

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

|                            |   |                                      |
|----------------------------|---|--------------------------------------|
| In the Matter of           | ) | Case Nos.: <b>09-O-13877-RAP</b>     |
|                            | ) | (09-O-14121; 09-O-14583;             |
| <b>LEE ALLEN McCOY,</b>    | ) | 09-O-15010; 09-O-15310;              |
|                            | ) | 09-O-16210; 09-O-16457;              |
| <b>Member No. 153631,</b>  | ) | 10-O-02487); 10-O-04348;             |
|                            | ) | 10-O-10929 (Cons.)                   |
| A Member of the State Bar. | ) |                                      |
|                            | ) | <b>DECISION INCLUDING DISBARMENT</b> |
|                            | ) | <b>RECOMMENDATION AND ORDER OF</b>   |
|                            | ) | <b>INVOLUNTARY INACTIVE</b>          |
|                            | ) | <b>ENROLLMENT</b>                    |

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**I. INTRODUCTION<sup>1</sup>**

In this contested, original disciplinary proceeding, respondent **Lee Allen McCoy** is charged with 55 counts of misconduct in 10 client matters. Respondent was represented by Theodore A. Cohen, Esq. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Ashod Mooradian.

Having considered the facts and the law, the court finds respondent culpable of 54 counts of misconduct and recommends that he be disbarred from the practice of law.

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

## **II. PROCEDURAL HISTORY**

The State Bar initiated this proceeding by filing a notice of disciplinary charges (NDC #1) on December 21, 2010. Respondent filed a response to the NDC #1 on March 3, 2011. The State Bar filed a second notice of disciplinary charges (NDC #2) on April 22, 2011. The respondent filed a response to NDC #2 on June 1, 2011. The State Bar filed a third notice of disciplinary charges (NDC #3) on September 23, 2011. Respondent did not file a response to NDC #3. The matters were consolidated for all purposes on October 12, 2011.

Trial was held on November 14 and 15, 2011. The case was submitted for decision at the conclusion of trial.

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

### **A. Jurisdiction**

Respondent was admitted to the practice of law in the State of California on June 28, 1991. He was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

### **B. Credibility Determinations**

With respect to the credibility of the witnesses, the court has carefully weighed and considered their demeanor while testifying; the manner in which they testified; their personal interest or lack thereof in the outcome of this proceeding; and their capacity to accurately perceive, recollect, and communicate the matters on which they testified. (See, e.g, Evid. Code section 780 [list of factors to consider in determining credibility].) Except as otherwise noted, the court found the testimony of the witnesses to be credible.

### **C. Respondent's Suspension and Inactive Enrollment**

On June 11, 2009, the California Supreme Court issued an order in case no. S173613, suspending respondent from the practice of law for his failure to pay his State Bar membership

fees for calendar year 2009. Respondent received the order by June 19, 2009, but intentionally failed to open the letter. Respondent was aware that he had not paid his membership dues.

The Supreme Court's June 11, 2009 order became effective on July 1, 2009. That same day, respondent was also enrolled inactive due to his failure to comply with the minimum continuing legal education (MCLE) requirements. The aforementioned suspension and inactive enrollment have remained in effect to the present day.

By July 1, 2009, respondent knew or should have known that he was suspended and enrolled inactive. The court finds that respondent acted with gross negligence by intentionally failing to open the envelope containing the Supreme Court order.

#### **D. Case No. 09-O-13877 – The Simmonds Matter**

##### **Facts**

On April 14, 2009, Paul Simmonds (Simmonds) hired respondent to defend him against criminal charges for driving while under the influence of alcohol (DUI). A fee agreement was signed by respondent and Simmonds for a fixed fee of \$4,000 for defense of the DUI charges and for representation before the Department of Motor Vehicles (DMV) concerning any restrictions to be imposed on Simmonds' California Driver License.

The fee agreement called for \$2,000 to be paid forthwith, and the remaining \$2,000 to be paid no later than June 14, 2009. Simmonds paid the first \$2,000 on April 16, 2009.

By April 30, 2009, respondent had notified Simmonds that his DMV hearing would be on May 27, 2010, and that Simmonds could appear by telephone from his home in Connecticut. Respondent also informed Simmonds that his arraignment for the DUI charges would be on June 19, 2009, and that Simmonds need not attend.

On May 27, 2009, respondent failed to attend the DMV hearing. The hearing officer attempted to telephone respondent, but there was no answer at the telephone number which respondent had provided to the DMV. Simmonds' default was entered, and his driving privileges were suspended from June 6, 2009 through October 5, 2009, and until he completed a licensed

DUI program and paid a license re-issue fee. Notice of the suspension was mailed to respondent on May 28, 2009, and was received by respondent on May 29, 2009. Respondent did not inform Simmonds of the suspension or respondent's failure to attend the DMV hearing.

On June 19, 2009, respondent failed to appear at Simmonds' arraignment on the DUI charges. A bench warrant was issued for Simmonds' arrest. The court's orders were mailed to respondent that same day and were received by respondent on June 22, 2009. Respondent did not inform Simmonds of the bench warrant or respondent's failure to attend the arraignment.

As noted above, respondent's suspension from the practice of law in the State of California became effective on July 1, 2009. Respondent never informed Simmonds of his suspension from the practice of law.

On July 3, 2009, the DMV issued a second Order of Suspension for Simmonds' failure to appear for his arraignment, suspending his driving privileges until the Superior Court reported to the DMV that respondent had appeared in court and the bench warrant was recalled. Simmonds received the DMV order on July 6, 2009.

On July 8, 2009, Simmonds telephoned respondent and left a message terminating his services, notifying respondent that he had hired new counsel, demanding a refund of his \$2,000, and notifying respondent that he was filing a complaint with the State Bar of California. Respondent received the message.

On July 9, 2009, respondent called the Superior Court, identified himself as Simmonds' attorney, and requested a hearing for recall of the bench warrant for Simmonds' arrest. The clerk calendared a hearing for the next day. Also on July 9, 2009, respondent sent a letter to the DMV requesting a new hearing for Simmonds.

On July 10, 2009, respondent sent another attorney to the hearing and obtained a continuance until July 20, 2009. On July 20, 2009, Simmonds' new counsel appeared in court and was substituted into the case.

On July 9, 2009, Simmonds sent a formal complaint to the California State Bar concerning respondent's failure to provide legal services.

