

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos. <b>08-O-13195-RAP</b> (08-O-13196;
	)	08-O-13677; 08-O-14114;
	)	08-O-14188; 08-O-14471;
<b>GERARD LIONEL GARCIA-BARRON,</b>	)	08-O-14840; 09-O-10444;
	)	09-O-10487; 09-O-13648;
	)	09-O-14124; 09-O-14346;
<b>Member No. 159092,</b>	)	09-O-16753; 09-O-17437)
	)	
	)	<b>DECISION AND ORDER OF</b>
A Member of the State Bar.	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
	)	

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**I. Introduction**

In this default disciplinary matter, respondent **Gerard Lionel Garcia-Barron** is charged with 42 counts of professional misconduct in 14 client matters, including (1) failing to avoid the representation of adverse interests; (2) failing to obey a court order; (3) failing to return unearned fees; (4) failing to return client files (5), misappropriation of \$5,000; (6) failing to communicate with client; (7) failing to perform services competently; (8) failing to pay client funds promptly; (9) failing to cooperate with the State Bar; (10) committing acts of moral turpitude and misrepresentation; and (11) engaging in the unauthorized practice of law.

The court finds, by clear and convincing evidence, that respondent is culpable of the charged misconduct. In view of respondent's serious misconduct and the evidence in

aggravation, the court recommends that respondent be disbarred from the practice of law and be ordered to make restitution to seven clients.

## **II. Pertinent Procedural History**

On March 8, 2010, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed and properly served on respondent a Notice of Disciplinary Charges (NDC) at his official membership records address. Respondent did not file a response.

Respondent's default was entered on May 11, 2010, and respondent was enrolled as an inactive member on May 14, 2010. The matter was submitted for decision on June 1, 2010, following the filing of State Bar's brief on culpability and discipline.

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

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on June 8, 1992, and has since been a member of the State Bar of California.

### **1. Aguirre Matter (Case No. 08-O-13195 -- Counts 1-5)**

On or about January 29, 2007, Maria Aguirre ("Maria") employed respondent to represent her son Michael Aguirre ("Aguirre") in a criminal appeal. Respondent gave Maria a copy of the attorney-client fee agreement that he signed and dated.

On or about February 5, 2007, Maria paid respondent a \$10,000 retainer. Respondent gave Maria a signed receipt for the \$10,000.

On or about March 24, 2007, Maria paid respondent an additional \$15,000. Respondent gave Maria a signed receipt for the \$15,000.

Between in or about January and March 2007, when respondent accepted the payment of \$25,000 from Maria to represent her son in a criminal appeal, respondent did not obtain Aguirre's informed written consent to third party payment.

On or about June 13, 2007, Maria sent respondent a letter, requesting the return of the unearned fees. Respondent failed to respond to Maria's request.

On or about July 9, 2007, respondent filed a Notice of Appeal on behalf of Aguirre in *People v. Aguirre*, California Court of Appeal, Second Appellate District, case No. B200904 (the "Aguirre appeal").

On or about October 30, 2007, the Court of Appeal sent respondent a notice, reminding him that the Aguirre appeal would be dismissed if the opening brief was not filed within 15 days of the notice. Respondent did not file an opening brief on behalf of Aguirre.

On or about December 14, 2007, the Court of Appeal issued an order that the Aguirre appeal be dismissed by default, advising that any party desiring reinstatement file a motion within 15 days of the date of the order. Thereafter, respondent did not file a motion to reinstate the appeal on behalf of Aguirre.

Because respondent did not file an opening brief on behalf of Aguirre or move to reinstate the appeal after receiving the order of dismissal by default, respondent did not earn the \$25,000 fees paid by Maria.

Between on or about January 15 and November 9, 2007, Maria, acting as Aguirre's authorized agent, called respondent at least 30 occasions, leaving messages inquiring about the status of the criminal appeal on behalf of her son. Respondent failed to return Maria's messages.

On or about August 29, 2008, a State Bar investigator wrote to respondent regarding the Aguirre matter. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his official State Bar membership records address, 2121 W. Imperial Hwy, Suite

E-410, La Habra, CA 90631. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Aguirre matter.

On or about September 29, 2008, respondent faxed the investigator a request for an extension to respond. On the same day, the investigator sent respondent a letter, granting an extension to respond by October 27, 2008.

On or about October 29, 2008, the State Bar investigator sent respondent a follow-up letter regarding the Aguirre matter.

