

**PUBLIC MATTER****FILED**

MAR 08 2010

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL  
RUSSELL G. WEINER, No. 94504  
INTERIM CHIEF TRIAL COUNSEL  
PATSY J. COBB, No. 107793  
DEPUTY CHIEF TRIAL COUNSEL  
NANCY J. WATSON, No. 89753  
ASSISTANT CHIEF TRIAL COUNSEL  
GERI VON FREYMAN, NO. 97937  
SUPERVISING TRIAL COUNSEL  
MONIQUE T. MILLER, No. 212469  
DEPUTY TRIAL COUNSEL  
1149 South Hill Street  
Los Angeles, California 90015-2299  
Telephone: (213) 765-1486

## STATE BAR COURT

## HEARING DEPARTMENT - LOS ANGELES

In the Matter of: ) Case Nos. 08-O-13195  
) [08-O-13196; 08-O-13677; 08-O-14114;  
GERARD L. GARCIA-BARRON, ) 08-O-14188; 08-O-14471; 08-O-14840;  
No. 159092, ) 09-O-10444; 09-O-10487; 09-O-13648;  
) 09-O-14124; 09-O-14346; 09-O-16753]  
)  
A Member of the State Bar ) NOTICE OF DISCIPLINARY CHARGES

**NOTICE - FAILURE TO RESPOND!**

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL

1 SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED,  
2 AND THE STATE BAR COURT HAS GRANTED, A MOTION FOR  
3 TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION  
4 FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR  
5 COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO  
6 COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE  
7 BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF  
8 PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

9 The State Bar of California alleges:

10 JURISDICTION

11 1. GERARD L. GARCIA-BARRON ("Respondent") was admitted to the practice of  
12 law in the State of California on June 8, 1992, was a member at all times pertinent to these  
13 charges, and is currently a member of the State Bar of California.

14 COUNT ONE

15 Case No. 08-O-13195  
16 Rules of Professional Conduct, rule 3-110(A)  
17 [Failure to Perform with Competence]

18 2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
19 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
20 follows:

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

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

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

28 6. On or about July 9, 2007, Respondent filed a Notice of Appeal on behalf of Aguirre  
in *People v. Aguirre*, California 2<sup>nd</sup> Appellate District Case No. B200904 (the "Aguirre appeal").

7. 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

1 within 15 days of the notice. Subsequent to October 2007, Respondent did not file an opening  
2 brief on behalf of Aguirre.

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

7 9. By failing to file an opening brief on behalf of Aguirre and move to reinstate the  
8 appeal after receiving the order of dismissal by default, Respondent intentionally, recklessly, or  
9 repeatedly failed to perform legal services with competence, in willful violation of Rules of  
10 Professional Conduct, rule 3-110(A).

11 COUNT TWO

12 Case No. 08-O-13195  
13 Rules of Professional Conduct, rule 3-310(F)  
[Accepting Fees from a Non-Client]

14 10. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(F), by  
15 accepting compensation for representing a client from one other than the client without  
16 complying with the requirement that Respondent obtained the client's informed written consent,  
17 as follows:

18 11. The allegations of paragraphs 3 through 5 are incorporated by reference.

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

22 13. By failing to obtain Aguirre's informed consent to payment of legal fees by Aguirre's  
23 mother, Respondent accepted compensation for representing a client from one other than the  
24 client without complying with the requirement that Respondent obtained the client's informed  
25 written consent, in willful violation of Rules of Professional Conduct, rule 3-310(F).

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

$$\begin{array}{c} 2 \\ 3 \end{array}$$
4  
5

6

7  
8  
9  
10

11  
12  
13

## 14

15

16

17  
18

19

20  
21  
22

23  
24

25  
26  
27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 2
- 2
- 2
- 2
- 2
- 2

[illegible][illegible][illegible][illegible]

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

20  
21  
22  
23  
24  
25  
26  
27  
2822  
2.  
2.  
2  
2  
2  
22  
2  
2

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

32. 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 wilful violation of Business and Professions Code, section 6068(i).

COUNT SIX

Case No. 08-O-13196  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

33. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

34. 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.

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

36. On or about June 9, 2008, Gomez filed a complaint (the “Gomez complaint”) with the State Bar, alleging that, in the last eighteen 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.

