

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 08-O-12175-LMA (08-O-12295;
)	08-O-12506; 08-O-12587;
DAVID NATHAN STEIN)	08-O-12958; 08-O-12960;
)	08-O-13010)
Member No. 202448)	
)	DECISION AND ORDER OF
A Member of the State Bar.)	INVOLUNTARY INACTIVE
<hr/>)	ENROLLMENT

I. Introduction and Pertinent Procedural History

This default matter was submitted for decision on May 4, 2009. At the time of submission, the State Bar of California (“State Bar”) was represented by Deputy Trial Counsel Treva R. Stewart. Respondent David Nathan Stein (“respondent”) did not participate in these proceedings.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on January 30, 2009. A copy of the NDC was properly served on respondent that same day, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).¹

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

On March 9, 2009, the court held an initial status conference; however, respondent did not participate. As respondent did not file a response to the NDC, the State Bar filed and properly served a motion for the entry of respondent's default on March 19, 2009.²

Following respondent's failure to file a written response within ten days after service of the motion for the entry of his default, the court, on April 7, 2009, filed an order of entry of default and involuntary inactive enrollment.³ A copy of said order was properly served on respondent at his membership records address, and was not subsequently returned by the U.S. Postal Service as undeliverable or for any other reason.⁴

Thereafter, the State Bar waived the hearing in this matter, and this matter was submitted for decision. Exhibits 1-3 attached to the State Bar's March 19, 2009 motion for the entry of default, and exhibit 1 attached to the State Bar's May 1, 2009 default brief on culpability and discipline are admitted into evidence.

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

II. Findings of Fact & Conclusions of Law

All factual allegations contained in 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).)

² The motion also contained a request that the court take judicial notice of all of respondent's official membership addresses. The court grants this request.

³ 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.

⁴ The return receipt indicates that this copy was rerouted by the U.S. Postal Service and ultimately delivered to 2717 N. Main, #8, Walnut Creek, CA 94597.

A. Jurisdiction

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.

B. The Ramirez Matter (Counts 1-5⁵) - Case No. 08-O-12175

1. Findings of Fact

On or about September 13, 2006, Betty Ramirez (“Ramirez”) hired respondent to represent her in a family law matter. Also on this date Ramirez paid respondent \$1,500 in advanced fees and costs for the representation. Pursuant to the agreement, respondent was to provide a monthly billing statement to Ramirez.

On or about November 15, 2006, respondent filed a Petition for Dissolution of Marriage on behalf of Ramirez in Contra Costa Superior Court case no. D06-05355 (“the Ramirez matter”). Respondent did not serve the petition on the opposing party. The initial hearing was set for December 27, 2006.

On or about December 6, 2006, respondent sent a fax to the court in the Ramirez matter, requesting a continuance of the hearing set for December 27, 2006. In the December 6, 2006 fax, respondent informed the court that he had not yet served the opposing party. The court continued the matter to February 5, 2007.

On or about February 5, 2007, the court called the Ramirez matter. Respondent did not appear. Thereafter the matter was continued.

On or about February 13, 2007, the court sent respondent notice that no proof of service was in the court file for the Ramirez matter. Respondent received this notice.

On or about April 6, 2007, the court called the Ramirez matter. Respondent did not appear. The court continued the matter to May 14, 2007. The court ordered

⁵ The NDC lists allegations using alphanumeric numbering. For the purposes of clarity, the court will instead identify these counts in numeric order.

respondent to appear to show cause why the petition should not be dismissed due to a failure to appear or to serve the petition. Respondent received notice of the order.

On or about May 11, 2007, counsel for the opposing party in the Ramirez matter left a telephone message for respondent. Opposing counsel notified respondent that the petition had never been served on Ernest Ramirez and that the hearing set for May 14, 2007, would have to be continued. Respondent received this message.

On or about May 14, 2007, the court called the Ramirez matter. Respondent appeared at the hearing. Respondent notified the court that Ernest Ramirez had retained counsel and requested a continuance. The matter was continued to July 11, 2007.

