

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>08-O-14180-LMA</b>
	)	
<b>GLENN DALE NELSON,</b>	)	<b>DECISION &amp; ORDER OF</b>
<b>Member No. 74832,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT<sup>1</sup></b>
<u>A Member of the State Bar.</u>	)	

**I. INTRODUCTION**

In this contested, original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (hereafter State Bar) charges respondent **GLENN DALE NELSON** with two counts of professional misconduct. In count one, the State Bar charges that respondent repeatedly failed to comply with three of the seven probation conditions that were imposed on him under the Supreme Court's April 26, 2006 order in *In Re Glenn Dale Nelson on Discipline*, case number S141203 (State Bar Court case number 05-H-03307) (hereafter *Nelson II*). (Bus. & Prof. Code, § 6068, subd. (k).)<sup>2</sup> In count two, the State Bar charges that, over a two-year period, respondent deliberately misrepresented, to the State Bar's Office of Probation,

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<sup>1</sup> The Rules of Procedure of the State Bar of California were amended effective January 1, 2011. Nonetheless, the former Rules of Procedure of the State Bar remain applicable in this proceeding because the trial in this proceeding was held before January 1, 2011. (See Rules Proc. of State Bar (eff. Jan. 1, 2011), Preface, item 1.)

<sup>2</sup> Unless otherwise noted, all further statutory references are to the Business and Professions Code.

that he was in compliance with the probation condition in *Nelson II* that required him to make specified monthly restitution payments to the Client Security Fund (hereafter CSF). (§ 6106.)

For the reasons set forth *post*, the court finds that respondent is culpable of most of the charged misconduct and concludes that the appropriate discipline recommendation is that respondent be disbarred and that he be required to finish making restitution to CSF. Moreover, because the court recommends that respondent be disbarred, the court must order that respondent be involuntarily enrolled as an inactive member of the State Bar of California pending the final disposition of this proceeding. (§ 6007, subd. (c)(4).)

The State Bar was represented by Deputy Trial Counsel Charles T. Calix. Respondent represented himself.

## **II. PERTINENT PROCEDURAL HISTORY**

The State Bar filed the notice of disciplinary charges (hereafter NDC) in this matter on July 29, 2009. Respondent, however, failed to timely file a response to the NDC. Thus, on September 15, 2009, the State Bar filed a motion for entry of respondent's default, which the court granted in an order filed on October 7, 2009.

On October 23, 2009, respondent filed both a response to the NDC and a motion to set aside his default. And, on October 29, 2009, the State Bar filed a response stating that it did not oppose respondent's motion. Thereafter, at a status conference on November 2, 2009, the court granted respondent's motion and set aside his default.

On the motion of the State Bar, the court filed an order on October 25, 2010, in which it sanctioned respondent for repeatedly failing to cooperate with discovery and for deliberately disobeying this court's September 13, 2010 order compelling him to respond to a State Bar demand for production of documents. In that October 25 order, the court precluded respondent

“from presenting or offering at trial any documentary evidence relating to the factual allegations or charges set forth in the Notice of Disciplinary Charges. . . .”

A one-day trial was held on December 15, 2010. Also, on December 15, the parties filed a partial stipulation as to facts and as to the admissibility of State Bar exhibits 1 through 25. At trial, the court ordered the parties to file posttrial briefs no later than January 7, 2011.

The State Bar timely filed its posttrial brief on January 7, 2011. Respondent, however, filed his posttrial brief three days late on January 10, 2011. The court took the case under submission for decision on January 10, 2011.

The State Bar was represented by Deputy Trial Counsel Charles T. Calix. Respondent represented himself.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

#### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 28, 1977, and has been a member of the State Bar of California since that time. As discussed in more detail *post*, respondent has two prior records of discipline.

#### **B. Credibility Determination**

After carefully observing respondent testify before it and after carefully considering, *inter alia*, respondent's demeanor while testifying and the manner in which he testified and after carefully reflecting on the record as a whole, the court finds that much of respondent's testimony lacks credibility. (Evid. Code, § 780; *In the Matter of Wright* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 219, 227 [trial court should declare how it weighed the evidence and determined the credibility of the parties and witnesses].) For example, respondent's testimony often lacked sincerity or was implausible. Other times, respondent's testimony appeared contrived.