On July 14, 2009, respondent sent an email to Simmonds, in which respondent acknowledged that his services were terminated, and he requested instructions on where to deliver the client file. The second and third sentences of that email read, “I would only ask that you withdraw the State Bar complaint and allow me to make it right between us. I know it did not seem like you had any option at the time, but I would like to give you that option now.”

Respondent provided no services of any value to Simmonds. As a result, he did not earn any part of the advanced fee paid to him and he owes Simmonds a refund of \$2,000. After receiving Simmonds’ July 8, 2009 telephone message demanding a refund, respondent failed to return the unearned fees. Respondent has yet to refund any portion of the unearned fees paid by Simmonds. Respondent also failed to provide Simmonds with an accounting for the \$2,000 in advanced fees.

On July 21, 2009, the State Bar opened an investigation, case no. 09-O-13877, pursuant to a complaint from Simmonds. On September 2, 2009, a State Bar investigator mailed respondent a letter requesting a written response to Simmonds’ allegations no later than September 16, 2009. The letter was mailed to respondent’s State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On September 28, 2009, a State Bar investigator mailed respondent a second letter requesting a written response to Simmonds’ allegations no later than October 12, 2009. The second letter was mailed to respondent’s State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

### **Conclusions of Law**

#### ***Count 1 – Rule 3-110(A) – Failure to Perform With Competence***

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By failing to appear for Simmonds at the DMV hearing on May 27, 2009, and failing to appear for his arraignment on June 19, 2009, respondent recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

***Count 2 – Section 6068, Subdivision (a) – Unauthorized Practice of Law***

Section 6068, subdivision (a) provides that an attorney has a duty to support the laws of the United States and of this state. Section 6125 prohibits the practice of law by anyone other than an active attorney and section 6126 prohibits holding oneself out as entitled to practice law by anyone other than an active attorney.

By telephoning the court clerk and calendared a hearing for Simmonds, sending a letter to the DMV requesting a new hearing for Simmonds, and sending an email to Simmonds informing him of the hearing and his plan to enter a not guilty plea, respondent held himself out as entitled to practice law and actually practiced law while he was not entitled, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of section 6068, subdivision (a).

***Count 3 – Section 6106 – Moral Turpitude***

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption. While moral turpitude generally requires a certain level of intent, guilty knowledge, or willfulness, a finding of gross negligence will support such a charge where an attorney's fiduciary obligations, particularly trust account duties, are involved. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 410.)

By holding himself out as entitled to practice law and by failing to inform Simmonds of his suspension from the practice of law when he knew he was no longer an active member of the State Bar, respondent willfully misrepresented that his State Bar membership was active, and thereby committed acts involving moral turpitude or dishonesty, in willful violation of section 6106.

***Count 4 – Section 6090.5 – Seek Agreement to Withdraw Disciplinary Complaint***

Section 6090.5(a)(2) provides that it is cause for suspension, disbarment, or other discipline for any member, whether as a party or as an attorney for a party, to seek agreement that the

plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the disciplinary agency. By his email request of July 14, 2009, respondent sought withdrawal of a complaint to a disciplinary agency, in willful violation of section 6090.5.

***Count 5 – Section 6068, Subdivision (m) – Failure to Communicate***

Section 6068, subdivision (m) provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to inform Simmonds of the suspension of his California Driver’s License due to respondent’s failure to appear at the DMV hearing, the issuance of the bench warrant for his arrest, and respondent’s suspension from the practice of law after July 1, 2009, respondent failed to keep Simmonds reasonably informed of significant developments in his case, in willful violation of section 6068, subdivision (m).

***Count 6 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly refund any part of a fee paid in advance that has not been earned. By not returning any of the legal fees paid in advance by Simmonds, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

***Count 7 – Rule 4-100(B)(3) – Failure to Render Accounting***

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney’s possession. By failing to provide Simmonds with an accounting, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent’s possession, in willful violation of rule 4-100(B)(3).

***Count 8 – Section 6068, Subdivision (i) – Failure to Cooperate***

Section 6068, subdivision (i), provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations in case no. 09-O-13877 or otherwise cooperating in the

investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

#### **E. Case No. 09-O-14121 – The Rhea Matter**

##### **Facts**

On April 22, 2009, the DMV suspended the driving privileges of Michelle Rhea (Rhea) after a hearing concerning her DUI arrest. The suspension was subject to administrative review by the Superior Court, if a petition were to be filed by May 22, 2009.

On May 5, 2009, Rhea hired respondent to seek administrative review of the DMV decision by the Superior Court. Respondent and Rhea signed a fee agreement for a fixed fee of \$4,500. Rhea paid respondent \$5,000 that day, which included \$500 as an advance for costs.

Respondent had actual knowledge of the May 22, 2009 deadline when Rhea hired him. Respondent promised to present documents no later than May 8, 2009, for Rhea to sign, but he never did any work on her case.

On May 5, 2009, respondent took Rhea's check for \$5,000 to her bank, where he endorsed it and received \$5,000 in cash. Five hundred dollars of that amount was an advance for costs, which respondent was required to deposit into his client trust account. Respondent never deposited any of Rhea's funds into his client trust account, but spent all \$5,000 for his personal expenses. Respondent has never refunded any part of the \$5,000. Respondent dishonestly or with gross negligence misappropriated the \$500 which Rhea paid him as an advance for costs.

On May 14, 2009, Rhea sent three separate emails to respondent requesting a status report. Respondent did not reply to any of the emails until the morning of May 21, 2009, when he sent a short email promising only to call her that afternoon or the next morning, which was the day of the filing deadline. Rhea never heard from respondent again.

On May 21, 2009, Rhea sent respondent another email, which expressed her concern that she had heard nothing from him and the filing deadline was the next day. She asked for a status report and further stated that, if respondent had filed nothing, he was to refund her \$5,000 immediately so she could hire new counsel. Respondent received the May 21, 2009 email.



Respondent did not reply to Rhea's email of May 21, 2009, and he did not make the telephone call he promised to make on the afternoon of May 21, 2009, or the morning of May 22, 2009. Respondent did not file the petition for administrative review by the Superior Court, and he thus allowed Rhea's right to review to expire as of May 22, 2009.

Respondent provided no services of any value to Rhea. As a result, he did not earn any part of the advanced fee paid to him and he owes Rhea a refund of \$4,500. Respondent has yet to refund any portion of the advanced fee to Rhea.

