FILED MARCH 24, 2010

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **MICHAEL G. SHARPE,** **Member No. 123965,** A Member of the State Bar.	)	Case Nos.: **09-O-12379-PEM** (09-O-12851-PEM) **DECISION & ORDER OF INACTIVE ENROLLMENT**

I. INTRODUCTION

In this original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent **MICHAEL G. SHARPE**[1] with a total of twelve counts of professional misconduct in two separate client matters. For the reasons set forth *post*, the court finds respondent culpable on only seven of the twelve counts. Nonetheless, the court concludes that the appropriate level of discipline to recommend to the Supreme Court is respondent's disbarment.

The State Bar was represented by Deputy Trial Counsel Susan Chan. Even though respondent appeared and participated in the initial status conference on October 26, 2009, he thereafter stopped participating in this proceeding, and as noted *post*, his default was entered when he failed to file a response to the notice of disciplinary charges (NDC).

[1] Respondent was admitted to the practice of law in the State of California on September 15, 1986, and has been a member of the State Bar of California since that time.

II. KEY PROCEDURAL HISTORY

On September 15, 2009, the State Bar filed the NDC in this proceeding and, in accordance with Business and Professions Code section 6002.1, subdivision (c),[2] properly served a copy of the NDC on respondent by certified mail, return receipt requested, at his latest address shown on the official membership records of the State Bar (hereafter official address). That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108.)

On September 24, 2009, the court filed and served on respondent at his official address, a notice of assignment and notice of initial status conference. Thereafter, respondent appeared and participated in the initial status conference on October 26, 2009, in persona propria. At the initial status conference, the court effectively extended the time for respondent to file his response to the NDC by instructing respondent to file his response no later than November 9, 2009. Respondent, however, failed to file his response.

On November 16, 2009, the State Bar filed and served on respondent a motion for the entry of respondent's default. Respondent never filed a response to that motion or to the NDC. Thereafter, because all of the statutory and rule prerequisites were met, this court filed an order on December 2, 2009, in which it entered respondent's default and ordered respondent's involuntary inactive enrollment as mandated by section 6007, subdivision (e)(1).

On December 16, 2009, the State Bar filed a request for waiver of default hearing and a brief on culpability and discipline (State Bar's December 16, 2009 brief). And, on December 28, 2009, the court took the case under submission for decision without a hearing.

[2] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under section 6088 and rules 200(d)(1)(A) and 201(c) of the Rules of Procedure of the State Bar, upon the entry of default, the factual allegations (but not the charges or conclusions) that are set forth in the NDC are deemed admitted and no further proof is required to establish the truth of those facts. Nonetheless, this court must determine whether the facts deemed admitted are sufficient to establish the charged disciplinary violations by clear and convincing evidence. (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54-55; cf. *In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 409, 410.) And, when making that determination, the court must still resolve all reasonable doubts in the respondent's favor, just as it does in contested disciplinary proceedings. (*In the Matter of Heiser, supra*, 1 Cal. State Bar Ct. Rptr. at p. 55, citing *Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.)

Attached to the State Bar's December 16, 2009 brief as exhibits 1 through 5 are respondent's five prior records of discipline. Those five exhibits are admitted into evidence. (Rules Proc. of State Bar, rule 202(c).)

A. The Manfredonia Client Matter (09-O-12379-PEM)

On about August 23, 2007, Mr. F. Manfredonia retained respondent to defend him in two criminal cases that were then pending against him. One case was in the Shasta County Superior Court (Shasta case). And the other case was in the Trinity County Superior Court (Trinity case).

Also, on about August 23, 2007, respondent and Manfredonia entered into a written fee agreement in which Manfredonia agreed to transfer ownership of his 1962 Oldsmobile to respondent as payment for respondent's legal fees in the Shasta and Trinity cases. According to that written agreement, the parties placed a value of $15,000 on the Oldsmobile. On about August 24, 2007, Manfredonia gave his Oldsmobile to respondent.

Then, on about August 27, 2007, respondent submitted an application, which he signed under penalty of perjury, to the California Department of Motor Vehicles (DMV) to have the title to the Oldsmobile transferred into his name. In that application, respondent deliberately lied and falsely stated that he purchased the Oldsmobile from Manfredonia for $3,000 so that he would not have to pay the applicable use and sales taxes on the full $15,000 value of the Oldsmobile.

As set forth *post*, respondent performed only limited legal services for Manfredonia in the Shasta and Trinity cases. Thus, it is clear that respondent did not earn all of the $15,000 agreed-upon value of the Oldsmobile. To date, respondent has not refunded, to Manfredonia, any portion of the $15,000 agreed-upon value of the Oldsmobile or returned the Oldsmobile to Manfredonia.