The court rejects as incredible almost all of respondent's proffered "explanations" for his misconduct. Similarly, the court rejects, for want of credibility, respondent's professed regret and remorse for his misconduct as well as respondent's assertion that, despite his significant prior refusal or inability to do so, he will now engage in the rehabilitative process and obey the conditions of any disciplinary probation imposed on him by the Supreme Court in the present proceeding.

The court further finds respondent's testimony on each of the following subjects to be particularly lacking in credibility: (1) when respondent first knew (or learned) that he had not made the required minimum monthly restitution payments to CSF; (2) respondent's alleged reliance on his then wife, Tammara Nelson (hereafter Tammara), for about two years (from about July 2006 through about September 2008) to make or to mail his restitution payments to CSF; (3) respondent's claim that, during that same two-year period, Tammara "embezzled" from him \$11,770 that she was allegedly to have sent to CSF for respondent; (4) respondent's claim that Tammara's "embezzlement" was part of the negotiations with the lawyers in respondent and Tammara's divorce proceedings; (5) respondent's claim that, because Tammara allegedly "embezzled" \$11,770 from him, respondent did not have to give Tammara part of his retirement documents; (6) respondent's claim that Tammara's purported "embezzlement" should be in the settlement documents in their divorce proceedings; and (7) respondent's claim that he did not think that he could file a motion to modify his probation conditions in *Nelson II* to reduce the amount of restitution he was required to pay CSF each month. In short, respondent's testimony on these issues was not even remotely credible.

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## **C. Charged Misconduct**

### **1. Respondent's Discipline in *Nelson II***

In its April 26, 2006 order in *Nelson II*, the Supreme Court placed respondent on one year's stayed suspension and four years' probation with conditions, but no actual suspension.<sup>3</sup> It is notable that the Supreme Court imposed that discipline on respondent, including each of the probation conditions, in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent entered into with the State Bar and which the State Bar Court approved in an order filed on January 6, 2006, in case number 05-H-03307. Thus, the violations of the probation conditions found *post* involve respondent's repeated failures to comply with his own agreement.

The Supreme Court's April 26, 2006 order in *Nelson II* became effective on May 26, 2006, and has continuously remained in effect since that time. At all times material hereto, respondent had notice and was aware of the Supreme Court's April 26, 2006 order. The three probation conditions that respondent is charged with violating in the present proceeding are as follows:

#### **a. Schedule Meeting with Probation Deputy**

Respondent was required, no later than June 25, 2006, to contact the Office of Probation and to schedule a meeting with his assigned probation deputy.

#### **b. Submit Probation Reports**

Respondent was required to submit written probation reports to the Office of Probation on every January 10, April 10, July 10, and October 10. In addition, respondent was required to submit a final probation report to the Office of Probation within the last 20 days of his probation. In each of his reports, respondent was required to state, under penalty of perjury, whether he had,

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<sup>3</sup> Respondent was properly served with the Supreme Court Order by the Clerk of the Supreme Court.

during the preceding calendar quarter (or other reporting period), complied with the State Bar Act (§ 6000, et seq.), the State Bar Rules of Professional Conduct, and all the conditions of his probation.

**c. Make Restitution**

Respondent was required to pay restitution to CSF for the \$40,000 that CSF paid out to one of respondent's former clients for losses the client incurred as a result of respondent entering into a business transaction with the client in willful violation in State Bar Rules of Professional Conduct, rule 3-300.<sup>4</sup> Respondent was also required to pay CSF (1) interest on the \$40,000 at the rate of 10 percent per annum from December 30, 2004, until paid and (2) an assessment for CSF's procedural costs of processing the former client's claim for reimbursement from the fund. (§ 6140.5, subd. (c).)

Respondent was required to not only make the following minimum monthly restitution payments to CSF from June 2006 through November 2009,<sup>5</sup> but was also required to complete his restitution to CSF no later than January 10, 2010.

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<sup>4</sup> Rule 3-300 provides that an attorney "shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied: [¶] (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and [¶] (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and [¶] (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition."