On July 31, 2009, the State Bar opened an investigation, case no. 09-O-14121, pursuant to a complaint from Rhea. On August 19, 2009, a State Bar investigator mailed respondent a letter requesting a written response to Rhea's allegations no later than September 2, 2009. The letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On September 28, 2009, a State Bar investigator mailed respondent a second letter requesting a written response to Rhea's allegations no later than October 12, 2009. The second letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

### **Conclusions of Law**

#### ***Count 9 – Rule 3-110(A) – Failure to Perform With Competence***

By failing to prepare and file Rhea's petition for administrative review, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***Count 10 – Section 6068, Subdivision (m) – Failure to Communicate***

By failing to provide Rhea with any information concerning the status of her petition for review in response to her three emails of May 14, 2009, and her email of May 21, 2009, respondent failed to respond promptly to reasonable status inquiries of a client, in willful violation of section 6068, subdivision (m).

***Count 11 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not returning any of the legal fees paid in advance by Rhea, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

***Count 12 – Rule 4-100(B)(3) – Failure to Render Accounting***

By failing to provide any accounting in response to Rhea’s May 21, 2009 email, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent’s possession, in willful violation of rule 4-100(B)(3).

***Count 13 – Rule 4-100(A) – Failure to Deposit Client Funds in Trust Account***

Rule 4-100(A) provides that all funds received for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney must be deposited therein or otherwise commingled therewith. By taking Rhea’s \$500 as cash which he spent and never repaid, respondent failed to deposit funds received for the benefit of a client in a bank account labeled “Trust Account,” “Client’s Funds Account,” or words of similar import, in willful violation of rule 4-100(A).

***Count 14 – Section 6106 – Moral Turpitude***

By misappropriating \$500 from Rhea, respondent willfully committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

***Count 15 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-14121 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

**F. Case No. 09-O-14583 – The Thomas Matter**

**Facts**

On July 8, 2009, Paul Thomas (Thomas) visited respondent’s internet website, www.dmv-writs.com, which stated that respondent was experienced and available for the representation of clients for DUI offenses. Thomas had been arrested on July 4, 2009, and had pending hearings in

criminal court and before the DMV. Thomas left a message on the website for respondent to contact him regarding legal representation.

On July 9, 2009, respondent sent Thomas an email containing an offer to attend the DMV hearing for “much less than I would charge to do the court case as well.” Respondent also suggested that Thomas have a public defender handle the court case.

On July 9, 2009, Thomas hired respondent by telephone to represent him in the DMV matter. They agreed to a fixed fee of \$1,000. Thomas said he had only \$720 “until payday,” but respondent said he would begin as soon as Thomas wired him the \$720. Thomas wired the \$720 to respondent that same day.

Since he was not entitled to practice law, it was illegal for respondent to enter into an agreement to provide legal services for pay, charge a fee for such services, or collect any fee for such services.

On July 13, 2009, Thomas sent respondent an email requesting a written fee agreement, requesting advice on whether to attend Alcoholics Anonymous, and promising to pay the balance of \$280 on July 18, 2010. Respondent received the email, but he did not reply to the email.

On July 15, 2009, Thomas telephoned respondent and left a message requesting a status report. Respondent received the telephone message, but respondent did not reply to it.

On July 21, 2009, Thomas hired new counsel. That same day, the new counsel telephoned respondent and left a message notifying him that his services were terminated and requesting a return call to discuss the case. Respondent received the telephone message, but did not reply.

Respondent provided no services of any value to Thomas. As a result, he did not earn any part of the \$720 paid to him. Respondent has not refunded anything to Thomas, and still owes Thomas \$720.

On August 18, 2009, the State Bar opened an investigation, case no. 09-O-14583, pursuant to a complaint from Thomas. On September 2, 2009, a State Bar investigator mailed respondent a letter requesting a written response to Thomas’ allegations no later than September 16, 2009. The

letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On September 28, 2009, a State Bar investigator mailed respondent a second letter requesting a written response to Thomas' allegations no later than October 12, 2009. The second letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

### **Conclusions of Law**

#### ***Count 16 – Section 6068, Subdivision (a) – Unauthorized Practice of Law***

By representing that he was entitled to practice law and charging and collecting advanced fees for legal services, respondent held himself out as entitled to practice law while he was not entitled, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

#### ***Count 17 – Section 6106 – Moral Turpitude***

Respondent knew or should have known he was no longer an active member of the State Bar. By falsely representing to Thomas that he was entitled to practice, respondent misrepresented the status of his State Bar membership, and thereby committed acts involving moral turpitude or dishonesty, in willful violation of section 6106.

#### ***Count 18 – Rule 4-200(A) – Illegal Fee***

Rule 4-200(A) states that a member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee. Attorneys are not entitled to charge or collect fees for services that constitute the unauthorized practice of law. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 904.) By charging \$1,000 and collecting \$720 for legal services while respondent was unauthorized to practice law, respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).

***Count 19 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not refunding any of the illegal fees paid in advance by Thomas, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

***Count 20 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-14583 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

**G. Case No. 09-O-15010 – The Garcia Matter**

**Facts**

On April 16, 2009, Eduardo Garcia (Garcia) hired respondent to defend him on a DUI matter. A fee agreement was signed by respondent and Garcia for a fixed fee of \$4,000 for defense of the DUI charges and for representation before the DMV concerning any restrictions to be imposed on Garcia's California Driver License.

The fee agreement called for \$2,000 to be paid forthwith, and the remaining \$2,000 to be paid no later than May 16, 2009. Garcia paid the first \$2,000 on April 16, 2009, paid another \$1,000 on June 1, 2009, and paid another \$500 on June 12, 2009, for total payments to respondent of \$3,500.

By April 30, 2009, respondent had notified Garcia that his DMV hearing would be on May 27, 2010, and that Garcia need not attend. Respondent also informed Garcia that his arraignment for the DUI charges would be on May 8, 2009, and that Garcia need not attend. The arraignment was subsequently continued to July 20, 2009.

On May 27, 2009, respondent failed to attend the DMV hearing. Garcia's default was entered, and his driving privileges were suspended from June 7, 2009 through October 6, 2009, and until he completed a licensed DUI program and paid a license re-issue fee. Notice of the suspension was mailed to respondent on May 29, 2009, and was received by respondent on June

2, 2009. Respondent did not inform Garcia of the suspension or respondent's failure to attend the DMV hearing. Respondent took no action to obtain a rehearing for Garcia.