On or about July 11, 2007, the Ramirez matter was continued by stipulation of counsel to September 18, 2007.

On or about September 18, 2007, the court called the Ramirez matter. Respondent did not appear. The court ordered respondent to appear on October 31, 2007, and show cause why the pending petition should not be dismissed. The notice was sent to the address respondent had provided the court. Respondent received the notice.

On or about October 31, 2007, the court called the Ramirez matter. Respondent did not appear. The court scheduled a case management conference for February 1, 2008. On this date the court sent notice to respondent. Respondent received the notice.

On or about January 8, 2008, Ramirez faxed a letter to respondent enclosing her declaration of disclosure. In the letter Ramirez asked when to expect her alimony. Respondent received this fax, but did not respond in any way.

On or about January 21, 2008, Ramirez faxed respondent a letter. Ramirez noted that she had been unable to communicate with respondent despite her repeated telephone

calls over the last month. Ramirez asked for a response within five business days.

Respondent received this fax, but did not respond in any way.

On or about February 1, 2008, the court called the Ramirez matter. Respondent did not appear. The court continued the matter to April 4, 2008.

On or about February 15, 2008, opposing counsel filed a motion and requested a hearing in the Ramirez matter. The hearing was set for March 17, 2008. Thereafter respondent was served with notice of the hearing. Respondent did not respond to the notice.

On or about March 17, 2008, the court called the Ramirez matter. Respondent did not appear. The court granted opposing counsel's unopposed February 15, 2008 motion to set aside a prior ruling. The court thereafter set a hearing for April 4, 2008.

Respondent received notice of the hearing.

On or about April 4, 2008, the Ramirez matter was called for a Case Management/Pretrial Conference. Respondent did not appear. The court ordered an OSC to be held and continued the Case Management until May 27, 2008. Respondent received notice of the hearing. In the notice, respondent was ordered to appear at the continued case management and show cause why sanctions should not be ordered. The date of the OSC was May 27, 2008. The notice was sent to the address respondent had provided the court. Respondent received this notice.

On or about April 14, 2008, Ramirez faxed respondent a letter. In the letter, Ramirez noted that she had been unable to communicate with respondent regarding her case. Ramirez asked for a response within five business days and requested a full statement of any charges thus far on the Ramirez matter. Respondent received this fax, but did not respond in any way.

On or about April 21, 2008, Ramirez faxed respondent a letter. In the letter, Ramirez noted that she had been unable to communicate with respondent regarding her case. Ramirez asked for a response within five business days and requested a full statement of any charges thus far on the Ramirez matter. Respondent received this fax, but did not respond in any way.

On or about May 6, 2008, Ramirez faxed respondent a letter. In the letter, Ramirez noted that she had been unable to communicate with respondent regarding her case and requested a full statement of any charges thus far on the Ramirez matter. Ramirez asked for a response within five business days. Respondent received this fax, but did not respond in any way.

On or about May 6, 2008, the State Bar Court ordered respondent inactive pursuant to Business and Professions Code section 6007, subdivision (e).⁶ The order became effective on or about May 9, 2008. Notice of the order was served on respondent at his official membership records address. Respondent received this notice.

As of May 9, 2008, through August 14, 2008, respondent was “not entitled” to practice law. As of May 9, 2008, respondent knew or should have known that he was not entitled to practice law.

On or about May 14, 2008, Ramirez faxed respondent a letter. In the letter, Ramirez noted that she had been unable to communicate with respondent regarding her case. Ramirez asked for a response within five business days. Respondent received this fax, but did not respond in any way.

On or about May 16, 2008, Ramirez terminated respondent’s services and hired new counsel.

⁶ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

On or about May 27, 2008, the OSC re: Failure to Appear was called in the Ramirez matter. Respondent failed to appear. The court ordered sanctions against respondent in the amount of \$800 payable to opposing counsel no later than June 26, 2008. The order was properly served on respondent at his official membership records address. Respondent received this notice.

Between December 2007 and May 27, 2008, Ramirez attempted to communicate with respondent by leaving numerous messages with his support staff. Ramirez would request a status update as well as a return call. Respondent received these messages, but did not respond.