37. 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, at E410, 2121 W. Imperial Hwy, la Habra, CA 90631. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of

1 business. The United States Postal Service did not return the investigator's letter as  
2 undeliverable or for any other reason.

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

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

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

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

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

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

23 44. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
24 communicate with the investigator.

25 45. By failing to provide the State Bar investigator with a response concerning the  
26 allegations of misconduct in the Gomez complaint, Respondent failed to cooperate and  
27 participate in a disciplinary investigation pending against Respondent, in wilful violation of  
28 Business and Professions Code, section 6068(i).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- .1
- .2
- .3
- .4
- .5
- .6
- .7
- .8
- .9
- 2
- 2.
- 2
- 2
- 2
- 2
- 2
- 2
- 2

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
2  
2  
2  
2  
2  
2  
2  
2  
2

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
2  
2  
2  
2  
2  
2  
2

7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
2  
2  
2  
2  
2  
2  
2

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847

14  
15  
16  
17  
18  
19  
20  
2  
23  
23  
23  
2  
2  
2  
2

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

20  
2  
2:  
2:  
2:  
2  
2  
2  
2

2  
2  
2  
2  
2  
2

2222

2



54. 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 wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

COUNT EIGHT

Case No. 08-O-13677  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

55. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

56. The allegations of paragraphs 46 through 54 are incorporated by reference.

57. 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.

58. 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, at E410, 2121 W. Imperial Hwy, La Habra, CA 90631. The letter was properly mailed by first class mail, postage prepaid, by depositing for collection by the United States Postal Service in the ordinary course of business. *The United States Postal Service did not return the investigator's letter as undeliverable or for any other reason.*

59. 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.

60. 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.

///

61. 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.

62. 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.

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

64. 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 wilful violation of Business and Professions Code, section 6068(i).

## COUNT NINE

Case No. 08-O-14114  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

65. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

66. 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.

67. 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

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

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

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

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

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

17 72. In or about February 2009, Penate requested and received a refund of \$1,500 from  
18 Respondent.

19 73. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
20 communicate with the investigator.

21 74. By failing to provide the State Bar investigator with a response concerning the  
22 allegations of misconduct in the Penate complaint, Respondent failed to cooperate and  
23 participate in a disciplinary investigation pending against Respondent, in wilful violation of  
24 Business and Professions Code, section 6068(i).

25 ///

26 ///

27 ///

28 ///

1 COUNT TEN

2 Case No. 08-O-14188  
3 Rules of Professional Conduct, rule 3-110(A)  
4 [Failure to Perform with Competence]

5 75. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
6 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
7 follows:

8 76. In or about December 2006, Byron Santiago ("Santiago"), a long-haul truck driver,  
9 employed Respondent to represent him in a personal injury matter. On or about December 4,  
10 2006, Santiago gave Respondent a \$500 retainer. Respondent gave Santiago a signed receipt for  
11 the \$500. On or about December 22, 2006, Santiago gave Respondent another \$500 retainer.  
12 Respondent gave Santiago a signed receipt for the second payment.

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

17 78. By not taking any legal action on behalf of Santiago, Respondent intentionally,  
18 recklessly, or repeatedly failed to perform legal services with competence, in willful violation of  
19 Rules of Professional Conduct, rule 3-110(A).

20 COUNT ELEVEN

21 Case No. 08-O-14188  
22 Rules of Professional Conduct, rule 3-700(D)(2)  
23 [Failure to Refund Unearned Fees]

24 79. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by  
25 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

26 80. The allegations of paragraphs 77 and 77 are incorporated by reference.

27 81. By not taking any legal action on behalf of Santiago, Respondent failed to earn the  
28 \$1,000 paid by Santiago.

82. 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.

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

4 COUNT TWELVE

5 Case No. 08-O-14188  
6 Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

7 84. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
8 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
9 follows:

10 85. The allegations of paragraphs 75 through 83 are incorporated by reference.

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

13 87. On or about November 7, 2008, a State Bar investigator wrote to Respondent  
14 regarding the Santiago complaint. The investigator's letter was properly mailed and addressed to  
15 Respondent at his official State Bar membership records address. The United States Postal  
16 Service did not return the investigator's letter as undeliverable or for any other reason.

