

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.:09-O-13561(09-O-14067);
)	11-O-13309-DFM (Cons.)
JOHN WONGOO RHEE,)	
)	DECISION INCLUDING DISBARMENT
Member No. 114109,)	RECOMMENDATION AND
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT ORDER

INTRODUCTION

Respondent **John Wongoo Rhee** (Respondent) is charged here with eleven counts of misconduct, involving three different client matters. The State Bar of California (State Bar) stipulated at trial that one of those counts be dismissed. The remaining counts include allegations of willfully violating (a) Business and Professions Code section 6103¹ (failure to obey court order); (b) section 6068, subdivision (o)(3) (failure to report judicial sanctions [two counts]; (c) section 6106 (moral turpitude) [four counts]; (d) section 6068, subdivision (d) (seeking to mislead a judge); (e) section 6068, subdivision (m) (failure to inform client of significant development); and (f) sections 6068, subdivision (a), 6125, and 6126 (unauthorized

¹ Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

practice of law). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) in cases Nos. 09-O-13561 and 09-O-14067 was filed by the State Bar on August 23, 2010. On September 30, 2010, Respondent filed his response to that NDC.

An initial status conference was held in the matter on October 18, 2010. At that time, the case was given a trial date of February 8, 2011, with a three-day trial estimate. A pretrial conference was scheduled for January 31, 2011, with pretrial statements ordered to be filed on or before January 24, 2011. The parties were also ordered to participate in a settlement conference on January 3, 2011. At that time, Respondent was acting as counsel in pro. per.

On January 3, 2011, Respondent failed to appear for the court-ordered settlement conference. On January 24, 2011, the deadline for the filing of pretrial conference statements passed with Respondent failing to file any document.

The pretrial conference was held on January 31, 2011, as scheduled. Respondent did not appear. Instead, he was represented by attorney Frederick Romero, who indicated that he had been contacted at the end of the prior week by Respondent and that he would be substituting into the case as counsel of record. In response to counsel's oral request for a continuance, the court indicated that any such request needed to be made in writing with supporting documentation. The court allowed Respondent until the close of business, February 4, 2011, to file the required pretrial conference statement. Respondent's new counsel filed the substitution of counsel and the pretrial conference statement by the new deadline.

On February 4, 2011, Respondent filed a formal motion seeking a trial continuance until August 2011, “to enable counsel to retain the assistance of experts in the mental treatment and defense of Respondent.” On February 7, 2011, that motion was denied. Trial was then called on February 8, 2011, as scheduled. At that time, the parties filed a stipulation in which Respondent, while not admitting culpability, admitted to the truth of virtually all of the facts alleged in the NDC. In addition, Respondent filed a declaration indicating his inability to assist in the defense of the action. Based on evidence then presented to the court of Respondent’s inability to participate in the defense of the action, the parties agreed that the matter would be abated. This court issued an abatement order and an order enrolling Respondent as involuntarily inactive under section 6007(b)(1) on that same date. At that time, the State Bar was represented at trial by Deputy Trial Counsel Charles Calix. Respondent was represented at trial by Mr. Romero.

On April 23, 2012, an NDC was filed by the State Bar in case No. 11-O-13309. At that time, Deputy Trial Counsel Adriana Burger assumed responsibility of the file in place of Deputy Trial Counsel Calix. On that same date, a status conference was held in the matters. Respondent was represented at this status conference by Mr. Romero. At this April 23 status conference, the parties agreed that the existing order of abatement should be terminated and that the prior two cases should be consolidated with the newly filed action, and it was so ordered by this court. The consolidated cases were then given a trial date of August 27, 2012, with a three-day trial estimate.

On May 21, 2012, Respondent filed his response to the NDC in case No. 11-O-13309.

On August 1, 2012, Respondent’s counsel filed a request (1) to be allowed to take the depositions of five witnesses in the case and (2) for a continuance of the trial date so that he could conduct that discovery. The request for a continuance was also based on the fact that the

State Bar had listed Mr. Romero as a percipient witness in the case, based on his representation of the principal complaining witness (Marina Rivas) in case No. 11-O-13309. On August 7, 2012, the State Bar filed an objection to the requests.