On July 9, 2009, respondent sent a status report to Garcia by email. Respondent reported that he had requested another DMV hearing, and he would attempt to settle the DUI case at Garcia's arraignment the next day. Respondent held himself out to Garcia as still entitled to practice law and did not tell Garcia he had been suspended from the practice of law.

On July 10, 2009, respondent sent another attorney to Garcia's arraignment and obtained a continuance until July 20, 2009.

On July 20, 2009, respondent failed to appear at Garcia's arraignment on the DUI charges, and did not send another attorney to appear for Garcia. A bench warrant was issued for Garcia's arrest. The court's orders were mailed to respondent that same day and were received by respondent on July 21, 2009. Respondent did not inform Garcia of the bench warrant or respondent's failure to attend the arraignment.

On July 27, 2009, Garcia sent respondent an email in which Garcia terminated respondent's employment.

Respondent did not inform Garcia of: (1) his suspension from the practice of law; (2) his failure to attend the DMV hearing on May 27, 2009; (3) his failure to attend the arraignment on July 20, 2009, or send suitable substitute counsel; and (4) the issuance of a bench warrant for Garcia's arrest.

On July 27, 2009, Garcia sent respondent a letter in which Garcia requested an accounting and a refund of any unearned fees. Respondent received the letter, but provided no accounting or refund to Garcia.

Respondent provided no services of any value to Garcia. As a result, he did not earn any part of the advanced fee paid to him and he owes Garcia a refund of \$3,500.

On September 2, 2009, the State Bar opened an investigation, case no. 09-O-15010, pursuant to a complaint from Garcia. On September 24, 2009, a State Bar investigator mailed respondent a letter requesting a written response to Garcia's allegations no later than October 8,

2009. The letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On October 13, 2009, a State Bar investigator mailed respondent a second letter requesting a written response to Garcia's allegations no later than October 27, 2009. The second letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

### **Conclusions of Law**

#### ***Count 21 – Rule 3-110(A) – Failure to Perform With Competence***

By failing to appear for Garcia at the DMV hearing on May 27, 2009, and failing to take prompt corrective action to obtain a new DMV hearing for Garcia, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***Count 22 – Section 6068, Subdivision (m) – Failure to Communicate***

By failing to inform Garcia of: (1) his suspension from the practice of law; (2) his failure to attend the DMV hearing on May 27, 2009; (3) his failure to attend the arraignment on July 20, 2009 or send suitable substitute counsel; and (4) the issuance of a bench warrant for Garcia's arrest, respondent failed to keep Garcia reasonably informed of significant developments in his case, in willful violation of section 6068, subdivision (m).

#### ***Count 23 – Section 6068, Subdivision (a) – Unauthorized Practice of Law***

By advising Garcia on his DUI matter on July 9, 2009, respondent held himself out as entitled to practice law and actually practiced law while he was not entitled, in willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of section 6068, subdivision (a).

#### ***Count 24 – Section 6106 – Moral Turpitude***

By holding himself out as entitled to practice law when he knew that he was no longer an active member of the State Bar, respondent willfully misrepresented that his State Bar membership

was active, and thereby committed acts involving moral turpitude or dishonesty, in willful violation of section 6106.

***Count 25 – Rule 4-100(B)(3) – Failure to Render Accounting***

By not providing an accounting to Garcia after termination of his employment, respondent failed to render appropriate accounts to a client of all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

***Count 26 – Rule 3-700(D)(2) – Failure to Refund Unearned Fee***

By not refunding any of the legal fees paid in advance by Garcia, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

***Count 27 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-15010 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

**H. Case No. 09-O-15310 – The Asghar Matter**

**Facts**

On May 11, 2009, Toheed Asghar (Asghar) consulted respondent about filing a petition for administrative review of an adverse ruling by the DMV concerning restrictions on his California Driver's License. Respondent offered to perform the legal services for a fixed fee of \$4,500, with an immediate payment of \$2,500 and the balance of \$2,000 due on July 31, 2009. Asghar declined the offer.

On July 7, 2009, Asghar offered to hire respondent for a total of \$5,000, with \$2,000 down, \$2,000 by August 31, 2009, and \$1,000 after successful completion. On July 9, 2009, respondent accepted, but with the condition that the first payment would be \$3,000 and the other two payments would be \$1,000 each. Asghar declined respondent's counteroffer.



On July 15, 2009, respondent and Asghar reached an oral agreement whereby respondent would perform the services for a fixed fee of \$4,000, with \$2,000 down and \$2,000 by August 31, 2009. Asghar paid respondent the \$2,000 on July 15, 2009.

Since he was not entitled to practice law, it was illegal for respondent to enter into an agreement to provide legal services for pay, charge a fee for such services, or collect any fee for such services.

On July 20, 2009 and July 22, 2009, Asghar sent respondent emails requesting a status report. Respondent received both emails, but he did not reply to them.

On July 24, 2009, Asghar learned of respondent's suspension from the practice of law. He sent respondent an email that day terminating his services and demanding a full refund. Respondent has never replied and has never paid any refund.

Respondent provided no services of any value to Asghar. As a result, he did not earn any part of the \$2,000 paid to him. Respondent has not refunded anything to Asghar, and still owes Asghar \$2,000.

On September 9, 2009, the State Bar opened an investigation, case no. 09-O-15310 pursuant to a complaint from Asghar. On September 24, 2009, a State Bar investigator mailed respondent a letter requesting a written response to Asghar's allegations<sup>2</sup> no later than October 8, 2009. The letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On October 13, 2009, a State Bar investigator mailed respondent a second letter requesting a written response to Asghar's allegations<sup>3</sup> no later than October 27, 2009. The second letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

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<sup>2</sup> The stipulation contains a minor typographical error labeling this as Thomas' allegations.

<sup>3</sup> The stipulation contains a minor typographical error labeling this as Thomas' allegations.

## **Conclusions of Law**

### ***Count 28 – Section 6068, Subdivision (a) – Unauthorized Practice of Law***

By holding himself out as entitled to practice law, entering into an agreement for legal services, charging \$4,000 for legal services, and collecting \$2,000 as an advanced fee for legal services, respondent willfully violated sections 6125 and 6126 and failed to support the laws of California, in willful violation of section 6068, subdivision (a).