<sup>5</sup> In the NDC, the State Bar incorrectly alleges and charges that respondent was required to start making monthly restitution payments to CSF on December 17, 2005. As noted *ante*, the Supreme Court's April 26, 2006 order in *Nelson II* did not become effective until May 26, 2006. Moreover, the Supreme Court's April 26, 2006 order does not provide for respondent's probation conditions to begin retroactively in December 2005. Consequently, just as respondent's first probation report was not due until July 10, 2006 (not January 10, 2006, or April 10, 2006), respondent's first monthly restitution payment was not due until June 17, 2006 (not December 17, 2005).

<u>Time Period</u>	<u>Minimum Monthly Payments</u>
June 2006 through November 2006	\$525 per month
December 2006 through November 2007	\$775 per month
December 2007 through November 2009	\$855 per month

Finally, with each of his probation reports, respondent was required to provide the Office of Probation with proof that he made the required minimum *monthly* restitution payments to CSF during the applicable reporting period.

## **2. Respondent's Violations of His Probation in *Nelson II***

On May 11, 2006, the Office of Probation mailed respondent a letter reminding respondent of the terms and conditions of his four-year probation in *Nelson II*. With that letter, the Office of Probation provided respondent with written instructions on how he was to provide it with proof that he made the required monthly restitution payments to CSF.

The instructions on providing proof of payments notified respondent, in plain and clear language, that if he made his monthly restitution payments to CSF by checks, he was required to provide the Office of Probation with either (1) copies of the fronts and backs of the canceled checks after they had been paid by respondent's bank or (2) one or more declarations from CSF acknowledging its receipt of his payments (specifying the amount and date received). The instructions further notified respondent, in plain and clear language, that if respondent submitted a copy of only the front of a check with one of his probation reports, respondent was required to submit, with his *next* probation report, a copy of the back of that check after the check had been paid and cancelled by respondent's bank.

Respondent actually received the Office of Probation's May 11, 2006 letter and the instructions on providing proof of restitution payments that were included with the letter. (Evid. Code, § 641 [mailbox rule].) Respondent, however, never contacted the Office of Probation and scheduled (or had) a meeting with his assigned probation deputy.

Furthermore, respondent submitted each of his first 10 quarterly probation reports late as follows:

<b><u>Report's Due Date</u></b>	<b><u>Date Report Was Actually Received</u></b>
July 10, 2006	July 12, 2006
October 10, 2006	October 12, 2006
January 10, 2007	January 11, 2007
April 10, 2007	April 12, 2007
July 10, 2007	July 12, 2007
October 10, 2007	October 15, 2007
January 10, 2008	January 14, 2008
April 10, 2008	April 14, 2008
July 10, 2008	July 11, 2008
October 10, 2008	October 14, 2008

What is more, respondent's second quarterly probation report, which was due October 10, 2006, was improperly completed, and respondent never submitted his 11th, 12th, or 13th quarterly probation reports, which were due on January 10, 2009; April 10, 2009; and July 10, 2009, respectively.

Moreover, respondent admits that he has not submitted a probation report since October 14, 2008. Thus, it is clear that respondent never submitted his last three quarterly probation reports, which were due on October 10, 2009; January 10, 2010; and April 10, 2010, respectively, or his final probation report that was due within the last 20 days of his probation. The State Bar, however, failed to amend the NDC to charge respondent with failing to submit his last four probation reports. Accordingly, this court will consider that uncharged, but proved misconduct *post* "as an aggravating circumstance and not as an independent basis of discipline." (*In re Silverton* (2005) 36 Cal.4th 81, 93, fn. 4.)

Respondent failed to pay restitution to CSF in accordance with the conditions of his probation. From June 17, 2006, through July 29, 2009, when the State Bar filed the NDC,



respondent was to have made at least 38 monthly payments to CSF and those 38 payments were to have totaled at least \$29,550. Regrettably, during that period, respondent actually made only 21 monthly payments to CSF and those 21 payments totaled only \$7,800.