On August 10, 2012, Mr. Romero made a motion to withdraw from the case, claiming a conflict of interest. On August 14, 2012, this court issued an order (1) ordering Mr. Romero to personally serve the motion on Respondent; (2) ordering both Respondent and Romero to appear in person at the pending pretrial conference on August 20, 2012, and to work together in complying with the pretrial conference disclosure and statement requirements; and (3) directing all parties to be prepared to discuss at the pretrial conference whether case No. 11-O-13309 should be severed and continued due to Mr. Romero's alleged involvement as a potential witness. In a separate order issued that same date, this court denied as untimely Respondent's request to be allowed to take depositions and denied the request for a continuance, to the extent that the request was based on the desire to take those depositions.

At the pretrial conference on August 20, 2012, both Respondent and Mr. Romero were present. At that time, Respondent declined this court's offer to sever case No. 11-O-13309, but instead agreed that Mr. Romero should be allowed to withdraw even though this court had indicated that the trial date would not be vacated for that reason. The court then granted the motion to withdraw, substituting Respondent to act as counsel in propria persona.

On Friday morning, August 24, 2012, an emergency telephonic status conference was held at the request of Respondent's new counsel, Steven Cohen, who complained that Mr. Romero had not turned over to him the files on the matter. During that telephonic conference, Mr. Cohen made an oral motion that the trial be continued, which motion was denied. Instead, an order was immediately issued by the court, which order was faxed and electronically

transmitted to all parties and Mr. Romero, ordering that Mr. Romero turn over the files on the matter to Respondent or his designee immediately.

On August 27, 2012, the day that the matters were called for the commencement of trial, Steven Cohen appeared as counsel for Respondent in the cases. He indicated that after this court had issued its order, he received the files from Mr. Romero later on the previous Friday. Mr. Cohen then notified the court that Respondent had filed earlier that morning a petition in bankruptcy, and he argued that this court was required to stay the trial pursuant to the automatic stay applicable to certain actions pending against a bankruptcy petitioner. After a brief delay, this court denied the requested stay, based on *Cooper v. State Bar* (1987) 43 Cal.3d 1016 and *In re Wade* (9th Cir. 1991) 948 F.2d 1122, 1122-1125.

Trial was then commenced on August 27, 2012, and was completed on August 29, 2012. At the end of the scheduled trial, a request was made by Respondent's newly appointed counsel, Mr. Cohen, to be given an opportunity to secure from the Superior Court the transcript of the court hearing on October 14, 2010, at which Respondent was accused of making an unauthorized appearance, and that counsel be allowed to supplement the evidentiary record if that transcript could be secured. In response, the court ordered that either of the parties, or both, could secure and file that transcript, given that it would likely provide the very best evidence of Respondent's actual conduct on October 14, 2010. Although the State Bar had the burden of proof on this issue and was making the claim of an unauthorized appearance, it was Respondent who secured the transcript. On September 28, 2012, a copy of the transcript was provided to this court, with a brief memorandum from Respondent's counsel regarding the content and significance thereof. On October 4, 2012, the State Bar filed a Response to Respondent's Submission of Supplemental Evidence, setting forth its own contentions with regard to the significance of the transcript. The

court now formally admits the transcript as a part of the evidentiary record. Its own assessment of the significance of the document appears below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's responses to the two NDCs; the Stipulation as to Facts and Admission of Documents filed by the parties on February 8, 2011; the Stipulation as to Facts and Admission of Documents filed by the parties on August 29, 2012; and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 13, 1984, and has been a member of the State Bar at all relevant times.

Case No. 09-O-13561 [Trident Cotton Mills Matter]

On or about July 18, 2008, Respondent represented Trident Cotton Mills, Inc., (Trident) in the matter of *Continental Currency Services, Inc., a California Corporation v. HP Textiles, Inc. et al.*

On or about July 18, 2008, the superior court heard a motion brought by Continental Services, Inc. (Continental) to compel responses to discovery from Trident. At that time, the court imposed sanctions on Respondent and Trident, jointly and severally, in the sum of \$1,040 to be paid to Continental's attorney, J. Scott Souders (Souders), on or about July 29, 2008. On or about July 16, 2008, Souders served notice of the court's order by mail to Respondent's office address. Respondent received notice of the ruling.