### ***Count 29 – Section 6106 – Moral Turpitude***

By holding himself out as entitled to practice when he knew or should have known that he was no longer an active member of the State Bar, respondent willfully misrepresented that his State Bar membership was active, and thereby committed acts involving moral turpitude or dishonesty, in willful violation of section 6106.

### ***Count 30 – Rule 4-200(A) – Illegal Fee***

By entering into an unlawful contract for illegal fees, charging an illegal fee of \$4,000, and collected an illegal fee of \$2,000, respondent entered into an agreement for, charged, and collected an illegal fee, in willful violation of rule 4-200(A).

### ***Count 31 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not refunding any of the legal fees paid in advance by Asghar, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

### ***Count 32 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-15310 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

## **I. Case No. 09-O-16210 – The Pengal Matter**

### **Facts**

On May 13, 2009, Kenneth Pengal (Pengal) hired respondent to file a petition for an administrative writ against the DMV after Pengal's driving privileges were suspended for one

year. They agreed to a fixed fee of \$5,000, with an immediate payment of \$2,500 and the balance to be paid within one month. Pengal paid the \$2,500 on May 13, 2009.

Thereafter, respondent did not work on Pengal's case. On June 8, 2009, Pengal telephoned respondent for a status report, and respondent told him that the necessary documents to support the petition would be mailed to Pengal "right away." Pengal never heard from respondent again despite his attempts to contact respondent after June 8, 2009.

Respondent abandoned Pengal's case and effectively terminated his representation of Pengal on June 8, 2009, by doing no work on his case and failing to provide him with the documents. Thereafter, Pengal tried to telephone respondent and respondent's telephone number was disconnected. Respondent did not provide Pengal with a new telephone number where he could be reached.

Respondent never informed Pengal that he did not intend to complete the work on Pengal's case after June 8, 2009. Respondent did not inform Pengal that his telephone number would be disconnected and that Pengal would no longer be able to reach him.

Respondent provided no services of any value to Pengal. As a result, he did not earn any part of the advanced fee paid to him. Respondent effectively terminated his employment when he abandoned Pengal's case on June 8, 2009. Respondent has not refunded anything to Pengal, and still owes Pengal \$2,500.

On October 1, 2009, the State Bar opened an investigation, case no. 09-O-16210, pursuant to a complaint from Pengal. On May 13, 2010, a State Bar investigator mailed respondent a letter requesting a written response to Pengal's allegations no later than May 24, 2010. The letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On June 2, 2010, a State Bar investigator mailed respondent a second letter requesting a written response to Pengal's allegations no later than June 16, 2010. The second letter was mailed to respondent's State Bar membership records address, but it was returned as undeliverable by the U.S. Postal Service because respondent had moved without providing a forwarding address.

## **Conclusions of Law**

### ***Count 33 – Rule 3-110(A) – Failure to Perform With Competence***

By failing to send Pengal the documents necessary to support his petition for administrative review and failing to prepare and file the petition, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

### ***Count 34 – Section 6068, Subdivision (m) – Failure to Communicate***

By failing to inform Pengal that he did not intend to complete the work on Pengal's case and by failing to provide Pengal with a new telephone number where he could be reached once his previous telephone number had been disconnected, respondent failed to keep Pengal advised of significant developments in his case, in willful violation of section 6068, subdivision (m).

### ***Count 35 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not refunding any of the legal fees paid in advance by Pengal, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

### ***Count 36 – Rule 4-100(B)(3) – Failure to Render Accounting***

By not providing an accounting to Pengal after termination of his employment, respondent failed to render appropriate accounts to a client of all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

### ***Count 37 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-16210 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

## **J. Case No. 09-O-16457 – The Danner Matter**

### **Facts**

On June 18, 2009, Analiese Danner (Danner) hired respondent to file a petition for an administrative writ against the DMV after Danner's driving privileges were revoked. They signed a written fee agreement for a fixed fee of \$4,500, plus costs of \$551. Danner's mother paid

respondent the \$5,051 that same day for respondent to handle Danner's case. The deadline to file the petition was August 29, 2009, and respondent had actual knowledge of the deadline.

On July 20, 2009, respondent faxed Danner a copy of the verified petition for writ of mandate which he had prepared for filing in the Santa Barbara County Superior Court. The petition was dated July 20, 2009, and showed that it was to be signed by respondent as attorney for Danner. Respondent also faxed an original Declaration of Verification, which he requested Danner to sign and return. Danner signed the verification form and returned it to respondent the same day.

Respondent never filed the petition, and he allowed the filing deadline of August 29, 2009, to expire. He never informed Danner that he was suspended from the practice of law.

On August 13, 2009, and again on September 16, 2009, Danner sent letters to respondent requesting a full refund of the \$5,051. Respondent received both letters. Respondent did not reply to either letter and did not provide any refund.

Respondent provided no services of any value to Danner. As a result, he did not earn any part of the advanced fee paid to him and he owes Danner a refund of \$5,051.

Respondent's employment effectively terminated no later than July 1, 2009, since he was suspended at that time and not entitled to practice law.

On October 7, 2009, the State Bar opened an investigation, case no. 09-O-16457, pursuant to a complaint from Danner. On February 25, 2010, a State Bar investigator mailed respondent a letter requesting a written response to Danner's allegations no later than March 11, 2010. The letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

On March 11, 2010, a State Bar investigator mailed respondent a second letter requesting a written response to Danner's allegations no later than March 25, 2010. The second letter was mailed to respondent's State Bar membership records address and was received by respondent. Respondent did not reply to the letter.

## **Conclusions of Law**

### ***Count 38 – Section 6068, Subdivision (a) – Unauthorized Practice of Law***

Respondent's acts of holding himself out as an attorney to Danner, preparing the petition for writ of mandate showing himself as Danner's attorney, sending it to Danner, and advising Danner to sign its verification form were acts of unauthorized practice of law and holding himself out as entitled to practice law. By engaging in the unauthorized practice of law and holding himself out as entitled to practice law, respondent willfully violated sections 6125 and 6126, and failed to support the laws of California, in willful violation of section 6068, subdivision (a).