Respondent by his conduct effectively withdrew from representation of Ramirez. Respondent did not inform Ramirez of his intent to withdraw from representation, or take any other steps to avoid reasonably foreseeable prejudice to Ramirez. At no time did respondent inform Ramirez that he had been placed on “not entitled” status and was unable to practice law. At no time did respondent inform Ramirez that he had abandoned her matter.

As of on or about January 26, 2009, respondent has not paid the \$800 in sanctions as ordered on May 27, 2008.⁷

2. Conclusions of Law

a. Count 1: Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)⁸ [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. By failing to appear at the hearings scheduled for February 5, 2007, April 6, 2007, September 18, 2007, October 31,

⁷ There is no indication in the record that respondent has since paid this sanction.

⁸ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

2007, February 1, 2008, March 17, 2008, April 4, 2008, and May 27, 2008, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

b. Count 2: Section 6068, Subd. (m) [Failure to Communicate]

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

By failing to inform Ramirez of his placement on “not entitled” status and by failing to respond to Ramirez’s telephone messages and faxed letters requesting a status update on her matter, respondent failed to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services and failed to respond to Ramirez’s reasonable status inquiries, in willful violation of section 6068, subdivision (m).

c. Count 3: Rule 3-700(A)(2) [Improper Withdrawal]

Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid foreseeable prejudice to the client’s rights.

By not giving Ramirez notice of his termination of employment with Ramirez, respondent withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to his client’s rights, in willful violation of rule 3-700(A)(2).

d. Count 4: Rule 4-100(B)(3) [Failure to Render Accounts]

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney’s possession. By failing to provide Ramirez an accounting as requested, respondent failed to render appropriate accounts to a

client regarding all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

e. Count 5: Section 6103 [Failure to Obey a Court Order]

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.”

By not appearing at the May 27, 2008 hearing on the Order to Show Cause and by failing to pay the \$800 in sanctions by June 26, 2008, respondent disobeyed court orders requiring him to do acts in the course of his profession, which he ought in good faith to do, in willful violation of section 6103.

C. The Richardson Matter (Counts 6-7) - Case No. 08-O-12295

1. Findings of Fact

Respondent represented Patricia Richardson (“Richardson”) in case no. VF04146122 (“the Richardson matter”).

On or about May 6, 2008, the State Bar Court ordered respondent inactive pursuant to section 6007, subdivision (e). The order became effective on or about May 9, 2008. Notice of the order was served on respondent at his official membership records address. Respondent received this notice.

As of May 9, 2008, through August 14, 2008, respondent was “not entitled” to practice law. Respondent knew or should have known that he was suspended from the practice of law from May 9, 2008 through August 13, 2008.

On or about May 20, 2008, the court called the Richardson matter. Respondent appeared on behalf of Richardson.

On or about June 4, 2008, respondent, while on “not entitled” status, caused to be filed on his caption a Motion for Modification of Visitation in the Richardson matter.

2. Conclusions of Law

a. Count 6: Section 6068, Subd. (a) [Failure to Comply with All Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

By causing to be filed on his caption a Motion for Modification of Visitation and by appearing on behalf of his client on May 20, 2008, when respondent was not entitled to practice, respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

b. Count 7: Section 6106 [Moral Turpitude]

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. The unauthorized practice of law can involve moral turpitude. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.)

By causing to be filed a motion and by appearing before the court and practicing law when he was not an active member of the State Bar, respondent committed acts involving moral turpitude, dishonesty and corruption, in willful violation of section 6106.

However, because the court relied on this same misconduct in Count 6, the court affords Count 7 no additional weight.

D. The Pressnell Matter (Counts 8-10) - Case No. 08-O-12506

1. Findings of Fact

On or about March 8, 2008, Matthew Pressnell (“Pressnell”) hired respondent to represent him in a family law matter. Pressnell wanted to annul his marriage of two weeks. The contract between Pressnell and respondent specified that respondent would provide an annulment for a flat fee of \$800.

