Bar investigation; (8) failing to obey a court order; and (9) failing to release files. This court finds by clear and convincing evidence that respondent is culpable of all but five charges. Based upon the serious nature and extent of culpability as well as the applicable mitigating and aggravating circumstances, the court recommends 90 days actual suspension, among other things.

II. Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on March 2, 2010. On April 5, 2010, respondent filed a response to the NDC.

A three-day trial was held on August 18, 19 and 20, 2010. The State Bar was represented by Deputy Trial Counsel (DTC) Treva Stewart. Respondent represented himself. On August 20, 2010, following closing arguments, the court took this matter under submission.

III. Findings of Fact and Conclusions of Law

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

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 24, 1976, and has been a member of the State Bar of California since that time.

B. Case No. 08-O-11111 (The Robinson Matter)

In August, 2007, David Robinson hired respondent to file and pursue an appeal on his behalf. Robinson paid respondent the sum of \$5,000 for his legal services. He hired respondent on the recommendation of his trial attorneys, Anthony Bothwell and Rey Hassan. Bothwell's office was in the same office building as respondent's office. Bothwell sought to communicate with respondent on Robinson's behalf and had Robinson's authority to do so. On several occasions, Bothwell met with respondent and provided him information to assist him in preparing the appellate brief.

On August 31, 2007, respondent filed an appeal on Robinson's behalf in the Fourth Appellate District. (*Robinson v. Invensys, PLC*, case no. G039217.) On October 31, 2007, the Court of Appeal issued an order indicating that the record on appeal had been filed and that the

appellant's opening brief was due within 30 days of the date of the Court of Appeal's October 31, 2007 order. The court clerk duly served respondent with the October 31, 2007 order.

Respondent received it and was aware of its contents. Respondent did not file appellant's opening brief within thirty days of the Court of Appeal's October 31, 2007 order.

On December 5, 2007,¹ the Court of Appeal issued an order, stating that if appellant's opening brief was not filed within 15 days, the appeal would be dismissed. The court clerk duly served respondent with the December 5, 2007 order. Respondent received it and was aware of its contents.

Prior to the first December 2007 deadline, respondent assured Bothwell that he would provide Bothwell with a draft of the appellate brief for Bothwell's review. Respondent did not do so.

On December 20, 2007, the Court of Appeal granted respondent's request for an extension until January 22, 2008, to file the appellant's opening brief. Respondent received notice of the extension.

On January 22, 2008, the Court of Appeal granted respondent's second request for an extension until February 6, 2008, to file the appellant's opening brief. Respondent received notice of the extension. The court indicated that it was the last extension that respondent was going to receive. Respondent claims that his copy of the extension order was not marked as a last extension.

On February 7, 2008, the Court of Appeal granted respondent's third request for an extension until February 19, 2008, to file the appellant's opening brief respondent received notice of the extension.

¹ Though the parties stipulated the date was December 15, 2007, exhibit 2, which was judicially noticed, indicates the date was December 5, 2007.

On February 20, 2008, respondent filed a fourth Application for Extension to File Brief. Respondent stated, under penalty of perjury, that the reason he was requesting the extension was: “preparing final draft.”

Bothwell sent respondent email on February 25 and 29, 2008, repeatedly requesting to see a copy of respondent's draft of the appellate brief. Respondent received Bothwell's emails but did not provide him with a draft of the appellate brief. Respondent repeatedly assured Bothwell that he was working on the draft.

On February 26, 2008, respondent filed a fifth Application for Extension to File Brief. Respondent again stated, under penalty of perjury, that the reason he was requesting the extension was: “preparing the final draft.” In a declaration supporting the Application for Extension, he stated, “I have returned repeatedly to the final draft seeking to improve the document submitted.”

Finally, on February 27, 2008, the Court of Appeal issued an order denying respondent's February 20 and 26, 2008 applications for extensions. The Court of Appeal ordered that the appeal be dismissed. The court clerk duly served respondent with the February 27, 2008 order dismissing the appeal. Respondent received it and was aware of its contents.

