

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>08-O-14412-RAP</b>
	)	(08-O-14685; 09-O-12245)
<b>AFTAB ALAM MALIK</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 171926</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

**I. Introduction and Pertinent Procedural History**

This default matter was submitted for decision on July 13, 2010. At the time of submission, the Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) was represented by Deputy Trial Counsel Christine Souhrada. Respondent Aftab Alam Malik (“respondent”) did not participate, and this matter proceeded by way of default.

The State Bar filed a Notice of Disciplinary Charges (“NDC”) against respondent on January 27, 2010. A copy of the NDC was properly served on respondent that same day, in the manner set forth in rule 60 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”).<sup>1</sup> The NDC was subsequently returned to the State Bar by the U.S. Postal Service as undeliverable.

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

Respondent did not file a response to the NDC. Therefore, on May 27, 2010, the State Bar filed and properly served a motion for the entry of respondent's default.<sup>2</sup>

Respondent failed to file a written response within ten days after service of the motion for entry of his default. Therefore, on June 18, 2010, the court filed an order of entry of default and involuntary inactive enrollment.<sup>3</sup> A copy of said order was properly served on respondent at his membership records address. This copy was subsequently returned to the court by the U.S. Postal Service as undeliverable.

Thereafter, the State Bar waived the hearing in this matter, and it was submitted for decision.<sup>4</sup>

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

## **II. Findings of Fact & Conclusions of Law**

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

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

<sup>3</sup>Respondent's involuntary inactive enrollment pursuant to Business and Professions Code section 6007, subdivision (e), was effective three days after the service of this order by mail.

<sup>4</sup>Exhibit 1 attached to the State Bar's May 27, 2010 motion for the entry of respondent's default and Exhibits 1-2 attached to the State Bar's July 12, 2010 discipline brief are admitted into evidence.

## **A. Jurisdiction**

Respondent was admitted to the practice of law in California on December 1, 1994, and has been a member of the State Bar of California at all times since that date.

## **B. The Ross Matter (Counts 1-5) - Case No. 08-O-14412**

### **1. Findings of Fact**

In or about February 2008, Dennis Ross (“Ross”) employed respondent to represent him in a bankruptcy action. Ross paid respondent a total of \$1,400 for this representation.

On or about June 10, 2008, respondent filed a Chapter 13 Voluntary Petition for Ross in the U.S. Bankruptcy Court, bankruptcy petition 2:08-bk-18267-VZ (“first bankruptcy petition”). On or about July 2, 2008, the first bankruptcy petition was dismissed by the court due to various filing deficiencies. Both respondent and Ross were served with notice of the dismissal.

On or about July 18, 2008, respondent filed a second Chapter 13 Voluntary Petition for Ross in the U.S. Bankruptcy Court, bankruptcy petition 2:08-bk-20819-VZ (“second bankruptcy petition”). On or about August 8, 2008, the second bankruptcy petition was dismissed by the court due to various filing deficiencies. Both respondent and Ross were served with notice of the dismissal.

Subsequently, respondent took no further action on behalf of Ross.

Between on or about August 8, 2008 and December 30, 2008, Ross telephoned respondent on numerous occasions inquiring as to the status of his matter. On each occasion Ross left messages for respondent requesting a return telephone call. Respondent did not respond to any of Ross’s telephone calls.

Following the dismissal of the second bankruptcy petition, respondent did not contact Ross and performed no services on behalf of Ross. Respondent thereby terminated his employment by Ross. Respondent subsequently failed to provide Ross with an appropriate account of all of Ross's funds in his possession.

Respondent failed to perform any legal services of value on behalf of Ross. Respondent did not earn the fee paid by Ross. Respondent did not refund any of the advanced fees paid by Ross.

On or about September 25, 2008, Ross filed a complaint against respondent with the State Bar. The State Bar conducted a disciplinary investigation—Case No. 08-O-14412—concerning respondent's conduct in his representation of Ross.

The State Bar requested that respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation. The State Bar notified respondent of its request for cooperation and participation by means of letters dated February 2 and February 27, 2009. The letters were sent to respondent by first class mail fully prepaid, addressed to respondent's address as maintained by the State Bar in accordance with Business and Professions Code, section 6002.1(a).

The February 2, 2009 letter was not returned to the State Bar by postal authorities. Respondent received this letter. The February 27, 2009 letter was returned to the State Bar on May 4, 2009, with the following handwritten notation on it: "RTS."

Respondent did not respond to the State Bar's request for cooperation and participation in the disciplinary investigation.