On or about December 12, 2008, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response. On or about December 15, 2008, respondent emailed the investigator back, stating that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Aguirre matter. Respondent failed to provide a response to the State Bar investigator's email.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

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

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

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

By failing to file an opening brief on behalf of Aguirre and move to reinstate the appeal after receiving the order of dismissal by default, respondent intentionally and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 2: Representation of Adverse Interests (Rule 3-310(F))***

Rule 3-310(F) provides that an attorney must not accept compensation for representing a client from one other than the client unless: (1) There is no interference with the attorney's independence of professional judgment or with the client-lawyer relationship; (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) The attorney obtains the client's informed written consent, provided that no disclosure or consent is required if such nondisclosure is otherwise authorized by law or the attorney 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 Aguirre's informed consent to payment of legal fees by Aguirre's mother, respondent accepted compensation for representing a client from one other than the client without complying with the requirement that respondent obtained the client's informed written consent, in willful violation of rule 3-310(F).

***Count 3: Failure to Communicate (Bus. & Prof. Code, § 6068, Subd. (m))<sup>2</sup>***

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

By failing to return Maria's multiple telephone messages, respondent failed to respond promptly to reasonable status inquiries of a client or his authorized agent, in willful violation of section 6068, subdivision (m).

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

***Count 4: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

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

By failing to refund any portion of the \$25,000 fees paid by Maria, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

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

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

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Aguirre matter, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**2. Gomez Matter (Case No. 08-O-13196 -- Count 6)**

On or about October 7, 2006, Dolores Rios ("Rios"), who only speaks Spanish and does not read and write English, employed respondent to review the criminal file of her son, Salvador Gomez ("Gomez"), an inmate incarcerated in Soledad Prison. Respondent gave Rios a copy of the attorney-client fee agreement that he signed and dated.

On or about October 7, 2006, Rios paid respondent a \$1,500 retainer. Respondent gave Rios a signed receipt for the \$1,500.

On or about June 9, 2008, Gomez filed a complaint (the "Gomez complaint") with the State Bar, alleging that, in the last 18 months, respondent had not contacted his mother who acted as Gomez's authorized agent, nor responded to her multiple telephone calls inquiring about respondent's review of Gomez's file, on behalf of Gomez.

On or about August 29, 2008, a State Bar investigator wrote to respondent regarding the Gomez complaint. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

The investigator's letter requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Gomez complaint.

On or about September 11, 2008, respondent called the investigator, requesting a two-week extension to respond. On or about September 12, 2008, the investigator sent respondent a letter, granting an extension to respond by September 29, 2008.

On or about September 29, 2008, respondent sent the investigator a written request for a second extension until October 27, 2008. Respondent stated that he was "engaged in. . . People v. Darrell Gray and Randle Hester . . . case number. . . 06NF2588." On or about September 29, 2008, the investigator sent respondent a letter, granting an extension to respond by October 27, 2008.

On or about October 29, 2008, the State Bar investigator sent respondent a follow-up letter regarding the Gomez complaint. Respondent did not respond to the October 29, 2008 letter.

On or about December 12, 2008, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response. On or about December 15, 2008, respondent emailed the investigator back, stating that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Gomez complaint. Respondent failed to provide a response to the State Bar investigator's email.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 6: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Gomez complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**3. Aguirre and Escobar Matters (Case No. 08-O-13677 -- Counts 7-8)**

On or about June 10, 2008, Michael Aguirre ("Aguirre") fired respondent as counsel in his criminal appeal, case No. B200904, Los Angeles Superior Court case No. KA07385701, (the "Aguirre appeal case") and substituted in attorney Lawrence R. Young ("Young") as counsel.

On or about July 14, 2008, Kevin Alonso Escobar ("Escobar") fired respondent as counsel in his criminal appeal, case No. B209694, Los Angeles Superior Court case No. BA31304401, (the "Escobar appeal case") and also substituted in Young as counsel.

On or about July 7, 2008, Young sent respondent a letter, enclosing a release signed by Aguirre and requesting the client's entire file. Young offered to have a messenger pick up Aguirre's file. Respondent failed to respond to Young's July 7, 2008 letter.

On or about July 15, 2008, Young sent respondent a letter, enclosing a release signed by Escobar and requesting the client's entire file. Respondent failed to respond to Young's July 15, 2008 letter.

On or about July 22, 2008, Young's office sent respondent a fax requesting Aguirre's client file. Respondent did not respond to Young's fax of July 22, 2008.



On or about July 29, 2008, Escobar's mother, Evelyn Santiago ("Santiago") sent respondent an email from Young's office, imploring respondent to release Escobar's file to his new counsel. Respondent did not respond to Santiago's plea of July 29, 2008.

On or about September 9, 2008, Young sent respondent a letter by certified mail, again requesting Aguirre's client file. Respondent failed to respond to Young's September 9, 2008 letter.

On or about September 17, 2008, Young filed a complaint (the "Young complaint") with the State Bar regarding respondent's failure to release Aguirre's and Escobar's client files to Young.

