

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 09-O-11963; 09-O-14688 (Cons.)
)	
JAMES JOSEPH BROWN, III)	DECISION INCLUDING DISBARMENT
)	RECOMMENDATION AND
Member No. 169686)	INVOLUNTARY INACTIVE
)	ENROLLMENT ORDER.
<u>A Member of the State Bar.</u>)	

INTRODUCTION

In this disciplinary matter, Kimberly G. Anderson appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent **James Joseph Brown, III**, represented himself.

After considering the evidence and the law, the court recommends, among other things, that Respondent be disbarred and that he be ordered to make restitution as set forth below.

SIGNIFICANT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on August 19, 2010. An initial status conference was held in the matter on October 4, 2010, at which time the proceeding was given a trial date of February 1, 2011. As part of the trial setting order, issued on October 6, 2010, the parties were ordered to file pretrial conference statements and comply with rule 1221-1225 of the Rules of Practice. The pretrial conference was scheduled to take place on February 24, 2011.

The State Bar filed the required pretrial conference statement. Respondent did not. He also failed to appear at the scheduled pretrial conference. After telephonic messages were left for him, he telephoned the court, at which time the pretrial conference (which had already taken place) was re-convened, with Respondent being allowed to appear telephonically. At the re-convened January 24, 2011, pretrial conference, the court ordered that Respondent was precluded from introducing evidence, except for his own testimony, due to noncompliance with the court's order of October 6, 2010, and with rules 1221 – 1224 of the Rules of Practice regarding filing of a pretrial conference statement and exhibit list and the disclosure of exhibits.

Respondent filed a written response to the NDC on February 1, 2011, the first day of trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

Respondent was admitted to the practice of law in California on December 13, 1993, and has been a member of the State Bar at all times since.

Case No. 09-O-11963 (Van Auken Matter)

In April 2009, Respondent represented plaintiff Van Auken in a lawsuit then pending in the Orange County Superior Court. The case was scheduled to commence trial on April 6, 2009, with a Pre-Trial Readiness Conference scheduled to take place on April 3, 2009. On the day of the scheduled Pre-Trial Readiness Conference, Respondent called the clerk of the assigned judge to inform the court that he would not be attending that day's conference because of transportation problems. He told the clerk that his car had been vandalized and that the damage was sufficiently serious that he was unable to drive it. The clerk then notified the court of Respondent's situation. As a consequence, the court took off calendar the scheduled Pre-Trial Readiness Conference but directed the clerk to inform Respondent that the scheduled trial would

go forward as previously ordered on April 6, 2009. The clerk did so. Respondent was ordered to appear at that time.

On the morning of April 6, 2009, Respondent called the court at approximately 8:45 a.m. to advise the court that he would not be appearing at the scheduled trial in the *Van Auken* matter, which was scheduled to commence at 9:00 a.m. He told the clerk that he was still having transportation problems because of his vandalized car. In response, the clerk indicated to Respondent that he needed to find alternative transportation, such as a taxi, public transportation, or a ride from a family member or friend. Respondent's response to these suggestions by the clerk made clear his lack of any intent to pursue those suggestions. In addition, Respondent further indicated that he did not wish to represent the plaintiff any longer and stated that he would be filing a declaration setting forth his request to be relieved as counsel of record. When the court was notified of this "telephonic request to be relieved as counsel," the court directed the clerk to advise Respondent that the trial would be trailed until 10:30 a.m. (so that Respondent could make arrangements to get to court), but that his request to be relieved as counsel was denied.

When the trial of the *Van Auken* matter was called at 10:00 a.m., Respondent was not present. His client, however, was in court that day, as were the opposing parties and counsel. When the court inquired of the plaintiff whether he would be able to proceed with the trial without the assistance of his attorney, the plaintiff indicated that he was not prepared to do so. As a result, on the motion by the defendant to dismiss the case, the court dismissed the action without prejudice.

The following day, April 7, 2009, the court received a letter from Respondent, dated April 6, 2009. In this letter, Respondent confirmed his telephone call to the clerk on the morning of April 6, 2009, and again requested that he be given permission to withdraw as counsel for Van

Auken. The stated justification for this request was as follows: “Third, over 6 months ago due to the lack of meaningful communications with Mr. Van Auken I asked that he seek other representation. He has failed to do so. It would be a breach of my ethical responsibilities to continue to represent this person under the circumstances.” Because the case had already been dismissed by the time this letter was received and the request to withdraw was not in the required format, the letter was merely put in the file and no further action taken on it by the court.