What is more, respondent admits that he has not made a single restitution payment to CSF since July 2008. Thus, it is clear that respondent also failed to make his last four minimum monthly restitution payments that were due in August, September, October, and November 2009. It is also clear that respondent failed to complete his restitution to CSF no later than January 10, 2010. The State Bar failed to amend the NDC to charge respondent with these post-NDC probation violations. Accordingly, the court considers them *post* only as uncharged-but-proved-misconduct aggravation. (*In re Silverton*, *supra*, 36 Cal.4th at p. 93, fn. 4.)

***Count one – Failure to Comply With Probation Conditions (§ 6068, subd. (k))***

The record establishes, by clear and convincing evidence, that respondent willfully violated his duty, under section 6068, subdivision (k), “To comply with all conditions attached to any disciplinary probation” by never contacting the Office of Probation and scheduling a meeting with his assigned probation deputy; by submitting each of his first 10 quarterly probation reports late, by failing to properly complete his second quarterly probation report; by failing to submit his 11th, 12th, and 13th quarterly probation reports; by making only 21 of the 38 required monthly restitution payments between June 17, 2006, and July 29, 2009; and by paying CSF only \$7,800 of the \$29,550 he was required to pay CSF between June 17, 2006, and July 29, 2009.<sup>6</sup>

The court rejects respondent’s claim that he lacked the ability to pay the minimum monthly restitution payments to which he stipulated because he contributed \$500 a month to his

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<sup>6</sup> Bad faith is not a requirement for finding a probation violation; “instead, a ‘general purpose or willingness’ to commit an act or permit an omission is sufficient. [Citations.]” (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 536.)

parents' support from 2005 through March 2009 and because he paid Tammara \$3,500 a month in court-ordered support from late 2008 through November 2010. Even if respondent lacked the ability to pay the minimum monthly restitution payments to which he stipulated, it is not a defense or an impediment to discipline because, as respondent admits, he never sought relief from either the State Bar Court or the Supreme Court on the basis of an inability to pay. Therefore, even if respondent did, in fact, lack the ability to pay the required minimum monthly restitution payments, he is not being disciplined for not making those payments. Instead, he is being disciplined for not making the payments without first attempting to be relieved from the obligation of making the payments in whole or in part on the basis of an inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

### **3. Respondent's Acts Involving Moral Turpitude and Dishonesty**

From July 2006 through July 2008, respondent submitted his first 9 quarterly probation reports to the Office of Probation. In each of those nine reports, respondent stated, under penalty of perjury, that he had "made monthly or quarterly restitution payments, and attached are front/back copies of the cancelled checks . . . ."

In his first 9 probation reports, respondent submitted copies of only the front sides of 13 checks totaling \$11,770 that were made payable to CSF.<sup>7</sup> Respondent never provided the Office of Probation with copies of the back sides of those 13 checks after the checks had been paid and cancelled by respondent's bank. More disturbing, however, is the fact that, when respondent signed each of his first 9 probation reports under penalty of perjury, respondent knew that the 13 copied checks had not been sent or given to CSF.

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<sup>7</sup> In each of his 1st, 2nd, 3rd, 4th, 6th, and 7th probation reports, respondent included the copy of one of the 13 checks. In his 5th and 9th probation reports, he included a copy of two checks. In his 8<sup>th</sup> report, he included a copy of three checks.

At trial, respondent denied knowing that the 13 checks totaling \$11,770 were never given to CSF. Respondent testified that he relied on his then wife Tammara to make (or to mail) his restitution payments to CSF and that he first discovered that Tammara had “embezzled” the \$11,770 from him when he received the Office of Probation’s September 30, 2008 letter outlining respondent’s numerous and repeated probation violations. As noted *ante*, the court does not find respondent’s foregoing denial and testimony credible. These adverse credibility determinations are supported in part by the fact that a State Bar probation deputy told respondent in a telephone conversation on August 28, 2007, that it did not appear as though respondent was paying CSF the required minimum payments of at least \$2,325 per quarter and advised respondent to pay restitution as required by the stipulation he signed in *Nelson II*. In that same telephone conversation, respondent asked for additional time to review his bank records so that he could determine whether he had been making the required minimum payments to CSF. The probation deputy correctly advised respondent that she was not authorized to grant extensions of time. Thereafter, the probation deputy did not hear back from respondent regarding what he found or did not find during his review of his bank records.