1. Shasta Case

Respondent became Manfredonia's attorney of record in the Shasta case on about August 27, 2007. Respondent was to have represent Manfredonia through the probation hearing in the Shasta case. However, from about August 27, 2007, through about October 30, 2008, respondent provided few, if any, legal services for Manfredonia in that case other than appearing (or sending another attorney to specially appear) at 11 court hearings and requesting continuances. On about October 30, 2008, the Shasta County Superior Court issued an order relieving respondent as Manfredonia's attorney of record in the Shasta case.

2. Trinity Case

Respondent became Manfredonia's attorney of record in the Trinity case on about October 3, 2007. Respondent was to have represented Manfredonia through the jury trial in the Trinity case. However, from about October 3, 2007, through about April 28, 2009, respondent provided few, if any, legal services for Manfredonia in the Trinity case other than appearing (or sending another attorney to specially appear) at 17 court hearings and requesting continuances.

In addition, from January 2009 through April 2009, Manfredonia repeatedly telephoned respondent and left numerous messages for respondent inquiring about the status of his Trinity case.[3] Respondent received those messages, but failed to respond to them.

Moreover, respondent failed to appear at an April 7, 2009 hearing in the Trinity case. Thereafter, the superior court set a hearing in the Trinity case for April 20, 2009, and issued an order requiring respondent to appear at that hearing. Even though respondent received the superior court's order to appear at the April 20, 2009 hearing shortly after the order was issued, respondent failed to appear at the hearing.

Because respondent failed to appear at the April 20, 2009 hearing, the superior court set a hearing in the Trinity case for April 28, 2009, and issued an order requiring respondent to appear at that hearing. Respondent received the order to appear at the April 28, 2009 hearing shortly after the order was issued. Respondent, however, still failed to appear at the hearing on April 28, 2009. Finally, on about April 28, 2009, the superior court issued an order relieving respondent as Manfredonia's attorney of record in the Trinity case.

3. Disciplinary Investigation

On June 2, 2009, and again on June 15, 2009, a State Bar investigator sent respondent a letter in which the investigator asked respondent to respond in writing to specific allegations of misconduct that the State Bar was investigating with respect to the Manfredonia client matter. Even though respondent received both of those letters, respondent failed to respond to them.

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[3] The NDC alleges that Manfredonia telephoned respondent about both the Trinity case and the Shasta case from January through April 2009. However, the Shasta County Superior Court relieved respondent as Manfredonia's attorney of record in the Shasta case a number of months earlier on October 30, 2008.

Count One (A) – Failure to Perform (Rules Prof. Conduct, rule 3-110(A))[4]

In count one (A), the State Bar charges that respondent willfully violated rule 3-110(A), which provides that an attorney must not "intentionally, recklessly, or repeatedly fail to perform legal services with competence." The record clearly establishes that respondent intentionally and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) as alleged in count one (A) "By performing little. . . work on behalf of Manfredonia in the Shasta and Trinity cases, by failing to communicate with Manfredonia after in or about January 2009, and by failing to appear at the two hearings in the Trinity case after being ordered to appear."

Count One (B) – Avoiding Interests Adverse to a Client (Rule 3-300)

In count one (B), the State Bar charges that respondent willfully violated that portion of rule 3-300 which provides that "A member shall not . . . knowingly acquire an ownership. . . 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."

Specifically, the State Bar charges that respondent violated rule 3-300 because he knowingly acquired an ownership interest in the Oldsmobile that was adverse to Manfredonia without advising Manfredonia in writing of his right to seek the advice of an independent lawyer of his choice and without giving Manfredonia a reasonable opportunity to seek that advice before

[4] Unless otherwise indicated, all further references to rules are to these Rules of Professional Conduct of the State Bar of California.

respondent and Manfredonia entered into the fee agreement on about August 23, 2007. The court cannot agree.

The court is at a loss to understand how "respondent knowingly acquired an ownership interest adverse to a client" when he accepted Manfredonia's Oldsmobile as payment of his legal fees in the Shasta and Trinity cases. Moreover, the State Bar has not cited any authority holding that attorneys acquire ownership interests adverse to their clients whenever they accept anything of value other than money as payment for their legal fees. Nor is the court aware of any such authority. Accordingly, count one (B) is dismissed with prejudice.

Count One (C)-- Failure to Communicate (§ 6068, subd. (m))

In count one (C), the State Bar charges that respondent willfully violated section 6068, subdivision (m), which provides that an attorney must "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."