On or about October 9, 2008, a State Bar investigator wrote to respondent regarding the Young complaint. The investigator's letter was placed in a sealed envelope correctly addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

The investigator's letter requested that respondent respond by October 30, 2008, in writing to specified allegations of misconduct being investigated by the State Bar in the Young complaint. Respondent failed to respond to the October 30, 2008 letter.

On or about November 7, 2008, the investigator sent respondent a follow-up letter requesting respondent's answer by November 21, 2008. Respondent again failed to respond to the investigator's letter of November 7, 2008.

On or about December 12, 2008, the investigator sent an email to respondent's blackberry. On or about December 15, 2008, respondent emailed the investigator back, stating that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Young complaint. The investigator also emailed respondent that seven disciplinary matters were pending against him. Respondent failed to provide a response to the State Bar investigator's email.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 7: Failure to Return Client File (Rule 3-700(D)(1))***

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client papers and property.

By not responding to Young's multiple written requests for Aguirre's and Escobar's client files, respondent failed to release promptly, upon termination of employment, to the clients, at the request of the clients, all the client papers and property, in willful violation of rule 3-700(D)(1).

***Count 8: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Young complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**4. Penate Matter (Case No. 08-O-14114 -- Count 9)**

On or about September 22, 2008, Marco T. Penate ("Penate") filed a complaint (the "Penate complaint") to the State Bar, stating that he had retained respondent in April 2008 to sue his employer for unpaid overtime wages and injuries incurred at work. Penate alleged that, after accepting a \$1,500 cash retainer, respondent failed to perform and communicate with him.

On or about October 31, 2008, a State Bar investigator wrote to respondent regarding the Penate complaint. The investigator's letter was properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

The investigator's letter requested that respondent respond by November 14, 2008 in writing to specified allegations of misconduct being investigated by the State Bar in the Penate complaint. Respondent failed to respond to the October 31, 2008 letter.

On or about November 25, 2008, the investigator sent respondent a follow-up letter requesting respondent's answer by December 18, 2008. Respondent again failed to respond to the investigator's letter of November 25, 2008.

On or about December 12, 2008, the investigator sent an email to respondent's blackberry. On or about December 15, 2008, respondent emailed the investigator back, stating that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar. Respondent also stated that he was finishing up a trial in Orange County Superior Court and hoped to be done by December 18, 2008.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Penate complaint. Respondent failed to provide a response to the State Bar investigator's email.

In or about February 2009, Penate requested and received a refund of \$1,500 from respondent.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 9: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Penate complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**5. Santiago Matter (Case No. 08-O-14188 -- Counts 10-12)**

In or about December 2006, Byron Santiago ("Santiago"), a long-haul truck driver, employed respondent to represent him in a personal injury matter. On or about December 4, 2006, Santiago gave respondent a \$500 retainer. Respondent gave Santiago a signed receipt for the \$500. On or about December 22, 2006, Santiago gave respondent another \$500 retainer. Respondent gave Santiago a signed receipt for the second payment.

Thereafter, respondent did not perform any legal services on behalf of Santiago. Santiago's only legal representation was provided by attorney David Madariaga ("Madariaga") who was hired by State National Insurance, the insurance carrier of Centerline Transportation, Santiago's employer.

By not taking any legal action on behalf of Santiago, respondent failed to earn the \$1,000 paid by Santiago.

On or about July 30, 2008, Santiago sent respondent a letter by certified mail, requesting the return of the unearned fees. Respondent failed to respond to Santiago's request.

On or about September 30, 2008, Santiago filed a complaint (the "Santiago complaint") with the State Bar.

On or about November 7, 2008, a State Bar investigator wrote to respondent regarding the Santiago complaint. The investigator's letter was properly mailed and addressed to

respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.

The investigator's letter requested that respondent respond by November 21, 2008 in writing to specified allegations of misconduct being investigated by the State Bar in the Santiago complaint. Respondent failed to respond to the November 7, 2008 letter.

On or about November 25, 2008, the investigator sent respondent a follow-up letter requesting respondent's answer by December 10, 2008. Respondent again failed to respond to the investigator's letter of November 25, 2008.

On or about December 12, 2008, the investigator sent an email to respondent's blackberry. On or about December 15, 2008, respondent emailed the investigator back, stating that he was involved in a trial in Santa Ana, and that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Santiago complaint. Respondent failed to provide a response to the State Bar investigator's email.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 10: Failure to Perform Competently (Rules Prof. Conduct, Rule 3-110(A))***

By not taking any legal action on behalf of Santiago, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 11: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

By failing to refund any portion of the \$1,000 fees paid by Santiago, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

***Count 12: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Santiago complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**6. Zendejas Matter (Case No. 08-O-14471 -- Counts 13-17)**

On or about February 21, 2008, Veronica Zendejas ("Zendejas") employed respondent to represent her in a marital dissolution matter. Zendejas engaged respondent's services in anticipation of a March 28, 2008 ex parte hearing regarding child custody and support, set by attorney Speros Maniates ("Maniates"), counsel for Zendejas' husband, Jose Meza. Respondent gave Zendejas a copy of the attorney-client fee agreement that he signed and dated.