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

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

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

27 ///

28 ///

91. 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.

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

93. 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 wilful violation of Business and Professions Code, section 6068(i).

COUNT THIRTEEN

Case No. 08-O-14471  
Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

94. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

95. 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 Jose Meza ("Meza"), Zendejas' husband. Respondent gave Zendejas a copy of the attorney-client fee agreement that he signed and dated.

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

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

98. On or about 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

1 Zendejas that the stipulation which she signed was silent on the issue of child support to  
2 Zendejas' three children. Respondent did not obtain the informed consent of Zendejas who did  
3 not understand what she was signing.

4 99. Between March and September 2008, Zendejas placed at least thirty calls to  
5 Respondent's office, cell, and home numbers, inquiring into her dissolution matter and about a  
6 conference-trial setting date of September 25, 2008. Respondent did not return the messages left  
7 by Zendejas. On September 24, 2008, Zendejas succeeded in reaching Respondent who told her  
8 over the phone that he would ask for a continuance because he was extremely busy.

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

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

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

18 103. By failing to explain to Zendejas the nature of the stipulation signed on March 28,  
19 2008, agreeing to receiving no child support for her three children, Respondent intentionally,  
20 recklessly, or repeatedly failing to perform legal services with competence, in willful violation of  
21 Rules of Professional Conduct, rule 3-110(A).

22 COUNT FOURTEEN

23 Case No. 08-O-14471  
24 Business and Professions Code, section 6068(m)  
[Failure to Respond to Client Inquiries]

25 104. Respondent wilfully violated Business and Professions Code, section 6068(m), by  
26 failing to respond promptly to reasonable status inquiries of a client, as follows:

27 105. The allegations of paragraphs 95 through 102 are incorporated by reference.

28 ///

106. 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 wilful violation of Business and Professions Code, section 6068(m).

COUNT FIFTEEN

Case No. 08-O-14471  
Rules of Professional Conduct, rule 3-700(D)(1)  
[Failure to Release File]

107. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(1), by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows:

108. The allegations of paragraphs 95 through 102 are incorporated by reference.

109. 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 wilful violation of Rules of Professional Conduct, rule 3-700(D)(1).

COUNT SIXTEEN

Case No. 08-O-14471  
Rules of Professional Conduct, rule 3-700(D)(2)  
[Failure to Refund Unearned Fees]

110. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

111. The allegations of paragraphs 95 through 102 are incorporated by reference.

112. 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.

113. 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 wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

///



1 COUNT SEVENTEEN

2 Case No. 08-O-14471  
3 Business and Professions Code, section 6068(i)  
4 [Failure to Cooperate in State Bar Investigation]

5 114. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
6 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
7 follows:

8 115. The allegations of paragraphs 94 through 113 are incorporated by reference.

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

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

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

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

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

27 121. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
28 communicate with the investigator.

122. 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 wilful violation of Business and Professions Code, section 6068(i).

COUNT EIGHTEEN

Case No. 08-O-14840  
Business and Professions Code, section 6103  
[Failure to Obey a Court Order]

123. Respondent wilfully violated Business and Professions Code, section 6103, by wilfully disobeying or violating 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, as follows:

124. 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 (the “Ferrell matter”).)

125. 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.

126. 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 OSC against Respondent for December 1, 2008.

127. 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.

128. 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 ten days.

129. On or about December 15, 2008, Respondent did not contact the Superior Court regarding the \$5,000 bench warrant issued against him. On or about December 15, 2008, the

1 Superior Court sent the State Bar a Discipline Referral Form, reporting Respondent in contempt  
2 for his failure to appear, as ordered by the court.

3 130. By failing to appear at the OSC and to provide a response to the \$5,000 bench  
4 warrant issued by the Superior Court, Respondent disobeyed or violated an order of the court  
5 requiring him to do or forbear an act connected with or in the course of Respondent's profession  
6 which he ought in good faith to do or forbear, in wilful violation of Business and Professions  
7 Code, section 6103.

8 COUNT NINETEEN

9 Case No. 08-O-14840  
10 Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

11 131. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
12 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
13 follows:

14 132. The allegations of paragraphs 123 through 130 are incorporated by reference.