On or about September 9, 2008, the superior court heard a motion brought by Continental to compel testimony and production of documents at deposition. At that time, the court again imposed sanctions on Respondent and Trident, jointly and severally, in the sum of \$1,240 to be

paid to Souders within twenty (20) days of the date of service of the notice of ruling. Souders properly served the notice of ruling on Respondent at his office address. Respondent received notice of the order.

On or about December 17, 2008, the superior court heard Continental's motion for terminating and/or monetary sanctions against Trident and Respondent for disobedience of its orders regarding deposition testimony and production of documents. Respondent did not appear to respond to the motion on December 17, 2008. At that time, the court ordered that Respondent pay sanctions in the sum of \$3,667.20 to Souder's firm. The court also set an order to show cause for December 29, 2008, for Trident to answer why its answer should not be stricken for failure to comply with the court's order regarding the deposition. The court's minute order and notice of ruling were properly served on Respondent at his office address. Respondent received the minute order and the notice of ruling.

On or about December 29, 2008, Respondent filed a motion for reconsideration of the order granting the motion to compel testimony at deposition and production of documents and monetary sanctions. On or about January 26, 2009, Respondent and Souders appeared at a hearing on the motion for reconsideration. The court denied Respondent's motion, finding it was frivolous and further sanctioning Respondent, solely, in the sum of an additional \$2,200, payable to Souders. In addition to being present when the court ordered that he pay the sanctions, Respondent received service of the minute order and a notice of ruling by mail to his office address. Respondent received the minute order and notice of ruling.

On or about May 27, 2009, Souders mailed a letter to Respondent reminding him of the sanctions orders in the total sum of \$8,147.20. To date, Respondent has neither paid nor sought to modify any of the sanctions.

At no time did Respondent report to the State Bar that he had been sanctioned on or about January 26, 2009, for filing a frivolous motion.

Count 1 – Section 6103 [Failure to Obey 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.”

Respondent stipulated before trial that he failed to pay the sanctions ordered by the court in the above matter. At trial, he stipulated, and this court now finds, that this failure by him to do so constituted a willful violation by Respondent of section 6103.

Count 2 – Section 6068 Subd. (o)(3) [Failure to Report Judicial Sanctions]

Section 6068 subdivision (o)(3) requires an attorney to report to the State Bar any imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000). That report must be in writing and must be made within 30 days of the time the attorney has knowledge of the sanctions. The sanctions order must be reported even though it is or will be appealed. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 866-867.) The willful violation of this duty does not require a bad purpose or an evil intent. (*Id.* at p. 867.)

Respondent stipulated before trial commenced that he had failed to report to the State Bar the sanctions ordered by the court on January 26, 2009, within the thirty (30) days required for such a report to be made. At trial, he stipulated, and this court now finds, that this failure by him to do so constituted a willful violation by Respondent of section 6068, subdivision (o)(3).

Case No. 09-O-14067

In or about December 2008, Francisco Garcia (Garcia) and Xochitl Harrison (Harrison), while visiting southern California, heard a radio advertisement for a company named "United First" offering assistance in renegotiating mortgage loans. They owned two properties in northern California.

Garcia and Harrison contacted United First and met with non-attorney Luis Saavedra (Saavedra) at an office in San Diego to discuss their loans. They employed United First and Saavedra to renegotiate loans on two properties they owned in California, one in Stockton, where they resided, and the other in Tracy. Saavedra charged them the sum of \$5,200. Garcia and Harrison paid \$1,700 directly to Saavedra.

In or about January 2009, Respondent employed Saavedra in Respondent's law office. In or about January 2009, Garcia and Harrison met with Saavedra at Respondent's office.

Respondent prepared and mailed a retainer agreement to Garcia and Harrison. On or about January 14, 2009, Garcia and Harrison signed the retainer agreement to employ Respondent for services identified in the agreement as "Modification/Civil Demand/Bankruptcy 13." They paid Respondent \$4,500 as fees for the representation.