The record clearly establishes that respondent willfully violated section 6068, subdivision (m) when he failed to respond to the telephone messages that Manfredonia left for him from about January 2009 through about April 2009. But the court has already relied on respondent's failure to communicate with Manfredonia after about January 2009 to find respondent culpable of violating rule 3-110(A) in count one (A), *ante*. Thus, count one (C) is duplicative of count one (A). It is inappropriate to find duplicative violations because "the appropriate level of discipline for an act of misconduct does not depend upon how many rules of professional conduct or statutes proscribe the misconduct. [Citation.]" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Count one (C) is dismissed with prejudice. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787.)

Count One (D) – Failure to Obtain Permission to Withdraw (Rule 3-700(A)(1))

In count one (D), the State Bar alleges that "As of on or about April 2009, respondent effectively withdrew from employment on behalf of Manfredonia in the Trinity case" in willful violation of rule 3-700(A)(1) because he withdrew without obtaining the superior court's permission. The record does not clearly establish the charged violation.

There are no facts alleged that establish how or when in April 2009 respondent "effectively withdrew from employment" in the Trinity case. And, resolving all reasonable doubts in respondent's favor, the court must presume that respondent effectively withdrew after the superior court issued its April 2009 order relieving respondent as Manfredonia's attorney of record. Count one (D) is dismissed with prejudice for want of proof.

Count One (E) – Failure to Refund Unearned Fee (Rule 3-700(D)(2))

In count one (E), the State Bar charges that respondent willfully violated rule 3-700(D)(2), which provides, in part, that, upon termination of their employment, attorneys must "Promptly refund any part of a fee paid in advance that has not been earned." Furthermore, "To justify retention of legal fess, respondent was required to perform more than he did (i.e., minimal services that were of no value to the client). [Citation.]" (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424; see also *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 450-451 [services rendered must benefit client to justify recovery under quantum meruit].)

Even though respondent made appearances at 28 hearings (11 hearings in the Shasta case plus 17 hearings in the Trinity case), he did not earn all of the $15,000 agreed-upon value for Manfredonia's Oldsmobile. Accordingly, respondent willfully violated rule 3-700(D)(2) when he failed to refund any portion of $15,000 agreed-upon value of the Oldsmobile to Manfredonia promptly after the superior court issued its April 2009 order relieving respondent as Manfredonia's attorney of record in the Trinity case.

Count One (F) – Failure to Obey a Court Order (§ 6103)

In count one (F), the State Bar charges that respondent willfully violated section 6103. As charged, the record clearly establishes that respondent willfully violated his duty, under section 6103, to obey court orders requiring him to do acts connected with or in the course of his profession, which he ought in good faith to do, when he failed to obey the superior court's orders to appear at the April 20 and 28, 2009 hearings in the trinity case. But, again, the court relied upon respondent's failures to appear at those hearings as ordered by the superior court to find respondent culpable of the charged rule 3-110(A) violation in count one (A), *ante*. Accordingly, count one (F) is dismissed with prejudice as duplicative of count one (A). (*In the Matter of Maloney and Virsik, supra*, 4 Cal. State Bar Ct. Rptr. at pp. 786-787.)

Count One (G) – Moral Turpitude, Dishonesty, or Corruption (§ 6106)

In count one (G), the State Bar charges that respondent willfully violated section 6106, which proscribes acts involving moral turpitude, dishonesty, or corruption. As charged, the record clearly establishes that respondent deliberately lied on his DMV title transfer application by falsely stating under penalty of perjury that he paid $3,000 for Manfredonia's Oldsmobile. Respondent lied to avoid paying the taxes on the $15,000 value of the Oldsmobile. Such a deliberate misstatement of fact for "personal gain" involves not only moral turpitude, but also dishonesty in willful violation of section 6106.

Count One (H) -- Failure to Cooperate with State Bar (§ 6068, subd. (i))

As charged in count one (H), the record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (i), to "cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. . . ." Respondent willfully violated section 6068, subdivision (i) by deliberately failing to respond to the State Bar investigator's letters dated June 2, 2009, and June 15, 2009.

B. The Marzocchi Client Matter (09-O-12851-PEM)

On about November 23, 2008, Marlene Marzocchi retained respondent to expunge the record in two criminal cases and to file a motion to reduce a felony to a misdemeanor in one of them. Marzocchi paid respondent $500 in advanced fees. Thereafter, however, respondent failed to perform any work for Marzocchi. Moreover, from about January 2009 through about February 20, 2009, Marzocchi repeatedly telephoned respondent and left numerous telephone messages for him inquiring as to the status of her matters. Even though respondent received those messages, he did not respond to them.