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

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

23 135. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
24 communicate with the investigator.

25 136. By failing to provide the State Bar investigator with a response concerning the  
26 allegations of misconduct in the SBI matter, Respondent failed to cooperate and participate in a  
27 disciplinary investigation pending against Respondent, in wilful violation of Business and  
28 Professions Code, section 6068(i).

1 COUNT TWENTY

2 Case No. 09-O-10444  
3 Rules of Professional Conduct, rule 3-110(A)  
4 [Failure to Perform with Competence]

5 137. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
6 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
7 follows:

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

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

16 140. Subsequent to July 2008, Respondent did not file any documents in Case No.  
17 BD451023. Respondent failed to take any legal action on behalf of Canales.

18 141. By not taking any legal action on behalf of Canales, Respondent intentionally,  
19 recklessly, or repeatedly failing to perform legal services with competence, in willful violation of  
20 Rules of Professional Conduct, rule 3-110(A).

21 COUNT TWENTY-ONE

22 Case No. 09-O-10444  
23 Business and Professions Code, section 6068(m)  
24 [Failure to Respond to Client Inquiries]

25 142. Respondent wilfully violated Business and Professions Code, section 6068(m), by  
26 failing to respond promptly to reasonable status inquiries of a client, as follows:

27 143. The allegations of paragraphs 138 through 140 are incorporated by reference.

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

145. By not returning Canales' multiple telephone inquiries, Respondent failed to respond promptly to reasonable status inquiries of a client, in wilful violation of Business and Professions Code, section 6068(m).

COUNT TWENTY-TWO

Case No. 09-O-10444  
Rules of Professional Conduct, rule 3-700(D)(2)  
[Failure to Refund Unearned Fees]

146. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

147. The allegations of paragraphs 138 through 140 are incorporated by reference.

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

149. 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.

150. 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 wilful violation of Rules of Professional Conduct, rule 3-700(D)(2).

COUNT TWENTY-THREE

Case No. 09-O-10444  
Rules of Professional Conduct, rule 3-700(D)(1)  
[Failure to Release File]

151. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(1), by failing to release promptly, upon termination of employment, to the client, at the request of the client, all the client papers and property, as follows:

152. The allegations of paragraphs 138 through 140, and paragraph 149 are incorporated by reference.

153. Respondent did not respond to Canales's written request for his client file.

111

///

154. 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.

COUNT TWENTY-FOUR

Case No. 09-O-10444  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

155. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

156. The allegations of paragraphs 138 through 154 are incorporated by reference.

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

158. 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.

159. 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.

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

161. 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 wilful violation of Business and Professions Code, section 6068(i).

///

///

1 COUNT TWENTY-FIVE

2 Case No. 09-O-10487  
3 Rules of Professional Conduct, rule 3-110(A)  
4 [Failure to Perform with Competence]

5 162. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
6 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
7 follows:

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

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

14 165. Subsequent to October 2008, Respondent did not take any legal action on behalf  
15 of Watanabe.

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

18 167. By failing to take any legal action on behalf of Watanabe, Respondent  
19 intentionally, recklessly, or repeatedly failing to perform legal services with competence, in  
20 willful violation of Rules of Professional Conduct, rule 3-110(A).

21 COUNT TWENTY-SIX

22 Case No. 09-O-10487  
23 Rules of Professional Conduct, rule 3-310(F)  
24 [Accepting Fees from a Non-Client]

25 168. Respondent wilfully violated Rules of Professional Conduct, rule 3-310(F), by  
26 accepting compensation for representing a client from one other than the client without  
27 complying with the requirement that Respondent obtained the client's informed written consent,  
28 as follows:

169. The allegations of paragraphs 163 through 166 are incorporated by reference.

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

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

8 COUNT TWENTY-SEVEN

9 Case No. 09-O-10487  
10 Rules of Professional Conduct, rule 3-700(D)(2)  
[Failure to Refund Unearned Fees]

11 172. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by  
12 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

13 173. The allegations of paragraphs 163 through 166 are incorporated by reference.

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

16 175. By failing to respond to Yuen's request for a return of the \$10,000 unearned fees,  
17 Respondent failed to refund promptly any part of the unearned advanced fees, in wilful violation  
18 of Rules of Professional Conduct, rule 3-700(D)(2).