On or about February 19, 2010, Respondent advised Garcia and Harrison, in writing, that he was unable to negotiate a loan modification for the Stockton property. He advised, in part, that they needed to retain a bankruptcy attorney in their district; that he was not retained for a bankruptcy; and that they needed to seek credit counseling. On or about February 27, 2009, Respondent advised them that a foreclosure sale was set for their home in Stockton on March 4, 2009.

Garcia and Harrison were unable to retain new counsel to handle the bankruptcy prior to the date of the scheduled foreclosure. As a result, on or about March 3, 2009, Respondent prepared a three page chapter 13 voluntary petition, with no schedules and statements, on behalf of Garcia and Harrison to be filed in the U.S. Bankruptcy Court, Central District of California. The petition listed Respondent as counsel and checked the box advising that "Exhibit D completed and signed by the debtor is attached and made part of this petition." Exhibit D, concerning the requirement that that the clients had attended credit counseling, was not attached. As of that date, March 3, 2009, Garcia and Harrison had not, in fact, yet attended credit counseling. On or about March 3, 2009, Respondent attempted to file the petition in the U.S. Bankruptcy Court, Central District of California and was informed that the filing was incorrect since Garcia and Harrison lived in Stockton.

Respondent then prepared another petition for filing in the U.S. Bankruptcy Court, Northern District of California, which listed the clients as in propria persona. Garcia and Harrison signed the petition and filed it on or about March 3, 2009, in the U.S. Bankruptcy Court, Northern District of California. On or about March 10, 2010, a judge in the Northern District of California sua sponte transferred the case to the Eastern District, which was the correct venue for the bankruptcy proceedings.

From approximately March 12, 2009, until on or about March 19, 2009, Respondent sought to obtain a referral for Garcia and Harrison for a new bankruptcy attorney and to correct the deficiencies in the petition. On or about March 18, 2009, Respondent arranged for (and attended by telephone) a consultation for them with Joseph Euretig (Euretig) a northern California attorney.

Euretig concluded that the bankruptcy case could not succeed. Garcia and Harrison had not yet satisfied the credit counseling requirement and did not have sufficient income to fund a feasible plan. Euretig did not accept representation of Garcia and Harrison.

On or about March 19, 2009, prior to the meeting of creditors, after Harrison and Garcia expressed dissatisfaction, Respondent refunded \$1,000 of the \$4,500 he had received.

On or about April 1, 2009, Garcia and Harrison asked Respondent what to do about the meeting of creditors. They were told that there was no need to attend. Respondent recommended that they wait until the court dismissed the petition and then file a second bankruptcy petition, this time under Chapter 7 of the Bankruptcy Code.

On or about April 29, 2009, the existing bankruptcy case was automatically dismissed for failure to file schedules and statements within 45 days of the petition date.

On or about June 29, 2009, the Bankruptcy Court heard a motion brought by the U.S. Trustee to compel Respondent to disgorge fees and for sanctions. Respondent appeared. At that time, the court ordered that Respondent disgorge to Garcia and Harrison the sum of \$3,774 as unearned attorney fees, as well as an additional \$274 as the cost of filing the petition. The court also ordered that Respondent pay sanctions of \$1,000 to the United States Trustee.

On or about August 24, 2009, Respondent made the refund to Garcia and Harrison and paid the sanctions to the U.S. Trustee. However, Respondent did not report in writing to the State Bar the \$1,000 sanctions within 30 days of the time that he had knowledge of the court's order.

Count 3 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney “shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.” Although the NDC charged Respondent with a

violation of this rule, at trial the State Bar asked that this count be dismissed with prejudice. An oral order doing so was issued at that time. Confirming that previous order, this count is hereby dismissed with prejudice.

Count 4 – Section 6068, Subd.(o)(3) [Failure to Report Judicial Sanctions]

Respondent stipulated before trial commenced that he had failed to report to the State Bar the sanctions ordered by the court on January 26, 2009, within the thirty (30) days required for such a report to be made. At trial, he stipulated, and this court now finds, that this failure by him to do so constituted a willful violation by Respondent of section 6068 subdivision (o)(3).