On May 6, 2009, approximately a month after the *Van Auken* matter had been dismissed, Respondent sent a second document (“emergency declaration”) to the judge handling the *Van Auken* matter, again requesting the court to enter a minute order relieving Respondent as counsel. The declaration ended with the comment that Respondent was “not sending a copy of this declaration to Mr. Van Auken out of fear of retaliation and requests that it be filed under seal.” In this declaration, Respondent alleged for the first time that Van Auken had been belligerent and dangerous with regard to Respondent after a court appearance in a criminal matter in September 2008. At that criminal appearance Van Auken had declined to accept a plea bargain negotiated by Respondent, causing Respondent to ask to be relieved as counsel, which request was granted. According to Respondent’s declaration, he informed Van Auken that he “could not continue” in the civil case shortly after that September 2008 court appearance. Finally, in Respondent’s declaration, he alleged that Van Auken had been stalking him after the civil action had been dismissed, referring to an instance on April 16, 2009, when Respondent said Van Auken was screaming at Respondent in public and on a bus.

Because the *Van Auken* case had already been dismissed and because the emergency declaration did not comply with the requirements for a formal motion to withdraw as counsel, this declaration was merely “straight filed” in the court’s file, resulting in no action being taken on it by the court.

Respondent sought in the instant proceeding to justify his failure to appear at trial in the *Van Auken* matter by claiming that he was afraid of Van Auken. This contention was neither credible nor convincing.

First, the court notes that, at the time Respondent was communicating with the court in April 2009 about his non-appearance in court, his only stated justifications for not being there related to his claimed absence of transportation and his communication problems with Van Auken. There was no evidence that he ever indicated to the court prior to the May 2009 that he could not appear in court based on any fear of personal harm.

Further, the evidence offered by Respondent to substantiate his claim of being afraid of Van Auken falls far short of being convincing. According to his emergency declaration, Van Auken's belligerent and dangerous demeanor took place in September 2008. That conduct took place on the same day as a court hearing in a criminal matter against Van Auken being defended by Respondent. At that hearing, Van Auken rejected a proposed plea agreement by the prosecutor, causing Respondent to withdraw from his case. Despite whatever unpleasant conduct occurred on that particular date, Respondent was willing to meet in person with Van Auken at a later date at Respondent's home, during which time Respondent told Van Auken to secure other representation. If Respondent actually feared for his physical safety as a result of the September incident, it seems unlikely that he would have invited Van Auken into his home to discuss having Van Auken secure other counsel. Moreover, the contention that showing up to try the civil case, rather than failing to appear for it, would somehow make Van Auken more dangerous is not logical.

During the trial in the instant case, Respondent presented a handwritten note, written by Van Auken on a piece of newspaper and left for Respondent to see. Respondent argued that this handwritten notation was evidence of Van Auken's violent nature. However, a review of the

note reveals that there is nothing about it indicating that Van Auken had any propensity to become violent. The notation reads merely, “Jimmy I was here @ 9 a.m. need files today. Call ASAP.”

Although Respondent repeatedly accused Van Auken of vandalizing Respondent’s car, Respondent acknowledged at trial that he never filed any complaint with the police department against Van Auken. Respondent’s testimony failed to demonstrate that it was his client who had damaged the car.

Further, while Respondent argued in his “emergency declaration” that Van Auken had stalked Respondent, the declaration makes clear that the stalking incident took place on April 16, 2009, which would have been close to ten days after Respondent had failed to appear for trial and the case had been dismissed. Subsequent conduct, after Van Auken’s case had been dismissed, cannot be used by Respondent to justify his conduct ten days earlier.

Finally, and most significantly, Respondent had been aware since September 2008 of his intent not to continue as counsel of record in the *Van Auken* matter. Under such circumstances, he needed to take formal steps to withdraw from the case well before the commencement of trial, rather than allow his client to appear for trial unrepresented. R offered no good explanation as to why he did not file a motion to withdraw as counsel in the action at a much earlier date.

Count 1 - Rule of Professional Conduct,¹ Rule 3-110(A) [Competence]

Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to perform legal services competently. By not appearing for the Pre-Trial Readiness Conference and for the trial of the *Van Auken* matter on April 3 and 6, 2009, Respondent intentionally, recklessly and repeatedly did not perform competently, in willful violation of rule 3-110(A).