On or about March 8, 2008, Pressnell paid respondent \$800 in advanced fees.

On or about March 10, 2008, respondent filed a petition in Contra Costa County Superior Court, case no. D08-01229. Respondent erroneously checked the wrong box, making it a Petition for Dissolution of Marriage, rather than the specified annulment.

Between on or about March 10, 2008 and May 16, 2008, both Pressnell and his mother on Pressnell’s behalf, attempted to communicate with respondent by calling respondent’s office telephone number and leaving messages requesting information regarding his case. Both Pressnell and Pressnell’s mother left multiple messages for respondent requesting a status update on the legal matter. Respondent received these messages, but did not reply in any way.

On or about May 9, 2008, respondent was placed on “not entitled” status by the State Bar of California. As of that date, respondent was not entitled to practice law. Respondent remained on “not entitled” status through August 14, 2008. On or about May 9, 2008, respondent knew or should have known that he was not entitled to practice law.

On or about May 16, 2008, respondent’s support staff informed Pressnell’s mother that respondent was ill.

On or about May 19, 2008, respondent's support staff informed Pressnell's mother that respondent had been suspended.

Respondent's services to Pressnell were so deficient as to be worthless to Pressnell. On or about June 10, 2008, Pressnell wrote a letter to respondent. In the letter, Pressnell requested a full refund of the \$800 in advanced fees. Respondent received this letter, but did not respond in any way.

As of January 27, 2009, respondent had not refunded any portion of the \$800 in advanced fees to Pressnell.⁹

2. Conclusions of Law

a. Count 8: Rule 3-110(A) [Failure to Perform with Competence]

The State Bar alleges that by filing for a dissolution of marriage rather than an annulment as called for in the contract, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence. The court disagrees. The evidence before the court demonstrates that respondent erroneously checked a box while filing a petition on Pressnell's behalf. Standing alone, this allegation demonstrates an act of negligence rather than an intentional, reckless, or repeated failure to perform legal services with competence. Consequently, Count 8 is dismissed with prejudice.

b. Count 9: Section 6068, Subd. (m) [Failure to Communicate]

By not responding to the multiple telephone messages left by Pressnell and Pressnell's mother, respondent failed to respond to Pressnell's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

⁹ There is no indication in the record that respondent has since refunded any of these funds.

c. Count 10: Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund to Pressnell the \$800 advanced fees, as requested by Pressnell, which respondent had not earned, respondent failed to refund unearned fees, in willful violation of rule 3-700(D)(2).

E. The Bany 2000 Matter (Counts 11-12) - Case No. 08-O-12587

1. Findings of Fact

Respondent represented Bany 2000 LLC (“Bany 2000”) in case no. BG08382593 (“the Bany 2000 matter”).

On or about May 6, 2008, the State Bar Court ordered respondent inactive pursuant to section 6007, subdivision (e). The order became effective on or about May 9, 2008. Notice of the order was served on respondent at his official membership records address. Respondent received this notice.

As of May 9, 2008, through August 14, 2008, respondent was “not entitled” to practice law. Respondent knew or should have known that he was suspended from the practice of law from May 9, 2008 through August 13, 2008.

On or about June 12, 2008, respondent signed and filed a request for entry of default in the Bany 2000 matter.

2. Conclusions of Law

a. Count 11: Section 6068, Subd. (a) [Failure to Comply with All Laws]

By filing as counsel for Bany 2000, a motion for entry of default, respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar, in willful violation of sections 6125 and 6126, and

thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

b. Count 12: Section 6106 [Moral Turpitude]

By filing a motion with the court in the Bany 2000 matter and by practicing law when he was not an active member of the State Bar, respondent committed an act, or acts, involving moral turpitude, dishonesty and corruption, in willful violation of section 6106. However, because the court relied on this same misconduct in Count 11, the court affords Count 12 no additional weight.