Case No. 11-O-13309

On or about May 2, 2008, Marina Rivas (Rivas) was involved in a traffic collision with a truck driven by Jeffrey Gaines (Gaines) of J.B. Hunt Transport Services, Inc. On or about May 5, 2008, Rivas hired Respondent to represent her in a lawsuit against Gaines and J.B. Hunt. The injuries suffered by Rivas as a result of the action were significant, and Respondent took the case on a contingency fee basis. There was the potential that his personal recovery on the case would be significant.

On or about April 29, 2010, the Supreme Court of California issued an Order (Order) in *In re John Wongoo Rhee*, Supreme Court case No. S180459 (State Bar Court case Nos. 07-N-14065 and 07-0-14294). This Order suspended Respondent from the practice of law for two years, stayed imposition of that suspension, and placed Respondent on probation for three years on conditions that included an actual suspension from the practice of law for one year. The Order also required Respondent to comply with rule 9.20 of the California Rules of Court 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 order. The Order became effective on

May 29, 2010, thirty (30) days after it was filed. As a result, Respondent was not authorized to practice law during the one-year period from May 29, 2010 through May 29, 2011, and until the resulting disciplinary costs had been paid. Respondent was properly served with and received the Order. During the period of his actual suspension, Respondent knew that he was not authorized to practice law.

On or about April 30, 2010, shortly before Respondent's suspension was to become effective, Respondent filed a complaint on behalf of Rivas in the Superior Court of California, County of Los Angeles, titled *Marina Rivas v. Jeffrey Gaines, J.B. Hunt Transport Services, Inc. et al.* (Rivas v. J.B. Hunt). Respondent knew at the time that he filed the complaint that he would soon be suspended and thus unable to act as formal counsel of record in the case. Not wanting to lose the client and a potentially large fee² because of his one-year suspension, he approached Peter S. Park (Park), an immigration attorney, with the proposal that Park would assume titular responsibility for the case during Respondent's suspension, but that Respondent would continue to do all of the case preparation in the capacity as Park's new paralegal. Park agreed to this arrangement. As a result, the complaint filed in the *Rivas* lawsuit listed both Respondent and Park as co-counsel of record for Rivas. Respondent had not discussed this co-counsel arrangement with his client before entering into it.

On or about May 27, 2010, two days before his suspension was effective, Respondent signed a Substitution of Attorney form, making Park the only attorney of record in place of Respondent in the *Rivas* action. This Substitution purported to bear the signature of Rivas, signifying her consent to have Park replace Respondent as her attorney of record in the matter. In fact, Rivas was completely unaware of the document. It was not signed by her; she never

² Ultimately the *Rivas* lawsuit resulted in a verdict of \$20 million dollars for Rivas. By the time of the trial, however, Rivas was represented by Brian Panish.

authorized anyone else to sign or affix her signature to it; and she had no knowledge that Respondent was being suspended or being replaced as the attorney of record on her case by another person. Knowing that the purported Rivas signature on the Substitution was false, Respondent nevertheless had the document filed on June 25, 2010. This Substitution of Attorney form was a significant legal document that constituted a significant change in circumstances of the *Rivas* matter before the court.

Count 1 – Section 6106 [Moral Turpitude – Affixing False Signature to Document]

Moral turpitude has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Fahey* (1973) 8 Cal. 3d 842, 849, citing *In re Craig* (1938) 12 Cal.2d 93, 97; *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73; *In re Boyd* (1957) 48 Cal.2d 69, 70.) The paramount purpose of the moral turpitude standard is not to punish practitioners but to protect the public, the courts and the profession against unsuitable practitioners. "To hold that an act of a practitioner constitutes moral turpitude is to characterize him as unsuitable to practice law." (*In re Higbie* (1972) 6 Cal.3d 562, 570.)