On or about February 21, 2008, Zendejas paid respondent a \$3,000 retainer. Respondent gave Zendejas a signed receipt for the \$3,000.

In or about February 2008, Zendejas, who spoke little English, substituted respondent in as counsel, in place of attorney Michael J. Selph because respondent spoke Spanish fluently.

At the March 28, 2008 ex parte hearing, respondent told Zendejas to sign the stipulation and order as filed by Maniates with the court. Respondent did not explain to Zendejas that the stipulation which she signed was silent on the issue of child support to Zendejas' three children. Respondent did not obtain the informed consent of Zendejas who did not understand what she was signing.

Between March and September 2008, Zendejas placed at least 30 calls to respondent's office, cell, and home numbers, inquiring into her dissolution matter and about a conference-trial setting date of September 25, 2008. Respondent did not return the messages left by Zendejas.

On September 24, 2008, Zendejas succeeded in reaching respondent who told her over the phone that he would ask for a continuance because he was extremely busy.

In or about October 2008, frustrated in her attempts to reach respondent and concerned about her dissolution matter, Zendejas fired respondent and retained new counsel, attorney Annaluisa Padilla ("Padilla").

On or about October 21, 2008, Padilla sent respondent a letter of representation, enclosing a substitution of attorney for respondent's signature, and requesting Zendejas' client file and a refund of unearned fees to Zendejas. Respondent did not respond to Padilla's letter.

On or about October 25, 2008, Padilla sent respondent an email, again requesting Zendejas' client file and a refund of unearned fees to Zendejas. Respondent did not respond to Padilla's email.

On or about November 7, 2008, Zendejas filed a complaint (the "Zendejas complaint") with the State Bar.

On or about November 7 and November 22, 2008, a State Bar investigator wrote to respondent regarding the Zendejas complaint. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Zendejas complaint. Respondent failed to respond to the November 7 and November 22, 2008 letters.

On or about December 12, 2008, the investigator sent an email to respondent's blackberry. On or about December 15, 2008, respondent emailed the investigator back, stating

that personal family problems and a difficult court schedule delayed his ability to respond to the State Bar.

On or about January 7, 2009, the State Bar investigator sent respondent a follow-up email regarding respondent's lack of response to the allegations of misconduct in the Zendejas complaint. Respondent failed to provide a response to the State Bar investigator's email.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 13: Failure to Perform Competently (Rule 3-110(A))***

By failing to explain to Zendejas the nature of the stipulation signed on March 28, 2008, agreeing to receiving no child support for her three children, respondent intentionally and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 14: Failure to Communicate (§ 6068, Subd. (m))***

By failing to return Zendejas' multiple telephone calls inquiring about her dissolution matter and respond to Padilla's correspondence on behalf of Zendejas, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 15: Failure to Return Client File (Rule 3-700(D)(1))***

By failing to respond to Padilla's requests for Zendejas' client file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1).

***Count 16: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

By failing to explain to Zendejas that the March 28, 2008 stipulation was silent on the issue of child support, and by failing to perform any legal service of value to Zendejas, respondent failed to earn the \$3,000 fees paid by Zendejas.



By failing to respond to Padilla's request for a return of the unearned fees on behalf of Zendejas, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

***Count 17: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Zendejas complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**7. Ferrell Matter (Case No. 08-O-14840 -- Counts 18-19)**

In or about late 2007, Anthony T. Ferrell ("Ferrell") employed respondent to represent him in *People v. Ferrell*, Contra Costa County, case No. 01-134033-O ("Ferrell matter").

On or about October 28, 2008, respondent faxed a request to continue the trial date set for October 28, 2008, in the Ferrell matter, on the ground that he was engaged in another trial in Los Angeles. The court rescheduled the trial for November 13, 2008.

On or about November 13, 2008, respondent failed to appear in court on behalf of Ferrell. The court denied respondent's request to continue the trial as untimely, and issued an order to show cause (OSC) against respondent for December 1, 2008.

On or about December 1, 2008, respondent failed to appear at the OSC. The court issued a \$5,000 bench warrant for respondent's arrest for his failure to appear at the OSC.

On or about December 4, 2008, the Contra Costa Superior Court sent respondent a courtesy notice, informing him of the bench warrant issued and held for his arrest. The notice informed respondent that the warrant would be issued and the State Bar notified if a response was not received within 10 days.