## **2. Conclusions of Law**

### **a. Count One: Rules of Professional Conduct of the State Bar of California, Rule 3-110(A)<sup>5</sup> [Failure to Perform with Competence]**

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By repeatedly filing defective bankruptcy petitions and failing to take adequate action to correct the defective filings, respondent repeatedly and recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

### **b. Count Two: Business and Professions Code Section 6068, Subd. (m)<sup>6</sup> [Failure to Communicate]**

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to respond promptly to Ross' telephone calls, respondent failed to respond to a client's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

### **c. Count Three: Rule 3-700(B)(3) [Failure to Withdraw]**

In Count Three, the State Bar alleged that respondent violated rule 3-700(B)(3). Rule 3-700(B)(3) provides that a member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if the member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. The facts, however, make no mention of respondent's mental or physical condition, and instead support a finding that respondent failed to provide Ross with an

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<sup>5</sup> All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

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

accounting. The court finds that the State Bar did not prove a violation of rule 3-700(B)(3) and did not provide respondent with adequate notice of a violation of rule 4-100(B)(3) [Failure to Account]. Consequently, Count Three is dismissed with prejudice.

**d. Count Four: Rule 3-700(D)(2) [Failure to Refund Unearned Fees]**

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund any part of the \$1,400 advanced fees paid by Ross, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

**e. Count Five: Section 6068, Subdivision (i) [Failure to Cooperate]**

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By failing to provide a response to the State Bar investigator's February 2, 2009 letter, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

**C. California Products International Matter (Counts 6 & 7) - Case No. 08-O-14685**

**1. Findings of Fact**

In or about 2008, respondent was the counsel of record for defendant California Products International, Inc., in two civil lawsuits pending in the United States District Court, Central District of California, Case Nos. CV 08-3502-SGL and CV 08-01877-SGL.

During the course of this representation, respondent failed to respond to discovery requests, failed to produce documents, and failed to abide by the district court's orders to serve further responses. Specifically, respondent did not file an opposition to a motion to

compel filed on July 29, 2008, failed to participate in a meet and confer regarding the outstanding discovery, and failed to appear at the district court hearing on the motion to compel held on October 21, 2008. Further, respondent did not file an opposition to a motion to compel filed on September 30, 2008, failed to participate in a meet and confer regarding the outstanding discovery, and failed to appear at the district court hearing on the motion to compel held on December 3, 2008. Also, respondent did not file an opposition to a motion to compel filed on November 11, 2008, failed to participate in a meet and confer regarding the outstanding discovery, and failed to appear at the district court hearing on the motion to compel held on December 9, 2008. Following each hearing, respondent was sanctioned in the amounts of \$1,027.50, \$2,741.50, and \$580.00, respectively.

On or about October 21, 2008, the district court ordered respondent to produce responsive discovery responses and pay \$1,027.50 in sanctions within 14 days of the order. Respondent received this order.

On or about December 3, 2008, the district court ordered respondent to produce responsive discovery responses and pay \$2,741.50 in sanctions within 14 days of the order. Respondent received this order.

On or about December 9, 2008, the district court ordered respondent to produce responsive discovery responses and pay \$580.00 in sanctions within 14 days of the order. Respondent received this order.

Respondent failed to produce any responsive discovery responses and failed to pay the sanctions ordered by the district court.

## **2. Conclusions of Law**

### **a. Count Six: Rule 3-100(A)**

By failing to respond to filed motions, failing to appear at noticed court hearings, and failing to participate in meet and confers regarding outstanding discovery, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

### **b. Count Seven: Section 6103 [Failure to Obey a Court Order]**

Section 6103 provides that “[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension.” By failing to abide by the district court’s orders of October 21, 2008, December 3, 2008, and December 9, 2008, respondent disobeyed court orders requiring him to do acts in the course of his profession, which he ought in good faith to do, in willful violation of section 6103.

## **D. The Probation Matter (Count 8) - Case No. 09-O-12245**

### **1. Findings of Fact**

On or about October 25, 2007, respondent entered into a Stipulation Re Facts Conclusions of Law and Disposition (“stipulation”) with the State Bar of California in Case Nos. 05-O-04874 and 06-O-12504. On or about October 30, 2007, the Hearing Department of the State Bar Court filed an order approving the stipulation and recommending a stayed suspension of one year with two years’ probation (“Hearing Department Order”).



On or about October 30, 2007, the Hearing Department Order was properly served upon respondent at his membership records address. Respondent received the order and was aware of the Hearing Department Order and its contents.

On or about March 3, 2008, the California Supreme Court filed an order in Case No. S159812 (State Bar Court Case Nos. 05-O-04874 (06-O-12504)) (“Supreme Court Order”), ordering that respondent be suspended from the practice of law for one year, that execution of the suspension be stayed and that he be placed on probation for two years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in the Hearing Department Order. Respondent was properly served with the Supreme Court Order by the Clerk of the Supreme Court. Respondent received the Supreme Court Order.

The Supreme Court Order became effective on April 2, 2008. Pursuant to the Supreme Court Order, respondent was required to comply with certain conditions of probation, including the following:

To submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the probation period;

To successfully complete six hours of continuing legal education courses in law office management, attorney client relations, and/or general legal ethics by April 2, 2009;

To successfully complete State Bar Ethics School by April 2, 2009, and to provide to the Office of Probation satisfactory proof of attendance and passage of the test given at the end of that session.