¹Future references to “rule” and “rules” are to this source.

Count 2 – Business and Professions Code,² Section 6103 [Violation of Court Order]

Section 6103 provides, in pertinent part: “A willful disobedience or violation of an order of the court requiring [an attorney] 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, ... constitute causes for disbarment or suspension.” By not complying with the court’s order to appear at the *Van Auken* trial, Respondent willfully disobeyed a court order, in willful violation of section 6103.

Count 3 - Rule 3-700(A)(2) [Improper Withdrawal from Representation]

Rule 3-700(A)(2) provides, “A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.” An attorney may effectively withdraw from a case without any intent to do so, when that attorney virtually abandons the client and is grossly negligent in communicating with the client. (See, e.g., *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 951; and cases cited therein.)

By telling the court on the morning of scheduled trial that he no longer wished to represent Van Auken and by not subsequently appearing at the trial later that day, Respondent effectively withdrew from employment. Respondent’s withdrawal prejudiced the client, who appeared in court by himself and whose case was dismissed without prejudice. Respondent’s failure to take reasonable steps to avoid such reasonably foreseeable prejudice to his client constituted a willful violation by him of rule 3-700(A)(2).

²Future references to “section” and “sections” are to this source unless otherwise stated.

Case No. 09-O-14688 (King Matter)

In March 2009, Steven King hired Respondent to represent King in pursuing a possible breach of contract claim against King's former girlfriend. King and his girlfriend had previously been involved in a failed real estate venture, where King had invested all of the capital but his girlfriend had become a co-owner of the purchased property. King felt that the girlfriend had some obligation to reimburse King for some portion of the resulting loss. In hiring Respondent, King paid Respondent \$2,500 as an advance fee for Respondent's legal work on March 14, 2009. In the meeting they held that day, King advised Respondent that a class action suit as a result of the failed real estate venture had also been filed against certain other parties and that this class action was apparently proceeding with some success. King did not want Respondent to become involved in that class action proceeding, since it was being handled by other attorneys in Texas and had nothing to do with his ex-girlfriend. At this meeting King provided a copy of his files on the failed venture to Respondent in order that Respondent might review and evaluate them.

Approximately three weeks later, during the first week of April 2009, King again met with Respondent. At that meeting Respondent asked King to fund an additional \$2,500 in order that Respondent could work on the class action lawsuit. In addition, although King had previously provided Respondent with copies of the paperwork that King had on the failed transaction, Respondent requested another copy of that paperwork. In response to Respondent's request for additional funding, King reiterated his instruction that Respondent was not to work on the class action, which was already being handled by attorneys in Texas. By the time of this April meeting, King had already received a payment of some of the money he was expecting to receive as a result of an existing settlement of that class action.

A third meeting was scheduled to take place between Respondent and King in the first week of May. Respondent, however, became unavailable for that meeting so it did not occur.

Sometime in the early part of May, based on King's dealings up to that time with Respondent, King made a decision that he did not wish to go forward with pursuing any sort of recovery from his ex-girlfriend. As a result, he commenced a series of efforts to communicate to Respondent his desire that work cease on the matter and that an accounting and refund of unearned advanced fees be made by Respondent. These efforts included sending a certified letter to Respondent on June 24, 2009, in which King requested an accounting. That letter, however, was returned as unclaimed, even though it was sent to Respondent's correct post office address.

On July 6, 2009, King sent a comparable letter to Respondent, addressed to both his post office address and to his office/home street address. While the letter sent to the street address via certified mail was returned as unclaimed, the letter sent to the post office address was not. In addition, King also called Respondent's telephone and read the letters onto Respondent's voicemail. The court concludes that Respondent received notification of his client's request of an accounting and refund.

When Respondent did not respond to King's request for a refund or an accounting, King then complained to the State Bar. On September 18, 2009, a letter was sent by the State Bar to Respondent, advising him of King's complaint, including King's prior request for an accounting and a refund of unearned fees. The State Bar requested that Respondent provide a written response to the complaint and provide pertinent documents. The deadline for providing this response was stated in a letter to be October 2, 2009.

On October 1, 2009, Respondent sent a letter to the State Bar requesting an extension of time to provide a written response. That request was granted. On October 22, 2009, Respondent sent a letter to the State Bar, reportedly responding to King's complaint that Respondent had neither provided an accounting nor refunded all unearned fees. Although this three-page letter made numerous derogatory comments about Mr. King, including a vague suggestion that King

was not mentally well, the letter provided no information with regard to an accounting or the return of unearned fees.