On or about December 15, 2008, respondent did not contact the court regarding the \$5,000 bench warrant issued against him. On or about December 15, 2008, the superior court sent the State Bar a Discipline Referral Form, reporting that respondent was in contempt for his failure to appear, as ordered by the court.

On or about January 9 and January 27, 2009, a State Bar investigator wrote to respondent regarding the superior court complaint (the "SBI matter"). The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the SBI matter. Respondent failed to respond to the January 9 and January 27, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 18: Failure to Obey a Court Order (§ 6103)***

By failing to appear at the OSC and to provide a response to the \$5,000 bench warrant issued by the superior court, respondent disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear, in willful violation of section 6103.

***Count 19: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the SBI matter, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**8. Canales Matter (Case No. 09-O-10444 -- Counts 20-24)**

On or about July 7, 2008, Edwin Canales ("Canales") employed respondent to petition the court to increase his visitation with his children and reduce his child and spousal support payments as ordered in Canales' dissolution matter, Los Angeles Superior Court case No. BD451023. At the time of employment, Canales gave respondent his client file in case No. BD451023. Respondent gave Canales a copy of the attorney-client fee agreement that he signed and dated.

On or about July 7, 2008, Canales paid respondent a \$1,500 retainer. Respondent gave Canales a signed receipt for the \$1,500.

Subsequent to July 2008, respondent did not file any documents in case No. BD451023. Respondent failed to take any legal action on behalf of Canales.

Between on or about July 7 and November 28, 2008, Canales called respondent's office at least 28 times, leaving messages inquiring about the modifications to prior court orders in his dissolution matter. Respondent did not return any of Canales' messages.

By failing to take any legal action on behalf of Canales, respondent failed to earn the \$1,500 fees paid by Canales.

On or about October 16, 2008, Canales sent respondent a letter, requesting the return of the unearned fees and his client file. Respondent failed to respond to Canales' request for a refund or his client file.

On or about October 30, 2008, Canales filed a complaint with the State Bar (the "Canales complaint").

On or about February 19 and March 17, 2009, a State Bar investigator wrote to respondent regarding the Canales complaint. The investigator's letters were properly mailed and

addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Canales complaint.

Respondent failed to respond to the February 19 and March 17, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 20: Failure to Perform Competently (Rule 3-110(A))***

By not taking any legal action on behalf of Canales, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 21: Failure to Communicate (§ 6068, Subd. (m))***

By not returning Canales' multiple telephone inquiries, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 22: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

By failing to refund any portion of the \$1,500 paid by Canales, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

***Count 23: Failure to Return Client File (Rule 3-700(D)(1))***

By not responding to Canales' request for his client file, respondent failed to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, in willful violation of rule 3-700(D)(1).

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

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Canales complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**9. Yuen/Watanabe Matter (Case No. 09-O-10487 -- Counts 25-28)**

In or about October 2008, Edwin Yuen ("Yuen") employed respondent to represent his friend Mayumi Watanabe ("Watanabe") in a felony criminal matter in San Mateo County, case No. NF378271A. Respondent gave Yuen a copy of the attorney-client fee agreement that Yuen and respondent both signed and dated.

On or about October 21, 2008, Yuen paid respondent a \$10,000 retainer. Respondent gave Yuen a signed receipt for the \$10,000.

Subsequent to October 2008, respondent did not take any legal action on behalf of Watanabe.

On or about December 2, 2008, Yuen sent respondent a letter, requesting a full refund of the \$10,000. Respondent did not respond to Yuen's request for a refund.

Between in or about October and December 2008, when respondent accepted the payment of \$10,000 from Yuen to represent Watanabe in her felony criminal matter, respondent did not obtain Watanabe's informed written consent to third-party payment.

By failing to take any legal action on behalf of Watanabe in her felony criminal matter, respondent failed to earn the \$10,000 fee paid by Yuen.

On or about January 8, 2009, Yuen filed a complaint with the State Bar (the "Yuen complaint").

On or about February 20 and March 11, 2009, a State Bar investigator wrote to respondent regarding the Yuen complaint. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Yuen complaint. Respondent failed to respond to the February 20 and March 11, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 25: Failure to Perform Competently (Rule 3-110(A))***

By failing to take any legal action on behalf of Watanabe, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 26: Representation of Adverse Interests (Rule 3-310(F))***

By failing to obtain Watanabe's informed consent to payment of legal fees by Watanabe's friend, respondent accepted compensation for representing a client from one other than the client without complying with the requirement that respondent obtained the client's informed written consent, in willful violation of rule 3-310(F).

***Count 27: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

By failing to respond to Yuen's request for a return of the \$10,000 unearned fees, respondent failed to refund promptly any part of the unearned advanced fees, in willful violation of rule 3-700(D)(2).