On February 29, 2008, respondent advised Bothwell that the appeal was dismissed. In fact, prior to each successive deadline for the filing of the appellant's opening brief, respondent repeatedly assured Bothwell that he would provide him with a draft of the appellate brief for his review. Respondent received Bothwell's emails of February 25 and 29, 2008, but did not provide him with a draft of the appellate brief. Respondent repeatedly assured Bothwell that he was working on the draft.

As late as March 3, 2008, respondent told Bothwell that he would provide a draft of the appellate papers that evening. However, on March 6, 2008, respondent informed Bothwell that, in fact, he had no drafts of any papers to be filed.

On March 6, 2008, Bothwell terminated respondent's services on behalf of Robinson. Bothwell also sent respondent an email requesting a refund of the fees that Robinson had paid respondent. Respondent received it and was aware of its contents. Respondent agreed to provide a full refund to Robinson.

However, respondent did not provide the full refund to Robinson. So, on June 8, 2009, Robinson sued respondent in the small claims division of the San Francisco Superior Court for \$7,500, including \$5,000 in principal, \$1,500 in interest, and additional expenses for filing fees, service fees, travel costs and lost wages (Robinson had to fly from out of state to appear in California). (*Robinson v. Jones*, case no. 929855.) On August 10, 2009, while the small claims case was pending, respondent provided Robinson with a partial payment of \$3,032.00. On February 25, 2010, respondent gave Robinson another check for \$1,968.00.²

On April 24, 2008, a State Bar investigator wrote to respondent and advised him that the State Bar had opened a complaint regarding his conduct in the Robinson matter. The letter gave a brief description of the investigation and asked respondent to provide a written, substantive response by May 9, 2008. Respondent received the letter.

On April 30, 2008, in response to respondent's written request, an extension was granted until May 23, 2008, to respond to the letter.

On May 23, 2008, respondent faxed a request to the State Bar investigator for an extension to respond due to the fact that he had given his Robinson file to Bothwell and Bothwell

² Respondent still owes Robinson \$2,500 plus 10% interest as of the date of the \$7,500 small claims court judgment, August 17, 2009.

was out of the country. On that same date, an extension was granted to respond by June 12, 2008. Thereafter, respondent failed to respond.

On June 12, 2008, respondent requested additional time to respond to June 16, 2008. On June 17, 2008, the State Bar denied respondent's request.

Count 1: Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))³

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

By not filing an appellant's brief, resulting in the dismissal of the appeal, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in violation of rule 3-110(A).

Count 2: Failure to Inform Client of Significant Development Failure (Bus & Prof. Code, §6068(m))⁴

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

Prior to each successive deadline for the filing of the appellant's opening brief, respondent repeatedly assured Bothwell that he would provide Bothwell with a draft of the appellate brief for his review. By not advising Bothwell on or between December 2007 and March 5, 2008, that he, in fact, had not drafted an appellate brief on Robinson's behalf, respondent did not respond keep a client informed of significant developments in a case in which he agreed to provide legal services, in willful violation of section 6068(m). There is not clear and convincing evidence that respondent did not respond promptly to client inquiries. He

³ References to the rules are to the Rules of Professional Conduct, unless otherwise stated.

⁴ References to section are to the Business and Professions Code, unless otherwise indicated.

responded, albeit with lies. Moreover, Bothwell received all of the notices from the court of appeal. Also, as to the most important fact - the dismissal - respondent told Bothwell of the February 27, 2008 dismissal on February 29, 2008, and that he had no brief to provide on March 3, 2008.