By affixing a false and unauthorized signature for Rivas on the Substitution of Attorneys form and then having that document filed with the court, Respondent committed an act involving moral turpitude, dishonesty or corruption on the court and his client, in willful violation of section 6106. (See, e.g., *Aronin v. State Bar* (1990) 52 Cal.3d 276, 287 [signing client's name to verification]; *Vaughn v. State Bar* (1972) 6 Cal.3d 847, 858 [staff signing attorney's name to sworn statement]; *Hallinan v. State Bar* (1948) 33 Cal.2d 246, 249 [simulation of party's signature to settlement agreement after litigation].)

Count 2 - Section 6068, Subd. (d) [Seeking to Mislead Judge]

Section 6068, subdivision (d), makes it a duty of an attorney never to seek to mislead a judge by an artifice or false statement of fact or law.

The State Bar alleges that Respondent's action in preparing and filing the Substitution, knowing that it had a falsified and unauthorized signature of Respondent's client, constituted an effort by Respondent to mislead the court and a willful violation of section 6103. This court agrees with that conclusion. As the California Supreme Court explained in *Pickering v. State Bar* (1944) 24 Cal.2d 141, 144-145: "Section 6103 of the Business and Professions Code provides that any violation by an attorney of his oath or professional duties constitutes cause for suspension or disbarment; and section 6068 of that code prescribes, in part, that it shall be the duty of an attorney 'never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.' The presentation to a court of a statement of fact known to be false presumes an intent to secure a determination based upon it and is a clear violation of the quoted provision.... The lack of direct evidence of an intent to deceive or that the petitioner acted out of malice or with the hope of profit does not, as contended by him, compel a determination in his favor. Nor is the fact that no one was deceived or damaged a defense to the charges of the State Bar." (See also *In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174-175.)

Although the court finds that Respondent is culpable of a willful violation of section 6068, subdivision (d), because the facts giving rise to that culpability are the same as those underlying the court's finding, above, that Respondent is also culpable of the more serious charge of an act of moral turpitude, the court finds no need to assess any additional discipline as

a consequence of it. (See *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390, 403.)

Count 3 - Section 6106 [Moral Turpitude – Misrepresentation to Client]

Between May 2010 and March 2011, Respondent did not inform Rivas, directly or indirectly, that he had been suspended from the practice of law effective on May 29, 2010; that a Substitution of Attorney form had been filed on June 25, 2011, substituting Park as attorney of record in place of Respondent; or that Park was the attorney of record representing Rivas in *Rivas v. J.B. Hunt*.

During that same period of time, Park told Respondent on several occasions that Respondent needed to inform Rivas of Respondent's suspension, but Respondent nonetheless failed to do so. Unfortunately, Park also did not tell Rivas of the true situation. As a result, Rivas continued to believe that Respondent was acting as her attorney, although such was not the case.

By failing to tell his client that he had been suspended from the practice of law, that a Substitution of Attorney form had been filed substituting Park as attorney of record in place of Respondent, and that Park was the attorney of record representing Rivas, Respondent knowingly misled Rivas into believing that Respondent remained her attorney of record in *Rivas v. J.B. Hunt*. It was not until April 2011, when Rivas' family relative and representative, Nelson Cordova, called and asked Respondent why Park was asking for a meeting with Rivas instead of Respondent, that Respondent first disclosed to Rivas that his license to practice law had been suspended and that Park was the attorney of record in *Rivas v. J.B. Hunt*.

Acts of moral turpitude include omissions, concealment and affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315; *In the Matter of Wells*

(Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910.) “No distinction can . . . be drawn among concealment, half-truth, and false statement of fact.” (*In the Matter of Chesnut, supra*, 4 Cal. State Bar Ct. Rptr. at p. 174 [citations omitted]; see also *In the Matter of Wells, supra*, 4 Cal. State Bar Ct. Rptr. at p. 910 [moral turpitude includes creating false impression by concealment as well as by affirmative misrepresentations].) By failing to tell Rivas that he had been suspended from the practice of law and misleading her to believe that he remained her attorney of record, Respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Count 4 – Section 6068 Subd. (m) [Failure to Inform Client of Significant Developments]

Section 6068, subdivision (m), obligates an attorney 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 tell his client that he had been suspended from the practice of law, that a Substitution of Attorney form had been filed substituting Park as attorney of record in place of Respondent, and that Park was the attorney of record representing Rivas, Respondent failed to keep his client advised on significant developments in her case, in willful violation of section 6068 subdivision (m). However, because the facts giving rise to this violation are the same as those underlying the court’s finding that Respondent is also culpable of the more serious charge of an act of moral turpitude, the court finds no need to assess any additional discipline as a consequence of it.