F. The Halim & Brown Matters (Counts 13-15) - Case No. 08-O-12958

1. Findings of Fact

Respondent represented Gamal Halim (“Halim”) in Alameda County Superior Court case no. VF04139084 (“the Halim matter”). Respondent also represented Barbi Brown (“Brown”) in Alameda County Superior Court case no. VF05210951 (“the Brown matter”).

Judge Alice Vilardi was assigned to hear both the Halim and Brown matters. On or about April 16, 2008, Judge Vilardi called the Halim matter. Respondent did not appear. Judge Vilardi issued an Order to Show Cause (“OSC”) and continued the matter to April 17, 2008. Respondent received the OSC.

On or about April 17, 2008, Judge Vilardi called the Halim matter. Respondent appeared. The OSC for respondent’s failure to appear at the April 16, 2008 hearing was continued to June 16, 2008. Respondent actually knew of the June 16, 2008 OSC date.

On or about June 16, 2008, Judge Vilardi called the Halim matter. Respondent did not appear.

On or about June 18, 2008, Judge Vilardi called the Brown matter. Respondent did not appear. Judge Vilardi continued the matter to July 9, 2008. Respondent received notice of the July 9, 2008 date.

On or about July 8, 2008, Judge Vilardi referred respondent to the State Bar of California for his failure to appear on June 16, 2008, as ordered.

On or about July 9, 2008, Judge Vilardi called the Brown matter. Respondent did not appear. Brown informed the court that she had been unable to contact respondent since the June 18, 2008 hearing, had been unable to secure a substitution of attorney, and had been unable to obtain her file from respondent. Judge Vilardi permitted Brown to terminate respondent's services by oral motion. Judge Vilardi ordered that respondent's conduct be reported to the State Bar.

Respondent constructively terminated his employment with Brown. Respondent did not inform Brown of his intent to withdraw from representation or take any other steps to avoid reasonably foreseeable prejudice to Brown.

On or about July 22, 2008, the State Bar opened an investigation regarding respondent's failure to appear before Judge Vilardi in the Halim and Brown matters.

On or about September 19, 2008, State Bar Investigator Amanda Gormley ("Gormley") wrote to respondent regarding his failure to appear before Judge Vilardi in the Halim and Brown matters. Gormley's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. Gormley's 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. The United States Postal Service returned Gormley's letter as undeliverable for "insufficient address." Also stamped on the letter was a forwarding address of 8 Broadway Lane,

#2717, Walnut Creek, CA 94596. Thereafter, Gormley's letter was forwarded to the 8 Broadway Lane address. The forwarded letter was not returned for any reason.

Gormley's letter dated September 19, 2008, requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar regarding his failure to appear before Judge Vilardi in the Halim and Brown matters. Respondent did not respond to Gormley's letter or otherwise communicate with the State Bar.

On or about October 27, 2008, Gormley again wrote to respondent regarding his failure to appear before Judge Vilardi in the Halim and Brown matters. Gormley's letter included a copy of the September 19, 2008 letter. Gormley's letter was placed in a sealed envelope correctly addressed to respondent at his State Bar of California membership records address. Gormley's 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. The United States Postal Service did not return Gormley's letter as undeliverable or for any other reason. Gormley's letter was also mailed to respondent at 8 Broadway Lane, #2717, Walnut Creek, CA 94596.

Gormley's letter dated October 27, 2008, requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar regarding his failure to appear before Judge Vilardi in the Halim and Brown matters. Respondent did not respond to the investigator's letter or otherwise communicate with the State Bar.

2. Conclusions of Law

a. Count 13: Section 6103 [Failure to Obey a Court Order]

By failing to appear at the scheduled hearings in the Halim and Brown matters, respondent disobeyed court orders requiring him to do acts in the course of his profession, which he ought in good faith to do, in willful violation of section 6103.

b. Count 14: Rule 3-700(A)(2) [Improper Withdrawal]

By not giving Brown notice of his termination of employment, respondent improperly withdrew from employment with a client, in willful violation of rule 3-700(A)(2).

c. Count 15: Section 6068, Subd. (i) [Failure to Cooperate]

By not responding to letters from the State Bar and by not providing a written response to the allegations regarding his failure to appear before Judge Vilardi in the Halim and Brown matters, respondent failed to cooperate with the State Bar in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

G. The Kilton Matter (Counts 16-17) - Case No. 08-O-12960

1. Findings of Fact

Respondent represented Choon Kilton (“Kilton”) before Judge Vilardi, in case no. CV002075 (“the Kilton matter”). Respondent also represented Jeanette Goodman (“Goodman”) before Judge Vilardi, in case no. VP06282750 (“the Goodman matter”).