Count 3: Failure to Refund Unearned Fees, rule 3-700(D)(2)

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

On March 6, 2008, respondent agreed to provide a full refund to Robinson. About 17 months later, on August 10, 2009, respondent provided Robinson with a partial payment of \$3,032.00. Finally, on February 25, 2010, respondent gave Robinson \$1,968.00.⁵ By failing to promptly refund the \$5,000 to Robinson, and by failing to refund the full amount to Robinson, respondent failed, upon termination of his services, to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Count 4: Moral Turpitude (Bus. & Prof. Code, § 6106)

Count 5: Seeking to Mislead a Judge (Bus & Prof. Code, §6068(d))

Count 6: Failure to Maintain Respect Due to the Court (Bus & Prof. Code, §6068(b))

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

⁵ Respondent still owes Robinson \$2,500 plus 10% interest as of the date of the judgment in small claims court that respondent owed Robinson \$7,500.

Section 6068(d) requires an attorney from employing, for the purpose of maintaining the causes confided to him or her, those means only as are consistent with the truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

Section 6068(b) requires an attorney to maintain the respect due to the courts of justice and to judicial officers.

There is clear and convincing evidence that respondent willfully violated section 6106, by committing an act involving moral turpitude, dishonesty or corruption; section 6068(d) by seeking to mislead a judicial officer by an artifice or false statement of fact or law; and section 6068(b) by not maintaining the respect due to courts and judicial officers as follows:

By stating to the Court of Appeal, in his Application for Extension to File Brief, which he filed on February 6, 2008, under penalty of perjury, that the reason he was requesting the extension was: "Last extension request to permit final drafting of brief,"; and by representing, on his fourth Application for Extension to File Brief, which he filed on February 20, 2008, under penalty of perjury, that the reason he was requesting the extension was: "preparing final draft"; and, by representing, in his fifth Application for Extension to File Brief, filed on February 26, 2008, under penalty of perjury, that the reason he was requesting the extension was: "preparing final draft"; and by attaching a Declaration in Support of Application For Extension, in which he stated, "I have returned repeatedly to the final draft seeking to improve the document submitted"; when in fact, respondent did not have any draft of his brief, respondent employed, for the purposes of maintaining the causes confided in him, means which are inconsistent with the truth, and, sought, by artifice or false statement, to mislead the judge of a statement of fact, in willful violation of Business and Professions Code, section 6068(d). However, as the same facts support the other violations, the court will not attach any additional weight in determining the

appropriate discipline to the willful violation of sections 6068(b) and 6106. (See *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 155.)

Count 7: Moral Turpitude (Bus. & Prof. Code, § 6106)

By repeatedly assuring Bothwell that he had a draft of the brief for Robinson's appeal, when, in fact, respondent did not draft the brief, respondent committed acts of moral turpitude, dishonesty, or corruption, in willful violation of Business and Professions Code, section 6106.

Count 8: Failure to Cooperate in State Bar Investigation (Bus. & Prof. Code § 6068(i))⁶

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

By not providing a written, substantive response to the State Bar's April 24, 2008 letter after requesting and receiving two extensions to do so, respondent did not participate in the investigation of the allegations of misconduct regarding the Robinson matter in willful violation of 6068(i).

C. Case No. 07-O-14779 (The Bell Matter)

Respondent represented Joesiah Bell in *The Matter of Teresa Bell v. Joesiah Bell*. (San Francisco Superior Court, case no. FDI-05-755940.) On June 29, 2007, the court ordered respondent to pay sanctions of \$5,000 for repeated violation of the local court rules and orders of the court. The court stated that the order would become final in 14 calendar days from July 2, 2007 unless respondent filed a motion for reconsideration with financial documents supporting any claim of inability to pay the above amounts. The court clerk duly served respondent with a copy of the order. Respondent received it and was aware of its contents. Respondent did not file a motion for reconsideration on his own behalf; however, he did file one on behalf of his client.

⁶ The NDC lists this charge under another case number, 07-O-14779, although it is part of the Robinson matter.

Respondent has not paid the sanctions nor has he reported to the State Bar, in writing, the imposition of the sanctions in the Bell matter.

Count 9: Failure to Obey a court order (Bus. & Prof. § 6103)

The State Bar asserts that by failing to pay the sanctions of \$5,000 ordered by the court on June 29, 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. Respondent argues that the sanction award was not appealable until after entry of final judgment. Respondent stated that there has been no final judgment in the case and that, once there was a final judgment, he would appeal the sanctions order. The State Bar presented no evidence contradicting respondent's assertion. Therefore, the court finds no clear and convincing evidence that respondent, in failing to pay the sanctions, violated section 6103.