On about February 20, 2009, Marzocchi sent respondent a letter requesting a refund of the $500 advanced fees. Respondent never refunded any portion of the $500 in unearned fees.

On April 9 and 28, 2009, and again on June 15, 2009, and July 9, 2009, a State Bar investigator sent respondent a letter asking respondent to respond in writing to specific allegations of misconduct that the State Bar was investigating with respect to the Marzocchi client matter. Even though respondent received those four letters, respondent failed to respond to them.

Count Two (A) – Failure to Perform (Rule 3-110(A))

In Count two (A), the State Bar charges that "By failing to perform any work on behalf of Marzocchi, respondent intentionally, recklessly, *and* repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A)." (Italics added.) The record, however, fails to establish that charged violation by clear and convincing evidence. There is no evidence that time was of the essence or that Marzocchi had met the statutory waiting period for filing motions to expunge or to have a felony reduced to a misdemeanor in a postconviction proceeding. At least without more, the fact that respondent failed to work on Marzocchi's matters from when he was retained in about late November 2008 and until late February 2009

when Marzocchi requested a refund (which is a period of about three months -- a relatively brief period of time) establishes only that respondent was negligent. (Cf. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 641.) And negligence, "even that amounting to legal malpractice, does not establish a rule 3-110(A) violation. [Citation.]" (*In the Matter of Torres*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 149.) Count two (A) is dismissed with prejudice.

Count Two (B) – Failure to Communicate (§ 6068, subd. (m))

As charged in count two (B), the record clearly establishes that respondent willfully violated his duty, under section 6068, subdivision (m), to respond to the reasonable status inquires of his clients when he failed to respond to Marzocchi's numerous telephone messages in January and February 2009.

Count Two (C) – Failure to Refund Unearned Fee (Rule 3-700(D)(2))

As charged in count two (C), the record establishes that respondent willfully violated rule 3-700(D)(2) by failing to promptly refund the $500 in unearned fees to Marzocchi in accordance with her February 2009 letter.

Count Two (D) -- Failure to Cooperate with State Bar (§ 6068, subd. (i))

As charged in count two (D), respondent willfully violated his duty, under section 6068, subdivision (i), to cooperate in State Bar disciplinary investigations by failing to respond to the State Bar investigator's letters of April 9, April 28, June 15, and July 9, 2009.

IV. MITIGATING & AGGRAVATING CIRCUMSTANCES

A. Mitigating Circumstances

There are no mitigating circumstances.

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B. Aggravating Circumstances

1. Prior Records of Discipline

Respondent has five prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)[5]

Respondent's first prior record of discipline is the Supreme Court's October 24, 1990 order in case number S011893 (State Bar Court case number 98-C-12028) in which the court publicly reproved respondent for his second conviction for driving under the influence of alcohol (DUI) and ordered him to take and pass the Multistate Professional Responsibility Examination. The court also attached conditions to respondent's public reproval, which included abstaining from the use of alcohol, narcotics, and other dangerous or restricted drugs and quarterly reporting to the State Bar Court.

Respondent's second prior record of discipline is the Supreme Court's July 1, 1993 order in case number S032454 (State Bar Court case number 92-H-18870, etc.) in which the court placed respondent on six months' stayed suspension and two years' probation on conditions, including a thirty-day period of suspension (actual). The Supreme Court imposed that discipline on respondent because he failed to abstain from using alcohol in violation of the conditions attached to his public reproval and because he was convicted of yet a third DUI offense.

Respondent's third prior record of discipline is the Supreme Court's February 23, 1995 order in case number S032454 (State Bar Court case number 93-PM-19309) in which the court revoked respondent's two-year disciplinary probation and placed him on three months' suspension (actual). The Supreme Court imposed that discipline on respondent because he filed

[5]All further references to standards are to this source.

five of his quarterly probation reports (his first 5 reports) late and because he failed to participate in the State Bar's Program on Alcohol and Drug Abuse during the first three quarters of 1994.

Respondent's fourth prior record of discipline is the Supreme Court's October 4, 1995 order in case number S047925 (State Bar Court case number 94-C-15803) in which the court placed respondent on two years' stayed suspension and three years' probation on conditions, including an eighteen-month suspension (actual). The court imposed that discipline on respondent because he was convicted of yet a fourth DUI offense, which involved a felony conviction.

Respondent's fifth prior record of discipline is the Supreme Court's July 23, 1997 order in case number S047925 (State Bar Court case number 97-PM-10356) in which the court extended respondent's three-year disciplinary probation an additional year because, in November 1996, he went on a one and one-half weeks "period of episodic consumption of alcohol" (a drinking binge) and was convicted of riding a bicycle while intoxicated.