On or about May 6, 2008, the State Bar Court ordered respondent inactive pursuant to section 6007, subdivision (e). The order became effective on or about May 9, 2008. Notice of the order was served on respondent at his official membership records address. Respondent received this notice.

As of May 9, 2008 through August 13, 2008, respondent was “not entitled” to practice law. Respondent knew or should have known that he was suspended from the practice of law from May 9, 2008 through August 13, 2008.

On or about May 15, 2008, respondent appeared before Judge Vilardi in the Kilton matter. The matter was set for a Settlement Conference. An OSC was set for June 9, 2008.

On or about June 6, 2008, respondent caused to be filed a proposed Order Appointing Guardian of a Minor in the Goodman matter. The proposed order was captioned in respondent’s name and listed respondent as attorney for Jeanette Goodman.

On or about June 11, 2008, respondent caused to be filed Letters of Guardianship in the Goodman matter. The Letters of Guardianship was captioned in respondent’s name and listed respondent as attorney for Goodman.

2. Conclusions of Law

a. Count 16: Section 6068, Subd. (a) [Failure to Comply with All Laws]

By causing to be filed on his caption a proposed Order Appointing Guardian of a Minor and Letters of Guardianship on behalf of Goodman, and by appearing before Judge Vilardi on behalf of Kilton, respondent held himself out to the court as entitled to practice law and actually practiced law when he was not an active member of the State Bar, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in violation of section 6068, subdivision (a).

b. Count 17: Section 6106 [Moral Turpitude]

By causing to be filed legal documents before the court and practicing law when he was not an active member of the State Bar, respondent committed acts involving moral turpitude, dishonesty and corruption, in willful violation of section 6106.

However, because the court relied on this same misconduct in Count 16, the court affords Count 17 no additional weight.

H. The Parsons Matter (Counts 18-21) - Case No. 08-O-13010

1. Findings of Fact

On or about December 2, 2007, Matthew Parsons (“Parsons”) hired respondent to represent him in a criminal case. On or about that same day, Parsons’ mother paid respondent \$1,500 in advanced fees for respondent’s representation of her son. At no time did respondent inform Parsons or Parsons’ mother of the restrictions imposed by the attorney client relationship. At no time did respondent obtain the informed written consent of Parsons to the payment of Parsons’ legal fees by his mother.

On or about April 7, 2008, Parsons met with respondent at respondent’s office. Respondent assured Parsons that he would be available to Parsons throughout the legal proceedings.

On or about April 17, 2008, Parsons and respondent appeared at the first court date. The court thereafter set the next court date for May 19, 2008. Respondent actually knew of the May 19, 2008 date.

On or about May 6, 2008, the State Bar Court ordered respondent inactive pursuant to section 6007, subdivision (e). The order became effective on or about May 9, 2008. Notice of the order was served on respondent at his official membership records address. Respondent received this notice.

As of May 9, 2008, through August 13, 2008, respondent was “not entitled” to practice law. As of May 9, 2008, respondent knew or should have known that he was not entitled to practice law.

Between on or about May 5, 2008 and May 19, 2008, Parsons and his mother telephoned respondent at least every day, leaving messages requesting information about the criminal case. Respondent received these messages, but did not reply in any way.

On or about May 19, 2008, Parsons appeared in court. Respondent did not appear with Parsons. Parsons' mother telephoned respondent repeatedly regarding her son's matter. At approximately 11:00 a.m., respondent's assistant telephoned Parsons' mother and informed her that respondent was not entitled to practice law. The court granted a 30-day continuance.