***Count 28: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Yuen complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**10. Gallardo Matter (Case No. 09-O-13648 -- Count 29)**

On or about September 15, 2007, Patricia Sigala-Gallardo ("Gallardo") employed respondent to represent her in a criminal matter. Respondent gave Gallardo a copy of the attorney-client fee agreement that he signed and dated. On the date of employment, Gallardo paid respondent a \$1,500 retainer.

On or about June 24, 2009, Gallardo filed a complaint with the State Bar (the "Gallardo complaint"), alleging that respondent failed to perform on her behalf and did not return her calls.

On or about July 22 and August 11, 2009, a State Bar investigator wrote to respondent regarding the Gallardo complaint. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Gallardo complaint. Respondent failed to respond to the July 22 and August 11, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 29: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Gallardo complaint, respondent failed to cooperate and participate in a

disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**11. Green Matter (Case No. 09-O-14124 -- Counts 30-33)**

On or about January 5, 2009, Samuel Green ("Green") employed respondent to file a petition in Superior and Juvenile Court to expunge his criminal record. Respondent gave Green a copy of the attorney-client agreement that he signed and dated.

On or about January 5, 2009, Green paid respondent a \$750 retainer. Respondent gave Green a signed receipt for the \$750.

On or about February 5, 2009, Green paid respondent an additional \$750 retainer. Respondent gave Green a signed receipt for the additional \$750.

Thereafter, respondent did not file any petition nor performed any legal services on behalf of Green.

Between April 25 and May 24, 2009, Green called respondent on at least six occasions, leaving messages inquiring about the petition to expunge Green's record. Respondent failed to return Green's messages.

By failing to perform any legal services on behalf of Green, respondent failed to earn the \$1,500 fees paid by Green.

On or about July 13, 2009, Green sent respondent a letter, requesting the return of the unearned fees. Respondent failed to respond to Green's request.

On or about June 30, 2009, Green filed a complaint with the State Bar (the "Green complaint").

On or about September 24 and October 13, 2009, a State Bar investigator wrote to respondent regarding the Green complaint. The investigator's letters were properly mailed and



addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Green complaint.

Respondent failed to respond to the September 24 and October 13, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 30: Failure to Perform Competently (Rule 3-110(A))***

By not taking any legal action on behalf of Green, respondent failed to intentionally, recklessly, or repeatedly perform legal services with competence, in willful violation of rule 3-110(A).

***Count 31: Failure to Communicate (§ 6068, Subd. (m))***

By failing to return Green's telephone messages, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 32: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

By failing to refund any portion of the \$1,500 fees paid by Green, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

***Count 33: Failure to Cooperate With the State Bar (§ 6068, Subd. (i)).***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Green complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**12. Tomei Matter (Case No. 09-O-14346 -- Counts 34-37).**

On or about December 5, 2008, Tod Tomei ("Tomei") employed respondent to represent him in a real estate matter. Respondent gave Tomei a copy of the contingent fee agreement that Tomei and respondent both signed and dated.

On or about December 5, 2008, Tomei paid respondent a \$5,000 advance on costs. The advance was paid by a check which respondent negotiated the same day.

Subsequent to December 5, 2008, respondent failed to take any legal action on behalf of Tomei.

In or about July 2009, frustrated with respondent's failure to take any legal action on his behalf, Tomei employed new counsel, attorney Robert Hishman ("Hishman").

By failing to take any action on behalf of Tomei, respondent did not incur any costs on behalf of Tomei.

On or about July 6, 2009, Hishman sent respondent a letter of representation of Tomei, requesting a full refund of the \$5,000 advanced costs paid by Tomei. Respondent did not respond to Hishman's July 6, 2009 letter.

On or about August 14, 2009, Hishman sent respondent a follow-up letter, again requesting a full refund of the advanced costs. Respondent again did not respond to Hishman's second letter.

To date, respondent has not returned to Tomei any portion of the advanced costs.

By not refunding the unused advanced costs to Tomei, respondent misappropriated the \$5,000 paid by Tomei.

On or about July 28, 2009, Tomei filed a complaint with the State Bar (the "Tomei complaint").

On or about September 25 and October 21, 2009, a State Bar investigator wrote to respondent regarding the Tomei complaint. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Tomei complaint. Respondent failed to respond to the September 25 and October 21, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 34: Failure to Perform Competently (Rule 3-110(A))***

By not taking any legal action on behalf of Tomei, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 35: Failure to Promptly Pay Client Funds (Rule 4-100(B)(4))***

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

By failing to deliver, as requested by Tomei's new counsel, the advanced costs paid by Tomei, respondent failed to promptly pay the funds in respondent's possession which the client is entitled to receive, in willful violation of rule 4-100(B)(4).