19 COUNT TWENTY-EIGHT

20 Case No. 09-O-10487  
21 Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

22 176. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
23 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
24 follows:

25 177. The allegations of paragraphs 162 through 175 are incorporated by reference.

26 178. On or about January 8, 2009, Yuen filed a complaint with the State Bar (the  
27 "Yuen complaint".)  
28



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

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

8 181. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
9 communicate with the investigator.

10 182. By failing to provide the State Bar investigator with a response concerning the  
11 allegations of misconduct in the Yuen complaint, Respondent failed to cooperate and participate  
12 in a disciplinary investigation pending against Respondent, in wilful violation of Business and  
13 Professions Code, section 6068(i).

14 COUNT TWENTY-NINE

15 Case No. 09-O-13648  
16 Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

17 183. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
18 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
19 follows:

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

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

27 186. On or about July 22 and August 11, 2009, a State Bar investigator wrote to  
28 Respondent regarding the Gallardo complaint. The investigator's letters were properly mailed

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

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

7 188. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
8 communicate with the investigator.

9 189. By failing to provide the State Bar investigator with a response concerning the  
10 allegations of misconduct in the Gallardo complaint, Respondent failed to cooperate and  
11 participate in a disciplinary investigation pending against Respondent, in wilful violation of  
12 Business and Professions Code, section 6068(i).

13 COUNT THIRTY

14 Case No. 09-O-14124  
15 Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

16 190. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
17 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
18 follows:

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

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

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

26 194. Thereafter, Respondent did not file any petition nor performed any legal services  
27 on behalf of Green.

28 ///

1           195. By not taking any legal action on behalf of Green, Respondent failed to  
2 intentionally, recklessly, or repeatedly perform legal services with competence, in wilful  
3 violation of Rules of Professional Conduct, rule 3-110(A).

4                                   COUNT THIRTY-ONE

5                                   Case No. 09-O-14124  
6                                   Business and Professions Code, section 6068(m)  
7                                   [Failure to Respond to Client Inquiries]

8           196. Respondent wilfully violated Business and Professions Code, section 6068(m) by  
9 failing to respond promptly to reasonable status inquiries of a client, as follows:

10           197. The allegations of paragraphs 191 through 194 are incorporated by reference.

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

14           199. By failing to return Green's telephone messages, Respondent failed to respond  
15 promptly to reasonable status inquiries of a client, in wilful violation of Business and Professions  
16 Code, section 6068(m).

17                                   COUNT THIRTY-TWO

18                                   Case No. 09-O-14124  
19                                   Rules of Professional Conduct, rule 3-700(D)(2)  
20                                   [Failure to Refund Unearned Fees]

21           200. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by  
22 failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

23           201. The allegations of paragraphs 191 through 194 are incorporated by reference.

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

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

28           204. 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 wilful  
violation of Rules of Professional Conduct, rule 3-700(D)(2).

1 COUNT THIRTY-THREE

2 Case No. 09-O-14124  
3 Business and Professions Code, section 6068(i)  
4 [Failure to Cooperate in State Bar Investigation]

5 205. Respondent wilfully violated Business and Professions Code, section 6068(i), by  
6 failing to cooperate and participate in a disciplinary investigation pending against Respondent, as  
7 follows:

8 206. The allegations of paragraphs 190 through 204 are incorporated by reference.

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

11 208. On or about September 24 and October 13, 2009, a State Bar investigator wrote to  
12 Respondent regarding the Green complaint. The investigator's letters were properly mailed and  
13 addressed to Respondent at his official State Bar membership records address. The United States  
14 Postal Service did not return the investigator's letters as undeliverable or for any other reason.

15 209. The investigator's letters requested that Respondent respond in writing to  
16 specified allegations of misconduct being investigated by the State Bar in the Green complaint.  
17 Respondent failed to respond to the September 24 and October 13, 2009 letters.

18 210. Thereafter, Respondent did not respond to the investigator's letters or otherwise  
19 communicate with the investigator.