Count 10: Failure to Report Judicial Sanctions (Bus. & Prof. Code §6068(o)(3))

Section 6068(o)(3) requires an attorney to report in writing to the State Bar the imposition of any judicial sanctions against him or her except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. The report must be made within 30 days of the time the attorney has knowledge of the sanctions.

Respondent willfully violated Business and Professions Code, section 6068(o)(3). In this hearing, he conceded that he failed to report in writing the imposition of the sanctions in the *Bell* matter.

D. Case No. 09-O-10958 (The Stewart Matter)

In March 2007, Celia Rudka,⁷ assisted by her aunt, Gay Stewart,⁸ hired respondent to recover the proceeds of a life insurance policy from Union Fidelity Life Insurance held by Rudka's late husband, Edward. Stewart had a power of attorney to act on Rudka's behalf. On March 7, 2007, respondent contacted the insurance company regarding the policy and requested information on Rudka's behalf.

On May 13, 2007, respondent wrote to Rudka and advised that he would need to probate Edward Rudka's estate. Respondent requested \$535 from Rudka to cover the filing fee and the estimated cost of publication. In July 2007, Rudka paid respondent the \$535 as requested. Thereafter, respondent did not probate the estate.

On July 12, August 17 and September 19, 2007, Union Fidelity sent respondent letters asking for information about the estate. Respondent received the letters but did not provide the information requested.

On October 19, 2007, Union Fidelity sent respondent a fourth request for information regarding the estate and advised respondent that if he did not respond within 28 days, the insurance proceeds would be considered to be abandoned property and forwarded to the state. Respondent received the letter but did not provide the information requested.⁹

On November 3 and 8, 2007, and August 11, 2008, Stewart sent respondent emails, requesting information regarding the status of the probate. Respondent received Stewart's emails but did not respond or otherwise apprise her of the probate's status.

⁷ Respondent was personal friends with Edward and Celia Rudka. Celia was elderly and fragile when her husband Edward died intestate. Edward left an insurance policy.

⁸ Stewart lived in Kansas.

⁹ Respondent presented handwritten notes on the October 19, 2007 letter that the insurance company sent him. These handwritten notes stated that he called the insurance company on November 16, 2007 at an hour that they were closed. Even if true, the contact is still beyond the deadline.

On May 22, 2008, respondent advised Stewart that he would be filing the probate papers the following week.

Rudka moved to Kansas in January, 2008. On July 24, 2008, Kansas attorney Darrell Spain wrote to respondent on her behalf inquiring about the status of the probate. Having received no response, Spain faxed respondent another inquiry on August 12, 2008. Respondent received the letter and fax but did not respond or otherwise apprise Rudka of the status of the probate.

When Stewart spoke to respondent in September 2008, he said that he had not filed the probate. When she spoke to him again on November 11, 2008, he said that he would file it at the end of the week. On December 10, 2008, Stewart sent and respondent received a letter via certified mail, again requesting the status of the legal matter. He did not respond.

On January 2, 2008, Stewart send respondent an email, requesting the return of four boxes of records that belonged to Rudka. In response, respondent returned one box.

On January 13, 2009, Stewart sent a letter to respondent, via certified mail, terminating his services and requesting the three boxes of records that he still possessed. He received the letter but did not return the three boxes of information. Respondent finally returned Rudka's remaining records in June 2010.

In February 2009, Rudka hired Kevin Urbatsch to probate the estate. Urbatsch concluded that, since the Rudkas held all their property as community property and Edward had died intestate, there was no need for a probate pursuant to Probate Code sections 6401 subdivision (a) and 100 because the only heir to the estate was the surviving spouse.