***Count 36: Misappropriation (§ 6106)***

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

By misappropriating the \$5,000 advanced costs paid by his client, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

***Count 37: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Tomei complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**13. Rivera Matter (Case No. 09-O-16753 -- Count 38)**

On or about September 23, 2009, Nelson A. Rivera ("Rivera"), an inmate in Pleasant Valley State Prison, filed a complaint with the State Bar (the "Rivera complaint"), alleging that respondent had been retained and paid \$1,500 by Rivera's sister Veronica Zamora and girlfriend Allyin Torres to represent Rivera in a criminal matter; and respondent failed to perform on Rivera's behalf.

On or about November 4 and November 19, 2009, a State Bar investigator wrote to respondent regarding the Rivera complaint. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the Rivera complaint.

Respondent failed to respond to the November 4 and November 19, 2009 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 38: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the Rivera complaint, respondent failed to cooperate and participate in a

disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**14. Matthews Matter (Case No. 09-O-17437 -- Counts 39-42)**

On or about March 13, 2009, the Membership Billing Department of the State Bar ("Membership") sent respondent a Final Delinquent Notice, notifying him that he would be suspended from the practice of law effective July 1, 2009, if his bar dues were not received within two months. Membership's March 13, 2009 notice was sent to respondent's membership records address. It was not returned as undeliverable or for any other reason by the U.S. Postal Service.

On or about June 17, 2009, Membership sent respondent a Notice of Entry of Order of Suspension issued by the California Supreme Court for nonpayment of membership fees. The notice specifically stated that it was sent to respondent to give him "the opportunity to make the appropriate payment prior to the effective date of the order." Membership's June 17, 2009 notice was sent to respondent's membership records address. It was not returned as undeliverable or for any other reason by the U.S. Postal Service.

On or about July 1, 2009, respondent was suspended from the practice of law for failure to pay his bar dues.

On or about July 13, 2009, respondent appeared in Los Angeles Superior Court, case No. SA068021, *People v. Matthews* (the "Matthews matter"), before Judge Antonio Barreto. The Matthews matter was transferred to Judge James R. Dabney for jury trial on July 21, 2009.

On or about July 21, 2009, respondent appeared before Judge Dabney in the Matthews matter. Judge Dabney continued the Matthews matter to August 4, 2009, because respondent informed the court of a death of a family member and that funeral services would take place "this week."

On or about July 21, 2009, Judge Dabner informed respondent that there was another matter that respondent "need[ed] to clear up before the next court date." Judge Dabner was referring to respondent's expired bar card.

On or about August 4, 2009, respondent appeared before Judge Barreto in the Matthews matter. Respondent informed Judge Barreto that his "father passed a couple of weeks back." Respondent's father, Jose Garcia, was alive in July and August 2009.<sup>3</sup>

On or about August 4, 2009, Judge Barreto asked respondent if there were any further issues regarding his expired bar card. Respondent stated that there were none.

On or about August 13, 2009, an Order to Show Cause re: Contempt was held before Judge Barretto. Respondent acknowledged that he knew that his license was suspended on August 4, 2009, when he appeared before Judge Barretto.

On or about September 28, 2009, Judge Barretto found respondent in contempt of court. Respondent was sentenced to five days in county jail.

On or about July 13, July 21, and August 4, 2009, while respondent was not entitled to practice law, respondent appeared as counsel of record for a criminal defendant.

On or about July 13, July 21, and August 4, 2009, when respondent appeared as counsel of record for the defendant in the Matthews matter, respondent misrepresented to the court that he was entitled to practice law when he knew that he was not entitled to practice law.

On or about July 21 and August 4, 2009, respondent misrepresented to the court that his father passed away when he knew that his father was alive in July and August 2009.

On or about October 29, the Los Angeles Superior Court sent the State Bar a Discipline Referral (the "State Bar Investigation/SBI matter").

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<sup>3</sup> Respondent's father passed away in November 2009.

On or about November 25, 2009, and January 5, 2010, a State Bar investigator wrote to respondent regarding the SBI matter. The investigator's letters were properly mailed and addressed to respondent at his official State Bar membership records address. The United States Postal Service did not return the investigator's letters as undeliverable or for any other reason.

The investigator's letters requested that respondent respond in writing to specified allegations of misconduct being investigated by the State Bar in the SBI matter. Respondent failed to respond to the November 25, 2009 and January 5, 2010 letters.

Thereafter, respondent did not respond to the investigator's letters or otherwise communicate with the investigator.