### ***Count 39 – Section 6106 – Moral Turpitude***

By holding himself out as an attorney to Danner, by accepting legal fees from Danner when he knew he was going to be suspended from practicing law before he could complete the work on Danner's case, by sending Danner the petition showing himself as her attorney and instructing her to sign and return the verification form, and by failing to inform Danner of his suspension from the practice of law when he knew that he was no longer an active member of the State Bar, respondent willfully misrepresented that his State Bar membership was active, and thereby committed acts involving moral turpitude or dishonesty, in willful violation of section 6106.

### ***Count 40 – Section 6068, Subdivision (m) – Failure to Communicate***

By failing to inform Danner of respondent's suspension from the practice of law, respondent failed to keep Danner reasonably informed of significant developments in her case, in willful violation of section 6068, subdivision (m).

### ***Count 41 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not refunding any of the legal fees paid in advance by Danner, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

***Count 42 – Rule 4-100(B)(3) – Failure to Render Accounting***

By failing to render accounts to Danner, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

***Count 43 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations in case no. 09-O-16457 or otherwise cooperating in the investigation, respondent failed to cooperate in a disciplinary investigation, in willful violation of section 6068, subdivision (i).

**K. Case No. 10-O-02487 – The Dolan Matter**

**Facts**

On October 31, 2006, William Dolan (Dolan) hired respondent to file a petition for writ of mandate against the DMV after Dolan's driving privileges were suspended for one year to commence on November 4, 2006.

They agreed to a fixed fee of \$3,000 plus an advance of \$500 for costs, which included the writ and a hearing for stay of the suspension pending hearing on the writ. Dolan signed the fee agreement and paid the \$3,500 on November 1, 2006. Respondent promised to file the motion for stay within one week and file the petition for writ within two weeks.

On November 28, 2006, respondent filed the petition for writ of mandate. He had process served on the DMV on December 7, 2006. Respondent did not file the ex parte application for stay of suspension until December 20, 2006. On December 22, 2006, the Superior Court granted the stay of suspension until March 22, 2007.

Thereafter respondent did not work on Dolan's case. The DMV failed to file an answer to the petition for writ, but respondent did not request its default. Respondent didn't inform Dolan that he had filed the petition for writ or that the DMV was in default.

On March 22, 2007, the DMV suspended Dolan's driver license for a full year. On March 23, 2007, respondent promised Dolan that respondent would go to court on March 26, 2007, and

obtain another stay of the suspension. However, respondent did not return to court then or at any later time on behalf of Dolan.

On July 25, 2007, respondent informed Dolan that he planned to have a court hearing on the petition for writ in mid-September, but respondent took no action.

On November 1, 2007, Dolan telephoned respondent and left a voice mail message terminating respondent's services, instructing respondent to cease all activity on Dolan's behalf, and demanding a full refund. Respondent received the telephone message. On January 8, 2008, Dolan sent a letter to respondent explaining his reasons for terminating respondent's services, and demanding a payment of \$4,000. Respondent received the January 8, 2008 letter, but did not respond to it and did not refund any of the unearned fees. On February 21, 2008, respondent had the petition for writ dismissed, 30 days before the suspension of Dolan's driving privileges expired.

On November 5, 2008, Dolan obtained a Small Claims Court default judgment against respondent for \$4,500 plus costs of \$85. The \$4,500 was calculated as the entire \$3,500 paid to respondent, plus interest of \$1,000 from November 1, 2006. The unearned fee portion of the judgment is \$3,600, consisting of the advanced fee of \$3,000 plus prejudgment interest of \$600. Respondent has thus far paid no refund to Dolan.

### **Conclusions of Law**

#### ***Count 44 – Rule 3-110(A) – Failure to Perform With Competence***

By delaying the filing of the application for stay of suspension of Dolan's driving privileges, failing to request the entry of the DMV's default, failing to otherwise prosecute the petition for writ, and delaying the dismissal of the petition for writ after Dolan terminated his services, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***Count 45 – Section 6068, Subdivision (m) – Failure to Communicate***

By failing to inform Dolan that the petition for writ had been filed, the DMV had been in default since January 9, 2007, and the next step was to request entry of the DMV's default,



respondent failed to keep Dolan reasonably informed of significant developments in his case, in willful violation of section 6068, subdivision (m).

***Count 46 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By failing to refund the unearned fees after receiving the January 8, 2008 letter from Dolan, and by failing to pay Dolan any part of the \$3,600 adjudged against him for an unearned fee, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

**L. Habitual Disregard of Client Interests**

**Facts**

Prior to the filing of this case, the State Bar filed two notices of disciplinary charges against respondent in State Bar Court case nos. 08-O-12904, 08-O-12999, 08-O-13014, 08-O-13581, 08-O-13582, 08-O-13583, 08-O-14042, 08-O-14599, 09-O-11039. These matters were consolidated for trial, and, on March 17, 2010, the State Bar Court Hearing Department issued a decision finding that respondent committed 39 counts of professional misconduct involving nine client matters.<sup>4</sup> The court found respondent culpable of misconduct, including: (1) failing to perform competently; (2) failing to release client files; (3) failing to refund unearned fees (totaling \$33,929.53); (4) failing to respond to client inquiries; (5) failing to render accounts of client funds; (6) committing acts of moral turpitude; and (7) failing to cooperate in State Bar investigations.<sup>5</sup>

Based on the hearing department's findings, the Supreme Court issued an order, in case no. S188295, suspending respondent for four years, stayed, with five-years' probation, and three years' actual suspension and/until respondent pays restitution and makes a satisfactory demonstration of rehabilitation. This order became effective on February 27, 2011.

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<sup>4</sup> Said misconduct spanned from approximately April 2006 through April 2009.

<sup>5</sup> There was no allegation of habitual disregard and no finding made concerning such an allegation in this matter.

## **Conclusions of Law**

### ***Count 47 – Section 6106 – Moral Turpitude***

The parties stipulated that the misconduct in case no. S188295, coupled with the present misconduct, demonstrate respondent's habitual disregard of clients' interests, constituting moral turpitude. The court finds that respondent's misconduct demonstrates a habitual disregard of clients' interests, but declines to base this finding on respondent's prior misconduct. The court concludes that the present matter, standing alone, sufficiently demonstrates respondent's habitual disregard for his clients' interests. (See *Farnham v. State Bar* (1988) 47 Cal.3d 429 [willfully failing to perform, misrepresenting case status, failing to communicate and failing to return unearned fees involving seven clients demonstrated habitual disregard of clients' interests]; *Simmons v. State Bar* (1970) 2 Cal.3d 719 [abandonment of three clients evidenced habitual disregard of client interest].)