On November 19, 2009, the State Bar investigator wrote a follow-up letter to Respondent, noting the failure of Respondent's prior letter to address the issues of Respondent needing to provide an accounting and return any unearned fees.

Despite the above intervention by the State Bar, Respondent, as of the date of trial in this matter, had not provided an accounting to King. Nor had he made any refund of unearned fees.

Respondent testified at trial that he first put together an "accounting" only after the Notice of Disciplinary Charges was filed in this proceeding, which he then sent to the State Bar. However, he still did not send this accounting to his client. That accounting, according to Respondent, revealed that Respondent had earned \$1,836 of the \$2,500 advanced fee. As a result, Respondent acknowledged that he owed King a refund of \$664. No explanation was given by Respondent as to why that refund has not been previously made.

Further, Respondent provided this court at trial with a copy of the so-called accounting he had prepared. It is little more than gibberish. It consists of a one-page handwritten document, with a single column of time entries listed on the left hand margin. The largest recorded segment of time is ".4" (24 minutes). The vast majority of the time entries are ".1" (6 minutes). There is no information provided as to when any of these various expenditures of time were made or what work was purportedly performed.

Count 4 - Rule 3-110(A) [Competence]

The State Bar alleges that Respondent intentionally, recklessly or repeatedly did not perform competently, in willful violation of rule 3-110(A), because he did not do any legal work on King's civil matter for about four months. The State Bar had the burden of showing the absence of work on the file during that time. It failed to sustain that burden.

Instead, both Respondent and King agreed at trial that there were two meetings held between Respondent and King during this time period. King was, admittedly, out of the country for approximately three weeks during this time period. Respondent had been given documents to review, and there was no evidence that he had failed to review them. Accordingly, this charge is dismissed with prejudice.

Count 5 - Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney whose employment has terminated to promptly return any part of a fee paid in advance that has not been earned. Respondent admitted at trial that he still was holding \$664 of unearned fees, which he had not refunded to King. This failure to promptly refund unearned fees is a willful violation by Respondent of rule 3-700(D)(2).³

Count 6 - Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) requires a member to “maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]” As previously noted, Respondent did not prepare an accounting until after the instant charges against him had been filed. Even then, he did not provide it to his client. Moreover, his purported accounting falls far short of being a true accounting. Respondent’s failure to provide an accounting to his client constituted a willful violation by him of rule 4-100(B)(3).

Aggravating Circumstances

It is the prosecution’s burden to establish aggravating circumstances by clear and

³ The court will not recommend restitution in excess of \$664, since it does appear that Respondent was spending time working on the file. As a result, the court cannot conclude that Respondent is obligated to refund anything more than the \$664 that he acknowledges to be unearned.

convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁴ std. 1.2(b).)

Prior Discipline

Respondent has four prior instances of discipline. (Std. 1.2(b)(i).)

By order filed on January 26, 1996, in State Bar Court case no. 95-C-10416, Respondent was publicly reprovved, based on a May 5, 1995, conviction of violations of Vehicle Code sections 23103/23103.5 (reckless driving), with a prior and 14605.1(a) (driving while license suspended or revoked). No aggravating factors were found. In mitigation, the parties agreed that Respondent recognized his wrongdoing; was candid and cooperative; and took objective steps demonstrating remorse.

By order filed on January 22, 1998, in Supreme Court case no. S065529 (State Bar Court case no. 96-H-6950), discipline was imposed, consisting of one year's stayed suspension and three years' probation on conditions including 30 days' actual suspension for noncompliance with conditions of Respondent's reprovval. The parties agreed that Respondent's prior disciplinary record and his conduct in not participating in the proceedings were aggravating factors. In mitigation, Respondent's emotional or physical disability was considered.