Count 11: Failure to Perform Competently (Rules of Prof. Conduct, rule 3-110(A))

By not probating the estate or pursuing the collection of the insurance policy proceeds between July 2007 and January 2009, respondent intentionally, recklessly or repeatedly did not perform competently in willful violation of rule 3-110(A).

Respondent was totally incompetent in this case. He admits he did not pursue the collection of the insurance proceeds because he was looking for Edward's children (heirs) in order to probate the estate. He also admits that he wrongly interpreted Probate Code section 6401. He did not understand that, if Edward died intestate, all of his property would go to his surviving spouse under the community property laws and, thus, there was no need to probate. Furthermore, he did not understand that, under Probate Code section 13100, even if there was a problem with finding heirs, an estate as small as Edward's could be settled by signing a declaration which was what Urbatsch did. Urbatsch accomplished in less than two months what respondent had not done in two years.

Count 12: Failure to Respond to Reasonable Status Inquiries (Bus & Prof. Code, §6068(m))

By not responding to Stewart's and Spain's inquiries on Rudka's behalf, respondent failed to respond to the reasonable status inquiries in a matter in which he agreed to perform legal services, in willful violation of section 6068(m).

Count 13: Failure to Release File (Rules of Prof. Conduct, rule 3-700(D)(1))

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

By not returning the three boxes of Rudka's papers, respondent failed, upon termination of his services, to release promptly to the client, all client papers and property, in willful violation of Rules of Professional Conduct, rule 3-700(D)(1). The court rejects respondent's claim that the boxes were not client files and, therefore, there was not a failure to release client files because the rule includes client property.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Professional Misconduct, standard 1.2(e).)¹⁰

The absence of a prior record of discipline over many years of practice prior to the commencement of the misconduct (34 years) is a mitigating factor. (Standard 1.2(e)(i).)

An extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities who are aware of the full extent of the misconduct is a mitigating factor. (Std. 1.2(e)(vi).) The character evidence presented is not broad enough to constitute a wide range of references, so the court will allow only some mitigating credit. All of the witnesses were credible. All except Bishop George Lee were aware of respondent's misconduct

Cathy Newell Jackson is on the board of directors of an AIDS community group. She has known respondent for 25 years. He represented her husband on appeal and handled a probate matter. The NDC she saw does not change her opinion of respondent. He is honest and trustworthy. She would not refer her family to him if she did not believe he was honest.

¹⁰ All further references to standards are to this source.

James Barbic is self-employed as an enrolled tax agent. He is a trustee and founder of Lincoln Law School. He has known respondent over 20 years. They have shared clients and worked together on cases. He runs into respondent every few months. When they had offices in the same building, he saw him once a week.

Barbic would not be here if respondent were not honest. Respondent has a very decent manner about him. He is a decent hard-working person. It was very surprising to him that respondent would have these charges brought against him.

Bishop George Lee is the pastor at Full Gospel Church. He has been a pastor for 23 years. Respondent handled a divorce case and has given the congregation free legal advice. He trusts respondent with everything.

The misconduct does not change his opinion of respondent. If respondent admitted to allegations, it would change his opinion of him.

Rev. Joesiah Bell has been the pastor of the Church of San Francisco for 13 years. He has known respondent for three years and feels that he is an honest person. Respondent represented him in divorce as well as the church in a civil manner. Regardless of the charges and culpability findings his opinion of respondent remains unchanged.

Rev David Innes is a Baptist minister at Hamilton Square Baptist Church. He has known respondent since 1992. Respondent has handled several cases for the church.

Rev. Innes finds respondent to be a very honest man. He is competent, dependable and honest. He is ethical and would recommend him to others. He does not use people and is not manipulative. The NDC does not square with what he knows about respondent. His confidence in respondent is not shaken.

Kevin Faulk has been an attorney for seven years. He has known respondent for three years through the Reformed Heritage Church. He has always been honest. Respondent executed

his responsibility at church and helped him with a case. The stipulated facts in this matter do not change his opinion as to respondent's competence.