***Count 39: Unauthorized Practice of Law (§§ 6068, Subd. (a), 6125 and 6126)***

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

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

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

Charging an attorney with a violation of the duty to support the constitution and laws, by reason of the attorney's violation of the statutes prohibiting practicing law while suspended, provides the basis for imposition of discipline for the unauthorized practice of law. (*In the*

*Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 574-575; *In the Matter of Tady* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 121, 126.)

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

***Count 40: Moral Turpitude (§ 6106)***

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

***Count 41: Misrepresentation (§ 6106)***

By misrepresenting to the court that he was entitled to practice law when he knew that he was not entitled to practice law and that his father passed away when he was alive, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

***Count 42: Failure to Cooperate With the State Bar (§ 6068, Subd. (i))***

By failing to provide the State Bar investigator with a response concerning the allegations of misconduct in the SBI matter, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**IV. Mitigating and Aggravating Circumstances**

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>4</sup> stds. 1.2(e) and (b).)

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<sup>4</sup> Future references to standard(s) or std. are to this source.



**A. Mitigation**

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

**B. Aggravation**

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

Respondent's misconduct demonstrated a pattern of misconduct by repeatedly failing to perform services competently, failing to refund unearned fees, and failing to cooperate with the State Bar. (Std. 1.2(b)(ii).) Respondent also committed multiple acts of wrongdoing by failing to communicate, failing to return client files, misappropriating client funds, committing acts of moral turpitude, failing to obey a court order, engaging in the unauthorized practice of law and failing to avoid the representation of adverse interests.

Respondent misconduct harmed significantly his clients. (Std. 1.2(b)(iv).) His clients are deprived of their funds, totaling \$47,000.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He had not yet reimbursed his clients of their funds or returned their files.

Respondent's failure to participate in these proceedings prior to the entry of default is also a serious 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.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproof to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.2, 2.3, 2.4, 2.6, and 2.10 apply in this matter.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standard 2.2(a) provides that culpability of willful misappropriation of entrusted funds must result in disbarment, unless the amount is insignificantly small or if the most compelling mitigating circumstances clearly predominate. Then the discipline must not be less than a one-year actual suspension, irrespective of mitigating circumstances.

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

Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward a court or a client must result in actual suspension or disbarment.

Standard 2.4 (a) provides that culpability of a member of a pattern of willfully failing to perform services demonstrating the member's abandonment of the causes in which he or she was retained must result in disbarment.

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

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

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

The State Bar urges disbarment. The court agrees.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) An attorney's failure to accept responsibility for actions which are wrong or to understand that wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-1101.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that this will not happen again. Instead of cooperating with the State Bar or rectifying his misconduct, respondent defaulted in this disciplinary proceeding. Although respondent advised the State Bar that he was undergoing some personal family problems, absent his participation in this proceeding, the court has no information about the underlying cause of his misconduct or of any mitigating circumstances surrounding his misconduct.

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d

605, 615.) Therefore, based on the severity of the offense, the serious aggravating circumstances, in particular, his pattern of client abandonments, and the lack of any mitigating factors, the court recommends disbarment.

## **VI. Recommendations**

### **A. Discipline**

Accordingly, the court recommends that respondent **Gerard Lionel Garcia-Barron** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

### **B. Restitution**

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

- 1. Maria Aguirre** in the amount of \$25,000 plus 10% interest per annum from the June 13, 2007 (or to the Client Security Fund to the extent of any payment from the fund to Maria Aguirre, plus interest and costs, in accordance with Business and Professions Code section 6140.5); and
- 2. Byron Santiago** in the amount of \$1,000 plus 10% interest per annum from July 30, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Byron Santiago, plus interest and costs, in accordance with Business and Professions Code section 6140.5).
- 3. Veronica Zendejas** in the amount of \$3,000 plus 10% interest per annum from October 21, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Veronica Zendejas, plus interest and costs, in accordance with Business and Professions Code section 6140.5).
- 4. Edwin Canales** in the amount of \$1,500 plus 10% interest per annum from October 16, 2008 (or to the Client Security Fund to the extent of any payment from the

fund to Edwin Canales, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

**5. Edwin Yuen** in the amount of \$10,000 plus 10% interest per annum from December 2, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Edwin Yuen, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

**6. Samuel Green** in the amount of \$1,500 plus 10% interest per annum from July 15, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Samuel Green, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

**7. Tod Tomei** in the amount of \$5,000 plus 10% interest per annum from July 30, 2008 (or to the Client Security Fund to the extent of any payment from the fund to Tod Tomei, plus interest and costs, in accordance with Business and Professions Code section 6140.5).

Respondent must furnish satisfactory proof of payment 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, subdivisions (c) and (d).

**C. California Rules of Court, Rule 9.20**

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.<sup>5</sup>

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<sup>5</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

**D. Costs**

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

**VII. Order of Involuntary Inactive Enrollment**

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: August 24, 2010.

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