The present case involves eight client matters.<sup>6</sup> In each of these matters, respondent either failed to perform legal services with competence or failed to disclose to his clients that he could not perform the services for which he was retained because of his suspension. Respondent also failed to communicate with his clients and refund their unearned or illegal fees. In short, respondent engaged in a repeated practice of taking clients' money and abandoned their interests.

By repeatedly, recklessly, and intentionally engaging in a pattern of habitual disregard of his clients, including specifically Simmonds, Rhea, Thomas, Garcia, Asghar, Pengal, Danner, and Dolan, respondent committed an act or acts involving moral turpitude, in willful violation of section 6106.

### **M. Case No. 10-O-04348 – The Mozingo Matter**

#### **Facts**

In July 2005, Dr. Ralph Mozingo (Mozingo) hired respondent to defend him in a DUI matter, and to represent him before the DMV concerning restrictions on Mozingo's driving privileges.

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<sup>6</sup> There were actually ten client matters, however, no allegations of habitual disregard of client interests were made in NDC #2 and NDC #3.

Respondent attended a DMV hearing on August 25, 2005, which resulted in a decision to suspend Mozingo's driving privileges for four months. On September 28, 2005, respondent filed a petition for writ of mandate against the DMV on behalf of Mozingo. The petition was not resolved until a hearing on February 27, 2008, and a judgment denying the petition was entered on March 10, 2008.

The criminal charges against Mozingo were dropped on November 10, 2005, because of a suppression motion filed by respondent.

On March 20, 2008, Mozingo hired respondent to file an appeal of the denial of his petition for writ of mandate. Mozingo paid respondent an advance of \$7,500 against an orally agreed fee of \$300 per hour. The deadline for filing of the notice of appeal was May 9, 2008.

Respondent did not file the notice of appeal until May 15, 2008, which was late by six days. On June 5, 2008, the clerk of the Court of Appeal sent respondent a notice that respondent had not filed a civil case information statement and that such statement must be filed no later than June 20, 2008. Respondent did not file the statement, and the Court of Appeal dismissed Mozingo's appeal on July 17, 2008.<sup>7</sup>

On July 20, 2008, Mozingo, unaware of the dismissal, sent respondent an email requesting respondent to either prosecute his appeal or refund his \$7,500. Mozingo repeated the request on July 21, 22, and 24, 2008, and again on August 5, 2008. Respondent did not reply until August 12, 2008, at which time respondent stated that he had been "out ill for several weeks," and stated that he would see if he could get the Court of Appeal to stay the suspension of Mozingo's driving privileges. Respondent took no further action on behalf of Mozingo, and provided no refund.

On March 4, 2010, the State Bar received a complaint concerning respondent's abandonment of Mozingo's case. On May 13, 2010 and June 2, 2010, a State Bar investigator sent letters to respondent requesting information regarding Mozingo's complaint. The two letters were properly addressed to respondent at his official State Bar membership records address. Both letters

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<sup>7</sup> The issue of respondent's untimely filing was not addressed by the Court of Appeal.

were returned by the U.S. Postal Service as undeliverable because respondent's former landlord refused to forward his mail and the U.S. Postal Service could not forward mail from that location.

Respondent moved from his State Bar membership records address sometime before May 10, 2010, but he did not notify the State Bar of his new address until August 25, 2010.

Respondent did not earn any portion of the \$7,500 advanced fees paid by Mozingo.

### **Conclusions of Law**

#### ***Count 1 – Rule 3-110(A) – Failure to Perform With Competence***

By failing to file a timely notice of appeal in Mozingo's case, respondent intentionally or recklessly failed to perform legal services with competence, in willful violation of rule 3-110(A).

#### ***Count 2 – Section 6106 – Moral Turpitude***

This count was dismissed in the interests of justice upon oral motion of the State Bar.

#### ***Count 3 – Rule 3-700(D)(2) – Failure to Refund Unearned Fees***

By not returning any of the legal fees paid in advance by Mozingo, respondent failed to refund promptly any part of a fee paid in advance which had not been earned, in willful violation of rule 3-700(D)(2).

#### ***Count 4 – Section 6068, Subdivision (j) – Failure to Update Membership Address***

Section 6068, subdivision (j) provides that it is the duty of an attorney to comply with the requirements of section 6002.1. Section 6002.1 requires, in part, that members maintain, on the official membership records of the State Bar, their current office address;<sup>8</sup> and in the event that a member's address changes, the member must notify the membership records office of the State Bar within 30 days. By failing to promptly update his address with the State Bar, respondent willfully violated section 6068, subdivision (j).

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<sup>8</sup> If the member does not maintain an office, then they are required to list the address to be used for State Bar purposes.

## **N. Case No. 10-O-10929 – The Tringale Matter**

### **Facts**

On September 10, 2009, respondent emailed Addison Tringale (Tringale) telling him that respondent could meet with Tringale and “sign him up” if Tringale had decided to hire his firm. Respondent did not inform Tringale that he was not entitled to practice law.

On September 11, 2009, Tringale met with respondent and employed respondent to defend him in a criminal DUI matter. Respondent and Tringale signed a fee agreement. Tringale’s parents paid respondent \$5,000 for their son’s representation. Respondent did not inform Tringale or his parents that he was not entitled to practice law.

On September 11, 2009, respondent knew, or was grossly negligent in not knowing that he was not entitled to practice law when he entered into the agreement to provide legal services to Tringale. Respondent accepted advanced legal fees in the amount of \$5,000 from Tringale’s parents to represent Tringale in the DUI matter.

On November 5, 2010, Tringale submitted a complaint against respondent to the State Bar. On December 29, 2010, a State Bar investigator mailed a letter to respondent at his address of record regarding Tringale’s complaint. The investigator’s letter requested that respondent respond in writing by January 12, 2011, to the allegations raised by Tringale’s complaint. Respondent received the letter.

On March 14, 2011, a State Bar investigator mailed a second letter to respondent at his address of record regarding Tringale’s complaint. The investigator’s letter requested that respondent respond in writing by March 28, 2011, to the allegations raised by Tringale’s complaint. Respondent received the letter, but did not provide the State Bar with a written response or otherwise cooperated in the investigation regarding Tringale’s complaint.