Between on or about May 19, 2008 and June 19, 2008, Parsons and his mother telephoned respondent at least every day, leaving messages requesting information about the criminal case. Respondent received these messages, but did not reply in any way.

On or about June 19, 2008, Parsons appeared in court. Respondent did not appear. At that time Parsons asked the judge for a public defender. The court provided Parsons a public defender.

Other than appearing with Parson on April 17, 2008, respondent took no action whatsoever on behalf of Parsons. On or about July 15, 2008, Parsons and Parsons' mother wrote respondent demanding a full refund of the \$1,500 in advanced fees paid.

Respondent's services were so deficient so as to be worthless to Parsons. Respondent did not earn any portion of the fees advanced for the representation of Parsons by Parsons' mother. As of January 27, 2009, respondent has not refunded any portion of the unearned fees to Parsons or Parsons' mother.¹⁰

¹⁰ There is no indication in the record that respondent has since refunded any of the outstanding fees owed to Parsons.

2. Conclusions of Law

a. Count 18: Rule 3-110(A) [Failure to Perform with Competence]

By taking no action, aside from making one appearance, on behalf of Parsons, respondent recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

b. Count 19: Section 6068, Subd. (m) [Failure to Communicate]

By failing to respond to Parsons' and Parsons' mother's telephone calls requesting information about the criminal case, respondent failed to respond to Parsons' reasonable status inquiries, in willful violation of section 6068, subdivision (m).

c. Count 20: Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

By failing to refund to Parsons or Parsons' mother the \$1,500 advanced fees, which respondent had not earned, respondent failed to refund unearned fees, in willful violation of rule 3-700(D)(2).

d. Count 21: Rule 3-310(F) [Accepting Fees from a Non-Client]

Rule 3-310(F) states that a member shall not accept compensation for representing a client from one other than the client unless:

- (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
- (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and
- (3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if:
 - (a) such notification is otherwise authorized by law; or
 - (b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

By failing to obtain the informed written consent of Parsons to the payment of legal fees by Parsons' mother, respondent accepted compensation from one other than the client, in willful violation of rule 3-310(F).

III. Mitigating and Aggravating Circumstances

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)¹¹

A. Mitigation

No mitigating factors were submitted into evidence and none can be gleaned from the record.

B. Aggravation

The court finds three factors in aggravation. (Std. 1.2(b).)

1. Multiple Acts of Wrongdoing

Though not a pattern, respondent's misconduct demonstrates "multiple acts of severe disregard of clients' interests." (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, 79.) Said conduct warrants significant consideration in aggravation. (1.2(b)(ii).)

2. Significant Harm

Respondent's misconduct resulted in significant financial harm to his clients. (Std. 1.2(b)(iv).) Said harm includes his failure to refund \$800 in unearned fees to Matthew Pressnell and \$1,500 in unearned fees to Matthew Parsons or his mother.

3. Prior Record of Discipline

Respondent's prior record of discipline is an aggravating circumstance.¹² (Std. 1.2(b)(i).) The State Bar Court's decision in case no. 07-O-13042, filed February 9, 2009, recommends discipline including two years' stayed suspension and 90 days' actual

¹¹ All further references to standard(s) are to this source.

¹² Pursuant to Evidence Code section 452, subdivision (h), the court takes judicial notice of its own records.

suspension and until respondent complies with rule 205.¹³ In this matter, respondent was found culpable of violating rules 3-110(A) and 3-700(D)(1), and section 6068, subdivisions (m), (c), and (i), in a single-client matter occurring between 2005 and 2007. In aggravation, respondent committed multiple acts of misconduct and failed to participate in the State Bar Court proceedings. No mitigating circumstances were found.

IV. 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 must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.2(b), 2.6, and 2.10 apply in this matter. The most severe sanction is found at standard 2.6 which recommends disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

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 Silvertown* (2005) 36 Cal.4th 81, 91-92; *In re Naney*

¹³ This matter is pending finality in the California Supreme Court. It is, nonetheless, considered a prior disciplinary record. (Rule 216(a) and (c), Rules Proc. of State Bar.)