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Count 5 - Section 6106 [Moral Turpitude – Misrepresentation to Court]
Count 6 – Sections 6068 Subd.(a), 6125, 6126 [Unauthorized Practice of Law]
Count 7 - Section 6106 [Moral Turpitude – Misrepresentation to the State Bar]

In these counts, the State Bar alleges that Respondent appeared in court on the *Rivas* matter on October 14, 2010, at a time when he was suspended from the practice of law. In support of that contention, it relies on a minute order of the court, which states, “Court informed by Jonathan Rhee, making a special appearance for Plaintiff counsel Peter Park, that Mr. Park is ill and cannot be present this day.” In addition, the State Bar called as a witness at trial the opposing attorney in the *Rivas* matter, who testified that Respondent had made a special appearance that day for Park. Based on this evidence, the State Bar alleged that Respondent violated section 6106 by making a false representation to the court that he was authorized to make an appearance (Count 5); that he violated the sections prohibiting the unauthorized practice of the law (Count 6); and that he made a misrepresentation to the State Bar when he reported in response to a State Bar inquiry that he had not made any court appearance since the commencement of his suspension (Count 7).

The evidence fails to be clear and convincing that Respondent’s presence or actions in the courtroom on October 14, 2010, constituted an “appearance” by him as an attorney or that his communications with the court at that time fell within the prohibition of the rules against the unauthorized practice of the law.

Respondent testified that he traveled to the courthouse on October 14, 2010, because attorney Park was subject to an Order to Show Cause re Sanctions, issued on August 30, 2010, and requiring Park to be present at the October 14, 2010 hearing. On the morning of October 14, Respondent learned that Park was sick and was completely unable to attend the hearing. Respondent’s sole purpose in going to the hearing was to inform the court personally of the

reason why Park could not be there that day; it was not to make an appearance for Park or on behalf of Rivas. He further testified that he informed the court when he first got there that morning that he was not entitled to practice. While the Minute Order is quite ambiguous in its language, that language is not inconsistent with Respondent's recitation of what happened.

Once it was obtained by Respondent's new attorney, Respondent's recollection was corroborated by the transcript of the hearing. The transcript shows that the *Rivas* matter was actually called by the court twice on the morning of October 14. Respondent was present both times. The reason why the matter was called twice was because the opposing attorney, who appeared to testify against Respondent in this matter, was late to court and was not present when the *Rivas* matter was first called. That means that she was also not present when Respondent informed the court that he was not eligible to practice or appear as counsel at the hearing. The transcript for when the matter was first called that morning makes clear that Respondent had already conducted an off-the-record conversation with the court about the fact that Park was ill and would not be appearing. It was during that initial conversation that Respondent told the court that he was not eligible to practice. As a result, when the court then first called the matter, the court did not ask Respondent to make an appearance. Instead, the court just said, "What is your name." At no time in this first session did Respondent purport to make an appearance in the case or act as an attorney. As he described his role accurately while testifying in this matter, he was merely serving as a messenger. At the end of this first session, which probably lasted well less than a minute, the court put the case over to the "second call" to "wait for the defense."

When the case was called by the court for the second time later that morning, the opposing attorney had now shown up. The transcript shows that the court summoned Respondent to participate in the hearing and then introduced him to opposing counsel as follows:

“Counsel, Mr. Rhee here, who is Mr. Park’s paralegal, advised that Mr. Park is ill today and cannot be here.” Once again, Respondent did not purport to make an appearance on behalf of Park at this hearing or to act as the attorney for Rivas. Instead, his only comments were in response to direct questions posed to him by the court regarding Park’s illness. The entire hearing probably lasted less than a minute.

Counts 5, 6, and 7 of case No. 11-O-13309 are dismissed with prejudice.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)³ The court finds the following with regard to aggravating factors.