20 COUNT THIRTY-FOUR

21 Case No. 09-O-14346  
22 Rules of Professional Conduct, rule 3-110(A)  
23 [Failure to Perform with Competence]

24 211. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by  
25 intentionally, recklessly, or repeatedly failing to perform legal services with competence, as  
26 follows:

27 212. On or about December 5, 2008, Tod Tomei ("Tomei") employed Respondent to  
28 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.

///

213. 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.

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

215. By not taking any legal action on behalf of Tomei, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

COUNT THIRTY-FIVE

Case No. 09-O-14346  
Rules of Professional Conduct, rule 4-100(B)(4)  
[Failure to Pay Client Funds Promptly]

216. Respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(4), by failing to pay promptly, as requested by a client, any funds in Respondent's possession which the client is entitled to receive, as follows:

217. The allegations of paragraphs 212 through 214 are incorporated by reference.

218. 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").

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

220. 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.

221. 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.

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

///

///

223. 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 wilful violation of Rules of Professional Conduct, rule 4-100(B)(4).

COUNT THIRTY-SIX

Case No. 09-O-14346  
Business and Professions Code, section 6106  
[Moral Turpitude - Misappropriation]

224. Respondent wilfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:

225. The allegations of paragraphs 212 through 214 are incorporated by reference.

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

227. By misappropriating the \$5,000 advanced costs paid by his client, Respondent committed an act involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code, section 6106.

COUNT THIRTY-SEVEN

Case No. 09-O-14346  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

228. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

229. The allegations of paragraphs 211 through 227 are incorporated by reference.

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

231. 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.

232. 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.

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

234. 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 wilful violation of Business and Professions Code, section 6068(i).

COUNT THIRTY-EIGHT

Case No. 09-O-16753  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

235. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

236. 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: (i) 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 (ii) Respondent failed to perform on Rivera's behalf.

237. 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.

238. 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.

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

240. 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 wilful violation of Business and Professions Code, section 6068(i).

COUNT THIRTY-NINE

Case No. 09-O-17437  
Business and Professions Code, section 6068(a)  
[Failure to Support Laws – Unauthorized Practice of Law]

241. Respondent wilfully violated Business and Professions Code, section 6068(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 Bar in violation of Business and Professions Code, section 6125 and 6126, as follows:

242. 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 undeliverable or for any other reason by the U.S. Postal Service.

243. 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 undeliverable or for any other reason by the U.S. Postal Service.

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

///



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

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

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

12           248.   On or about August 4, 2009, Respondent appeared before Judge Barreto in the  
13 Matthews matter. Respondent informed Judge Barreto that his "father passed a couple of weeks  
14 back." Respondent's father, Jose Garcia, was alive in July and August 2009.

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

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

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

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

24           253.   By appearing as counsel of record for the defendant, Respondent held himself out  
25 as entitled to practice law and actually practiced law when he was not entitled to do so, in wilful  
26 violation of Business and Professions Code sections 6125 and 6126, and thereby failed to  
27 support the laws of the State of California in violation of Business and Professions Code, section  
28 6068(a).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNT FORTY-TWO

Case No. 09-O-17437  
Business and Professions Code, section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

263. Respondent wilfully violated Business and Professions Code, section 6068(i), by failing to cooperate and participate in a disciplinary investigation pending against Respondent, as follows:

264. The allegations of paragraphs 241 through 262 are incorporated by reference.

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

266. 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.

267. 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.

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

269. 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 wilful violation of Business and Professions Code, section 6068(i).

**NOTICE - INACTIVE ENROLLMENT!**

**YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**

1 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
2 RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF  
PROCEDURE OF THE STATE BAR OF CALIFORNIA.

3 NOTICE - COST ASSESSMENT!

4 IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
5 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
6 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
7 PROFESSIONS CODE SECTION 6086.10. SEE RULE 280, RULES OF  
PROCEDURE OF THE STATE BAR OF CALIFORNIA.

8 Respectfully submitted,

9 THE STATE BAR OF CALIFORNIA  
OFFICE OF THE CHIEF TRIAL COUNSEL

10  
11 DATED: March 8, 2010

12 By:

13 Monique T. Miller  
MONIQUE T. MILLER  
Deputy Trial Counsel

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3

4  
5  
6  
7  
8  
9  
10

## 11

12  
13

14  
15

16

17

18

19

20