By order filed on April 15, 1998, in Supreme Court case no. S067417 (State Bar Court case nos. 96-C-4656; 96-C-6253; 96-O-4791; 96-O-7274; 96-O-7822; 97-O-13247; 97-O-14706; 97-O-15187; 97-O-16314 (Cons.)), discipline was imposed, consisting of five years' stayed suspension and five years' probation on conditions including actual suspension for one year and until Respondent made specified restitution. Discipline was based, in part, on the criminal convictions of February 21, 1997, in which Respondent was found culpable of violating Penal Code section 273.5(a) (corporal injury to spouse) (one count) and Business and Professions Code

⁴Future references to "standard" or "std." are to this source.

section 6126(b) (unauthorized practice of law) (four counts). In addition, in seven client matters, he was found culpable of violating sections 6068(a) (three counts); 6068(a)/6126(b) (one count); and 6068(m) (four counts), as well as Rules of Professional Conduct, rules 1-320 (one count); 3-110(A) (four counts); 3-700(D)(1) (two counts); 3-700(D)(2) (two counts); and 4-100(B)(3) (three counts).⁵ In aggravation, the parties agreed that multiple acts of misconduct, Respondent's prior disciplinary record, and dishonesty were aggravating factors. In mitigation, Respondent's emotional or physical disability was considered.

By order filed on January 11, 1999, in Supreme Court case no. S074404 (State Bar Court case no. 97-C-10252), discipline was imposed, consisting of three years' probation based on a January 13, 1998 conviction for violating Vehicle Code section 23152(b) (driving with blood alcohol level of .08 or higher). The parties agreed to Respondent's prior disciplinary record in aggravation. There were no mitigating factors.

Multiple Acts

Respondent's multiple acts of misconduct are an aggravating factor. (Std. 1.2(b)(ii).)

Client Harm

Respondent's misconduct significantly harmed his two clients. (Std. 1.2(b)(iv).) The *Van Auken* case was dismissed, albeit without prejudice. Nonetheless, this dismissal necessarily caused harm to the client, since it meant that his claims could not be adjudicated without a new proceeding being filed. With regard to King, Respondent still owes him \$664. King has been deprived of the use of that money since mid-2009.

⁵The court notes that there are similar ethical issues in this prior disciplinary matter and in the current one, namely violations of rules 3-110(A), 3-700(D)(2) and 4-100(B)(3).

Lack of Remorse

Respondent's failure to acknowledge his misconduct or to take steps to remedy the harm (such as by making the refund of the unearned fees) demonstrates a lack of remorse. (Std. 1.2(b)(v).)

Mitigating Circumstances

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) There do not appear to be any formal mitigating factors. While Respondent testified that his practice consists of helping poor people deal with foreclosure matters, he did not indicate that he does that on a pro bono basis.

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) 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.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silvertown* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State

Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.) We determine the appropriate discipline in light of all relevant circumstances, including aggravation and mitigation. (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 1.7(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate.⁶

The State Bar recommends disbarment. This court agrees.

In two client matters, Respondent has been found culpable of violations of section 6103 and rules 3-110(A), 3-700(A)(2), 3-700(D)(2) and 4-100(B)(3). In aggravation, the court considered his considerable prior disciplinary record (four matters, one of which violation of three of the rules involved in this proceeding), multiple acts of misconduct, client harm, and lack of remorse. There are no mitigating circumstances.

Lesser discipline than disbarment is not warranted under standard 1.7(b) because there are no extenuating circumstances that clearly predominate in this case. The fact that this is Respondent's fifth disciplinary matter raises serious concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. Given his past

⁶ Standards 2.2(b), 2.4(b), 2.6 and 2.10 apply in this matter.

discipline record, Respondent should have taken the utmost care to comply with his ethical duties and to handle carefully his clients' affairs. It is evident that the four prior instances of discipline have not served to rehabilitate Respondent or to deter him from further misconduct. Moreover, the court is concerned about Respondent's lack of remorse. That he would continue to hold money admittedly owed to his client even through the trial of these disciplinary charges against him is a "red flag" signaling the likelihood of future misconduct. Accordingly, having considered the evidence, the standards, and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by Respondent. (See, e.g., *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841-842; *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 80.)

DISCIPLINE RECOMMENDATION

Disbarment

The court recommends that Respondent **James Joseph Brown, III**, Member No. 169686, be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

Restitution

It is recommended that Respondent make restitution to Steven King in the amount of \$664, plus 10% interest per annum from July 6, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Steven King, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Restitution is to be made within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

Rule 9.20

The court recommends 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.⁷

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.

ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that Respondent **James Joseph Brown, III**, Member No. 169686, be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4) and *new* rule 5.111(D)(1) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three days from the date of service of this order and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March _____, 2011

DONALD F. MILES
Judge of the State Bar Court

⁷ 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.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)