Objective steps promptly taken by the attorney spontaneously demonstrating remorse, recognition of the wrongdoing found or acknowledged and designed to timely atone for any consequences of the misconduct are a mitigating factor. (Std. 1.2(e)(vii).) Respondent has expressed some remorse for his misconduct and has admitted some wrongdoing. He regrets not reporting the sanctions timely. He thought that others had reported. Pastor Bell's was a hotly-contested divorce case. It was never his intention to keep the sanctions private. He was going to appeal the sanctions and, if he loses, he will pay them.

As to the Rudka matter, Ned and Celia were friends. He did very little legal work for Rudka. He helped her move and located an auction house. He voided her check because he did not want money from her. He wanted to make sure she was taken care of. He admits to not performing well with regard to the estate. He rejoiced that she was able to find a lawyer who did it cheaper and that the matter was resolved. He regrets his misunderstanding of the law. He regrets handling the matter the way he did and won't let it happen again. He was in transition in the process of closing his office.

B. Aggravation

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

Respondent's misconduct significantly harmed clients and the administration of justice. (Std. 1.2(b)(iv).) Respondent sought five extensions to file the brief in the Robinson matter. He still does not understand his wrongdoing in this matter. If he found no appealable issues, he had an obligation to tell his client, not just continually put off writing the brief. The appeal was dismissed because no brief was filed. Robinson lost some causes of action in his lawsuit. Bothwell did file an appeal but he had less than 10 days to file the appeal and as such the appeal

did not cover all the issue because it was put together in great haste as respondent did not have a draft of the brief to give Bothwell. Robinson had to go to small claims court to get the funds respondent had agreed to refund. Respondent filed a motion to vacate the small claims judgment forcing the victim to come again to California from Florida to deal with it.

Rudka had to retain other counsel to resolve her husband's estate. The resolution of the estate was delayed because of respondent's misconduct.

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

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

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety.

(*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable, in three matters, of violating rule 3-110(A) and section 6068(m) (two counts each) and one count each of violations of rules 3-700(D)(1) and (2) and section 6068(d), (i) and (o)(3) and 6106. Mitigating factors included no prior discipline and witness regarding his good character. Aggravating factors include multiple acts of misconduct and harm to clients and the administration of justice.

The State Bar recommends 120 days' actual suspension. Respondent seeks a private reproof.

The court found *King v. State Bar* (1990) 52 Cal.3d 307 instructive. In *King*, the Supreme Court actually suspended the attorney for 90 days with a four-year stayed suspension and probation for neglecting two clients and causing substantial harm to one client who had lost his personal injury action due to the attorney's inaction. He also did not return a client file; and improperly withdrew from representation; and demonstrated indifference and lack of insight. He had no prior record of discipline in 14 years of practice and was candid and cooperative with the victim. The instant case presents greater misconduct and mitigation than *King*, accordingly, it merits somewhat lesser discipline as reflected in the recommendation.

VI. Recommended Discipline

IT IS HEREBY RECOMMENDED that respondent **John Edmund Jones** be suspended from the practice of law for one year; that execution of that suspension be stayed, and that respondent be placed on probation for two years, with the following conditions:

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

of probation;

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

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

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

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

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

6. Respondent must make restitution to David Robinson in the amount of \$2,500 plus 10% interest per annum from August 17, 2009 (or to the Client Security Fund to the extent of any payment from the fund to David Robinson, plus interest and costs, in accordance with

Business and Professions Code section 6140.5) and furnish satisfactory proof thereof to the State Bar's Office of Probation. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d);

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

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

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

It is further recommended that respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, Multistate Professional Responsibility Examination Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the State Bar Office of Probation within one year of the effective date of the discipline herein. **Failure to pass the Multistate Professional Responsibility Examination within the specified time results in actual suspension by the Review Department, without further hearing, until**

passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) and (3), Rules of Procedure of the State Bar.

It is also recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court (rule 9.20) within 30 calendar days of the effective date of the Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.¹¹

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: November _____, 2010

PAT McELROY
Judge of the State Bar court

¹¹Failure to comply with rule 955 could result in disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)