2. Significant Client Harm

Respondent's misconduct has caused significant client harm. (Std. 1.2(b)(iv).) Respondent's failure to refund the unearned portion of the $15,000 agreed-upon value of the Oldsmobile to Manfredonia deprived Manfredonia of about $10,800, as reasonably estimated *ante*. Likewise, respondent's failure to refund the $500 unearned fee to Marzocchi caused harm.

3. Failure to File a Response to the NDC

Respondent's failure to file a response to the NDC in the present proceeding, which allowed his default to be entered, is an aggravating circumstance. (See *Conroy v. State Bar* (1990) 51 Cal.3d 799, 805.) However, its weight in aggravation is limited because the conduct relied on for this aggravating factor closely equals the misconduct relied on to find respondent

culpable of violating section 6068, subdivision (i) and to enter his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 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 Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

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 2.3, which applies to respondent's deliberate false statement under penalty of perjury on his DVM title transfer application in willful violation of section 6106. 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; *In re Morse* (1995) 11 Cal.4th 184, 206.) Nonetheless, it does support significant discipline for respondent’s misrepresentation of the Oldsmobile’s value to the DMV. Standard 1.7(b) and the cases applying also support very significant discipline. 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 as defined by Standard 1.2(f), 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, disbarment is not mandated 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.) To conclude otherwise would require that all prior records of discipline be blindly treated as equally aggravating. Instead, 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 addition, in determining whether to recommend disbarment under standard 1.7(b), the court is to place "great weight 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.)

Admittedly, there is no "common thread" among respondent's five prior disciplinary proceedings and the present proceeding -- respondent's sixth disciplinary proceeding. None of respondent's prior proceedings involved client misconduct. And the present proceeding does not involve the violation of any criminal law or Supreme Court disciplinary order. Nonetheless, respondent's prior disciplinary proceedings involved serious misconduct (i.e., four DUI convictions, at least one of which was a felony conviction, and repeated violations of the Supreme Court's disciplinary orders). And the present disciplinary proceeding involves serious misconduct (i.e., deliberate dishonesty for "personal gain"), but no mitigation. The present proceeding also involves misconduct in two separate client matters and failing to cooperate in the State Bar's disciplinary investigations related to those two matters. Furthermore, because of respondent's default in the present proceeding, there is nothing in the record to suggest that

respondent is a suitable candidate for further discipline. In fact, the record strongly suggests, if not establishes, the opposite.

In addition, the court (1) takes judicial notice of its own records in case number 09-TR-17980-PEM, styled *In the Matter of Michael G. Sharpe*, and (2) notes that, on October 28, 2009, the Shasta County Superior Court filed a *permanent* order for assumption of jurisdiction over respondent's law practice under sections 6180 et seq., and 6190 et seq.[6] in superior court case number 167286, styled *In the Matter of the Assumption of Jurisdiction Over the Law Practice of Michael G. Sharpe*. Even though the superior court's permanent order is not a prior record of discipline, it is an appropriate factor to consider for purposes of discipline. (Cf. *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 531-532.)

The court concludes that disbarment is the appropriate discipline recommendation in this proceeding. Even a lengthy period of suspension and a standard 1.4(c)(ii) requirement will not adequately further the goals of attorney discipline. Public protection concerns require that respondent successfully undergo a formal reinstatement proceeding with its attendant greater showing than would be required under standard 1.4(c)(ii) is necessary before he is permitted to resume the practice of law. Finally, the court independently concludes that respondent should be required to make restitution with interest to Marzocchi for the $500 unearned fee he never refunded. The court is unable to recommend that respondent be required to make restitution for the unearned portion of the $15,000 agreed-upon value of the Oldsmobile in the Manfredonia client matter because the State Bar failed to establish the unearned amount.

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[6] Section 6190 provides: "The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, *become incapable of devoting the time and attention to,* and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility." (Italics added.)

VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent MICHAEL G. SHARPE 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 Michael G. Sharpe be required to make restitution to Marlene Marzocchi in the amount of $500 plus 10 percent interest thereon per year from March 22, 2009, until paid (or to reimburse the Client Security Fund to the extent of any payment from the fund to Marlene Marzocchi in accordance with Business and Professions Code section 6140.5). The court further recommends that any restitution 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 AND COSTS

The court further recommends that Michael G. Sharpe 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.

Finally, the court 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 INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that MICHAEL G. SHARPE be involuntarily enrolled as an inactive member of the

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State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: March ___, 2010.

PAT E. McELROY
Judge of the State Bar Court