As of January 27, 2010,<sup>7</sup> respondent failed to comply with his conditions of probation as follows:

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<sup>7</sup> This date reflects the day the NDC was signed and filed. There is no indication in the record that respondent has since complied with any of the outstanding conditions of probation.

Respondent failed to file his quarterly reports which were due on: July 10, 2008, October 10, 2008, January 10, 2009, and April 10, 2009.

Respondent did not complete, nor provide the Office of Probation with proof of completion of, six hours of Continuing Legal Education.

Respondent did not attend Ethics School, nor file proof of completion of Ethics School.

## **2. Conclusions of Law**

### **a. Count Eight: Section 6068, Subdivision (k) [Failure to Comply with Conditions of Probation]**

Section 6068, subdivision (k), provides that it is the duty of an attorney to comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney. By failing to timely submit to the Office of Probation the quarterly reports due on July 10, 2008, October 10, 2008, January 10, 2009, and April 10, 2009; failing to complete and provide the Office of Probation with proof of completion of six hours of Continuing Legal Education; and failing to attend Ethics School and file proof of completion of Ethics School with the Office of Probation; respondent failed to comply with the conditions of his disciplinary probation in willful violation of Business and Professions Code, section 6068, subdivision (k).

## **III. Mitigating and Aggravating Circumstances**

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2.)<sup>8</sup>

### **A. Mitigation**

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

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<sup>8</sup> All further references to standard(s) are to this source.

## **B. Aggravation**

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

### **1. Multiple Acts of Wrongdoing**

As illustrated above, respondent committed multiple acts of wrongdoing.

(1.2(b)(ii).)

### **2. Indifference**

Respondent's failure to comply with the terms of his previously ordered disciplinary probation demonstrates his indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).)

### **3. Prior Record of Discipline**

Respondent's prior record of discipline includes two previous impositions of discipline. (Std. 1.2(b)(i).)

Effective October 6, 2005, respondent was publicly reprimanded with conditions, in State Bar Court Case Nos. 04-O-11523 and 04-O-15844 (Cons.), for failing to cooperate in a disciplinary investigation and failing to report court-ordered sanctions to the State Bar. In aggravation, respondent committed multiple acts of wrongdoing and failed to participate until after disciplinary charges were filed. In mitigation, respondent had no prior record of discipline.

On March 3, 2008, the California Supreme Court issued an order (S159812) suspending respondent from the practice of law for one year, stayed, with a two-year probationary period. This discipline resulted from respondent's improper withdrawal from a federal appellate matter and, in a second matter, his failure to comply with a court order. In aggravation, respondent had a prior record of discipline. In mitigation, respondent's misconduct did not harm his clients.

#### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.) 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.)

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

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.6(a).)

Standards 2.4(b), 2.6, and 2.10 apply in this matter. The most severe sanction is found at standard 2.6 which states that the culpability of a member of a violation of section 6068 must result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Due to respondent's prior record of discipline, standard 1.7(b) is also applicable. Standard 1.7(b) provides that, 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 must be disbarment unless the most compelling mitigating circumstances clearly predominate.

The Supreme Court and Review Department have not historically applied standard 1.7(b) in a rigid fashion. Instead, the courts have weighed the individual facts of each case, including whether or not the instant misconduct represents a repetition of offenses for which the attorney has previously been disciplined. (*In the Matter of Thomson* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 966, 977.) When such repetition has been found, the courts have typically found disbarment to be the appropriate sanction. (See *Morgan v. State Bar* (1990) 51 Cal.3d 598, 607; *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841; *In the Matter of Thomson, supra*, 4 Cal. State Bar Ct. Rptr. at p. 977.)

The present matter involves some of the same misconduct for which respondent has been previously disciplined. This marks the second time he has been disciplined for violating court orders and failing to cooperate in a State Bar investigation. In addition, respondent's failure to comply with the terms of his disciplinary probation demonstrates an unwillingness or inability to comply with the strictures of disciplinary probation.

After weighing the evidence and the factors in aggravation, and considering the repetition of respondent's misconduct and his failure to participate in the present proceedings, the court finds little reason to believe that respondent no longer poses a threat to public protection. Consequently, the court finds no compelling reason to deviate

from standard 1.7(b), and agrees with the State Bar's recommendation that respondent should be disbarred.

### **V. Recommended Discipline**

The court recommends that respondent **Aftab Alam Malik**, State Bar Number 171926, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

It is also recommended that respondent be ordered to comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>9</sup>

### **VI. Order of Inactive Enrollment**

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

### **VII. Costs**

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

Dated: September 27, 2010.

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RICHARD A. PLATEL  
Judge of the State Bar Court

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<sup>9</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)