***Count Two – Acts Involving Moral Turpitude and Dishonesty (§ 6106)***

The record establishes, by clear and convincing evidence, that respondent willfully violated section 6106, when he submitted each of his first 9 quarterly probation reports to the Office of Probation. Respondent’s submission of each of his first 9 probation reports involved separate acts of both moral turpitude and dishonesty because, in each report, respondent deliberately misrepresented that he had made restitution payments to CSF that he knew he had not made.

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## **IV. AGGRAVATION AND MITIGATION**

### **A. Aggravation**

The State Bar established the following aggravating circumstances by clear and convincing evidence.

#### **1. Prior Record of Discipline**

Respondent has two prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(1).)<sup>8</sup>

##### **a. First Prior Record**

In late 2004, the State Bar Court publicly reprovved respondent in case number 02-O-15192 (hereafter *Nelson I*). The State Bar Court attached eight conditions to respondent's public reprovval for five years.

The public reprovval and the eight conditions attached to it for five years were imposed on respondent in *Nelson I* in accordance with a stipulation as to facts, conclusions of law, and disposition that respondent and the State Bar entered into and which the State Bar Court approved in an order filed on October 27, 2004. That stipulation conclusively establishes that respondent willfully violated multiple provisions of State Bar Rules of Professional Conduct, rule 3-300 when he and his former first wife, Evelyn Nelson, borrowed \$80,000 from one of respondent's clients (or former clients).

##### **b. Second Prior Record**

Respondent's second prior record of discipline is the Supreme Court's April 26, 2006 order in *Nelson II* in which the Supreme Court placed respondent on one year's stayed

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<sup>8</sup> All further references to standards are to this source. The standards were not included in the rule revisions adopted by the Board of Governors effective January 1, 2011. Nor have the standards been revised to conform to the new organizational structure for all of the Rules of the State Bar. The standards remain in effect in their current form.

suspension and four years' probation. As noted *ante*, the Supreme Court imposed that discipline on respondent in accordance with a stipulation that respondent entered into with the State Bar and that the State Bar Court approved in an order filed on January 6, 2006, in case number 05-H-03307. That stipulation conclusively establishes that respondent willfully violated State Bar Rules of Professional Conduct, rule 1-110, which mandates that attorneys comply with the conditions attached to any reproof imposed on them by the State Bar Court. Respondent willfully violated the reproof conditions imposed on him by the State Bar Court in *Nelson I* when he failed to submit any of his first 4 reproof reports on time, to provide proof that he had made any of the minimum restitution payments to the client (respondent was required to pay a total of \$40,000 restitution within the five-year reproof period), failed to make his minimum restitution payments, and failed to complete Ethics School and to pass the Multistate Professional Responsibility Examination within the first year of his reproof period.

## **2. Multiple Acts**

Respondent's misconduct in the present proceeding involves multiple acts of misconduct. (Std. 1.2(b)(ii).)

## **3. Additional Misconduct**

Respondent never submitted his last three quarterly probation reports, which were due on October 10, 2009; January 10, 2010; and April 10, 2010, respectively, or his final probation report that was due within the last 20 days of his probation. Respondent also failed to make his last four minimum monthly restitution payments that were due in August, September, October, and November 2009. Respondent also failed to complete his restitution to CSF no later than April 10, 2010. As noted *ante*, the court finds that this uncharged, but proved misconduct is properly considered as an aggravating circumstance. (Std.1.2(b)(iii); *In re Silverton, supra*, 36 Cal.4th at p. 93, fn. 4.)

### **3. Indifference**

Respondent admits that he did not even attempt to rectify even a portion of his current misconduct after the Office of Probation notified him of his failures and after the State Bar filed the NDC in this proceeding. Nor has respondent made a single restitution payment of any amount since he stopped having to pay Tammara \$3,500 a month in November 2010. Actions speak louder than words. Respondent's failure to rectify even one of his many probation violations after the State Bar filed the NDC in this proceeding not only defies understanding, it clearly establishes respondent's indifference towards rectification, which is yet another very serious aggravating circumstance. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702; *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.) By this point in time, respondent should have done more than merely talk about complying with Supreme Court disciplinary orders. By now, respondent should have fully *completed* all of his probation conditions. (See, e.g., *In the Matter of Gorman* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 567, 573.)