(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 urges that respondent be disbarred. The State Bar cites to *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, among other cases, in support of its recommendation.

In *Hunter*, the attorney, in four criminal law matters, failed to make scheduled court appearances, failed to file pleadings, failed to comply with numerous court orders, failed to perform services competently, and failed to refund an unearned fee. In aggravation, the attorney: (1) had a record of two prior disciplinary matters, (2) committed multiple acts of wrongdoing, (3) caused significant harm to his clients, and (4) demonstrated a lack of concern for the disciplinary process and failed to appreciate the seriousness of the charges. No mitigating circumstances were found. The Review Department recommended that the attorney be disbarred.¹⁴

While *Hunter* involves greater aggravation, the misconduct in the present matter is more egregious. For the present matter involves considerably more clients and additional counts involving the unauthorized practice of law. On the whole, the court finds the facts and circumstances of the present matter to be fairly comparable to *Hunter*.

The Supreme Court's decision in *Young v. State Bar* (1990) 50 Cal.3d 1204, is also helpful in this matter. In *Young*, the Supreme Court declined to follow the Review Department's recommendation that the attorney be disbarred for abandoning nine clients

¹⁴ In a separate disciplinary recommendation, the Review Department recommended that the attorney's prior disciplinary probation be revoked. This revocation constituted the attorney's second discipline for purposes of aggravation.

as a result of an unannounced move out of state.¹⁵ The Supreme Court found that a two-year period of actual suspension was warranted considering the attorney's substantial showing of mitigation including: (1) the effects that his hepatitis had on his ability to practice, (2) the fact that none of his clients were substantially harmed, (3) his demonstrated remorse for his actions, (4) his lack of a prior record of discipline, and (5) his full cooperation with the State Bar. In addition, several witnesses testified that following the attorney's incidents of abandonment, he resumed his practice and worked diligently and capably on behalf of his clients. Accordingly, the Supreme Court found that public protection did not require the attorney's disbarment.

The present matter is analogous to *Young* in that it involves similar misconduct affecting the same number of clients. Here, however, the significant mitigation that warranted a lower level of discipline in *Young* does not exist. The court has no understanding as to why the misconduct occurred, no reason to believe that respondent feels any remorse for his actions, and no basis to assume that his misconduct will not reoccur. Consequently, the court agrees with the State Bar's disciplinary recommendation of disbarment.

Respondent's failure to participate in these proceedings and provide any explanation for his misconduct, gives the court little reason to believe that he is a viable candidate for probation. Based on the breadth of his misconduct, including the extensive aggravating circumstances and utter lack of mitigation, the court finds that the interests of public protection require that respondent be disbarred.¹⁶

¹⁵ The attorney stipulated to withdrawing from employment without taking steps to avoid prejudice to his clients, failing to refund unearned fees, failing to perform legal services competently, and willfully disobeying court orders.

¹⁶ Although respondent has a prior recommendation of discipline, said recommendation is not yet final. Should the Supreme Court decide not to accept the

V. Recommended Discipline

The court recommends that respondent David Nathan Stein, State Bar Number 202448, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is further recommended that respondent make restitution as follows:

(1) To Matthew Pressnell in the amount of \$800 plus 10 percent interest per annum from March 8, 2008 (or reimburses the Client Security Fund to the extent of any payment from the fund to Matthew Pressnell in accordance with Business and Professions Code section 6140.5); and

(2) To Matthew Parsons or Parsons' mother in the total amount of \$1,500 plus 10 percent interest per annum from December 2, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to Matthew Parsons or Parsons' mother in accordance with Business and Professions Code section 6140.5).¹⁷

It is also recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and 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.¹⁸

VI. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 220(c).)

discipline recommendation in case no. 07-O-13042, this court's present discipline recommendation remains the same. (See rule 216(c), Rules of Procedure.)

¹⁷ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

¹⁸ 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.)

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: July _____, 2009

LUCY M. ARMENDARIZ
Judge of the State Bar Court