Prior Discipline

Respondent has three prior instances of discipline.

On January 12, 1995, the Supreme Court filed Order No. S043171 (State Bar case No. 91-O-08964), suspending Respondent from the practice of law for one year, stayed, with two years’ probation, including 30 days of actual suspension, for failing to perform, failing to promptly release a client’s file, and failing to maintain client funds in trust.

On May 4, 2007, the Supreme Court filed Order No. S150640 (State Bar Court case Nos. 05-O-02605; 05-O-00458; 06-O-10082; 06-O-13487 (Cons.)), suspending Respondent from the practice of law for one year, stayed, with two years’ probation, including six months’ actual suspension, for failing to perform, failing to maintain client funds in trust, and commingling personal funds in his client trust account.

³ All further references to standard(s) or std. are to this source.

On April 29, 2010, as previously noted, the Supreme Court issued an order in *In re John Wongoo Rhee*, Supreme Court Order No. S180459 (State Bar Court Case Nos. 07-N-14065 and 07-O-14294). This order suspended Respondent from the practice of law for two years, stayed, and placed Respondent on probation for three years on conditions including an actual suspension of one year. This discipline resulted from Respondent's failure to comply timely with the requirements of California Rules of Court, rule 9.20, as required by Supreme Court Order S150640, and his failure to comply with several of the conditions of his probation ordered by the Supreme Court in that matter.

Respondent's record of three prior disciplines is an extremely serious aggravating circumstance. (Std. 1.2(b)(i).)

Multiple Acts of Misconduct

Respondent has been found culpable of multiple counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with regard to mitigating factors.

Emotional Difficulties

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.2(e)(iv); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Respondent testified that he was depressed during the time that the above misconduct occurred due to his

relationship with a former girlfriend. A review of the July 2009 State Bar Court decision leading to the third disciplinary order reveals that Respondent was given mitigation at that time for this same claim.

In the current matter, however, there was no expert testimony or other convincing evidence, showing the required nexus between Respondent's claimed emotional problems and his current misconduct. Nor was there sufficient evidence for this court to conclude that any emotional problems suffered by Respondent in the past have now been satisfactorily resolved. Accordingly, the court declines to find Respondent's depression to be a mitigating factor.

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 court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier, supra*, (Review Dept. 1991) 1 Cal.

State Bar Ct. Rptr. at p. 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.)

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: "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."

Also applicable is standard 2.3, which 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." Acts of moral turpitude by an attorney are grounds for suspension or disbarment even if no harm results. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. at 211, 220.)

The State Bar urges that the protection of the public and the profession requires that Respondent be disbarred, and this court agrees. Respondent's most recent misconduct took place after he had been previously disciplined on three different occasions. It took place within a

month after the Supreme Court had issued the third order of discipline and continued while Respondent was suspended and on probation. That third order of discipline resulted from Respondent's violations of the conditions of his prior probation.

Such a track record of ongoing indifference by Respondent to his obligations as an attorney makes clear that imposition at this point of any discipline less than disbarment will not operate to persuade Respondent to comply with his professional obligations. While there was a valid basis for this court in 2009 to recommend that standard 1.7(b) not be applied (when Respondent's third violation consisted only of relatively minor probation violations), such is not the case now, where there has been continuing misconduct by Respondent after that last discipline and the misconduct has included acts of moral turpitude directed at a client and the courts. In sum, it is the strong view of this court that disbarment is both appropriate and necessary to protect the public, the courts and the legal profession.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **JOHN WONGOO RHEE**, Member No. 114109, 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.

Sanctions

The court also recommends that Respondent pay court-ordered sanctions, totaling \$8, 147.20, to J. Scott Souders.

California Rules of Court, Rule 9.20

The court further recommends that Respondent 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.

Costs and Other Reimbursements

The court further recommends that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **JOHN WONGOO RHEE**, Member No. 114109, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)⁴

Dated: November _____, 2012.

DONALD F. MILES
Judge of the State Bar Court

⁴ An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or even to hold himself or herself out as entitled to practice law. (*Ibid.*) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)