### **B. Mitigation**

Respondent did not establish any mitigating circumstances by clear and convincing evidence. Nor is any mitigating circumstance otherwise apparent from the record.

## **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. (Std. 1.3; *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 1085, 1090; *In the Matter of Koehler* (Review

Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. The most severe of the applicable sanctions in the present proceeding is found in standard 2.3, which applies to respondent's section 6106 violations. Standard 2.3 provides:

Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The generalized language of standard 2.3 provides little guidance to the court. (*In re Brown* (1995) 12 Cal.4th 205, 220; see also *In re Morse* (1995) 11 Cal.4th 184, 206.) Standard 1.7(b), which is also relevant, provides more guidance. Standard 1.7(b) provides:

If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline . . . , the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

Notwithstanding its unequivocal language to the contrary, standard 1.7(b) is not strictly applied. In other words, disbarment is not mandatory under standard 1.7(b) even if there are no compelling mitigating circumstances that clearly predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Without question, standard 1.7(b) is not to be applied in a method that blindly treats all prior records of discipline as equally aggravating.

Standard 1.7(b) is to be applied "with due regard to the nature and extent of the

respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) In that regard, great weight is placed "on whether or not there is a 'common thread' among the various prior disciplinary proceedings or a 'habitual course of conduct' which justifies disbarment. [Citation.]" (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

There are common threads among respondent's misconduct in *Nelson II* and the present proceeding -- respondent's third disciplinary proceeding. Both proceedings involve respondent's failure to comply with conditions (e.g., restitution payments) to which he stipulated.

The review department has repeatedly held that the primary goals of attorney disciplinary probation are protection of the public and rehabilitation of the attorney. (*In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445, 452.) What is more, an attorney has an independent statutory duty "To comply with all conditions attached to any disciplinary probation . . . ." (§ 6068, subd. (k).)

The court finds that respondent's unwillingness or inability to fully comply either with the conditions attached to his public reproof in *Nelson I* or with the probation conditions imposed on him under the Supreme Court's order in *Nelson II* " 'demonstrates a lapse of character and a disrespect for the legal system that directly relate to an attorney's fitness to practice law and serve as an officer of the court. [Citation.]" [Citation.]" (*In the Matter of Tiernan, supra*, 3 Cal. State Bar Ct. Rptr. at p. 530.) The court notes that even in this proceeding, he still demonstrated a lack of insight into the seriousness of the client misconduct involved in *Nelson I* which is troubling because he still fails to appreciate his wrongdoing. (Cf. *Blair v. State Bar* (1989) 49 Cal.3d 762, 781-782.) Moreover still, in light of the court's finding that respondent's "explanations" for his misconduct lack credibility, respondent's two prior records of discipline and the present misconduct establish that respondent is either unwilling or unable to conform his conduct to the



strictures of the profession and that disbarment is the only adequate means of protecting the public, the courts, and the profession. In short, the court concludes that a disbarment recommendation under standard 1.7(b) is appropriate. Accordingly, the court will so recommend.

In addition, the court will recommend that, to the extent that he has not yet done so, that respondent be ordered to make restitution to CSF for the amount it reimbursed Sarah Brothers plus applicable interest and costs in accordance with section 6140.5 and that such restitution/reimbursement to CSF be enforceable as provided in section 6140.5, subdivisions (c) and (d).

## **VI. RECOMMENDED DISCIPLINE**

The court recommends that respondent **GLENN DALE NELSON**, State Bar number 74832, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state. The court further recommends that **GLENN DALE NELSON** be ordered, to the extent he has not yet done so, to make restitution to the Client Security Fund for the \$40,000 it reimbursed Sarah Brothers plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. The court further recommends that this restitution/reimbursement to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

## **VII. RULE 9.20 & COSTS**

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

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that those costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

#### **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Finally, in accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that GLENN DALE NELSON be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 5.111(D)(1)).

Dated: April 8, 2011.

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LUCY ARMENDARIZ  
Judge of the State Bar Court