### **Conclusions of Law**

#### ***Count 1 – Section 6068, Subdivision (a) – Unauthorized of Practice of Law***

By meeting with Tringale and accepting representation in his DUI matter, respondent held himself out as entitled to practice law and actually practiced law while he was not entitled, in

willful violation of sections 6125 and 6126, and thereby failed to support the laws of the State of California in willful violation of section 6068, subdivision (a).

***Count 2 – Section 6106 – Moral Turpitude***

By misrepresenting to Tringale and his parents that respondent was entitled to practice law when he was not an active member of the State Bar, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

***Count 3 – Rule 4-200(A) – Illegal Fee***

By accepting advanced legal fees of \$5,000 to represent Tringale regarding his DUI when he was not entitled to practice law, respondent entered into an agreement for, charged, and collected an illegal fee, in willful violation of rule 4-200(A).

***Count 4 – Section 6068, Subdivision (i) – Failure to Cooperate***

By not providing a written response to the allegations raised by Tringale’s complaint or otherwise cooperating in the investigation, respondent failed to cooperate and participate in the disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

**IV. MITIGATING AND AGGRAVATING CIRCUMSTANCES**

**A. Mitigation**

The record establishes that respondent has proven, by clear and convincing evidence, the following four factors in mitigation. (Rule Proc. of State Bar, tit. IV, Stds for Atty. Sanctions of Prof Misconduct,<sup>9</sup> std. 1.2(e).)

**Extreme Emotional Difficulties**

At the time of his misconduct, respondent was suffering from the effects of extreme emotional difficulties and alcoholism. (*Read v. State Bar* (1991) 53 Cal.3d 394, 424-425 [Severe emotional problems which can be related to misconduct at issue can be considered to have a mitigating effect]; Std. 1.2(e)(iv).)

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<sup>9</sup> Future references to standards or std. are to this source.

Dr. Charles Ungar, a psychotherapist and certified grief and recovery expert, testified on respondent's behalf in the previous disciplinary proceeding. As found by the court in State Bar case no 08-O-12904, et al., respondent treated with Dr. Ungar from June 2008 through December 2008. In the short time span between 2005 and 2007, respondent lost both his mother and father to cancer. Respondent turned to alcohol and drugs and did not want to face things. Thus, he did not return phone calls or letters, and failed to cooperate with the State Bar. According to Dr. Unger, such behavior is consistent with alcoholism and depression. However, in 2008, respondent became motivated to get his life together. The last time respondent used drugs was October 2009.

Respondent has taken appropriate measures to regain his sobriety and to address his depression. Respondent entered the Lawyer's Assistance Program in 2009, and continues participation in the program. Respondent continues to reside at a graduate sober living house. Respondent's graduate sober living house is open to those members who are most committed to living a sober lifestyle. Respondent has been clean and sober since December 2009.

### **Cooperation**

Respondent entered into an extensive stipulation as to facts and admission of documents in this matter. (Std. 1.2(e)(v).) Because of this stipulation, the length of time necessary for trial was dramatically reduced. Consequently, respondent is entitled to mitigation for his cooperation.

### **Character Evidence**

Respondent presented the testimony of three witnesses, including one attorney, attesting to his good character and the current status of respondent's rehabilitation efforts. (Std. 1.2(e)(vi).) All three witnesses praised respondent for his commitment to sobriety and his work in the sober living community. All three testified that respondent should be given the chance to practice law again rather than be disbarred. The court finds the testimony of the witnesses to be strong evidence of respondent's commitment to his rehabilitation. However, this evidence is given less

than its full weight due to the small number of witnesses attesting to respondent's character and rehabilitation. (See *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628 [character testimony by two clients and one attorney discounted as non-extensive].)

### **Remorse and Recognition of Wrongdoing**

Respondent has demonstrated remorse and willingness to accept responsibility for his acts of misconduct. (Std. 1.2(e)(vii).) Respondent has taken objective steps to overcome his substance abuse and has taken responsibility for his acts of misconduct. Respondent understands that he owes his clients money and that he must repay the funds. He feels bad about accepting client funds without doing the work.

### **B. Aggravation**

The record establishes three factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

#### **Prior Record of Discipline**

Respondent has a prior record of discipline. (Std. 1.2(b)(i).)

On January 8, 2003, the California Supreme Court issued an order (S110690) suspending respondent from the practice of law for one year, stayed, with two years' probation. This matter involved respondent's representation of a criminal defendant while he was not an active member of the State Bar. In mitigation, respondent had no prior discipline and his client was not harmed. He also demonstrated remorse and he displayed candor and cooperation with the State Bar. No aggravating circumstances were involved.

On January 28, 2011, the Supreme Court issued an order (S188295) suspending respondent from the practice of law for four years, stayed, with five years' probation, including three years' actual suspension. In this matter, respondent was found culpable of 39 counts of misconduct in nine client matters, including failing to perform competently, failing to release client files, failing



to refund over \$33,000 in fees, failing to respond to client inquiries, failing to render accounts of client funds, committing acts of moral turpitude, and failing to cooperate in State Bar investigations. In mitigation, respondent was experiencing extreme emotional difficulties at the time of the misconduct and was suffering from the effects of alcoholism. In addition, respondent displayed candor and cooperation during the disciplinary proceeding, and demonstrated remorse and a willingness to take responsibility for his actions. He also received mitigation credit for his work in the community and the good character testimony of six witnesses. In aggravation, respondent committed multiple acts of misconduct and caused significant harm to his clients. The court also considered his prior record of discipline.

#### **Multiple Acts of Misconduct**

Like respondent's most recent discipline, the present matter also involves multiple acts of misconduct. (Std. 1.2(b)(ii).) Respondent was found culpable on 54 counts of misconduct.

#### **Significant Harm**

Respondent's failure to perform with competence and failure to refund unearned fees caused significant harm to his clients. (Std. 1.2(b)(iv).) Five of respondent's former clients – Addison Tringale; Paul Simmonds; Michelle Rhea; William Dolan; and Toheed Asghar – testified to the financial and emotional harm they suffered due to respondent's misconduct.

### **V. DISCUSSION**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.”

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from reproof to disbarment. (Stds. 1.7(b), 2.2(a), 2.2(b), 2.3, 2.4(a), 2.6, and 2.10.) The most severe sanctions are found at standards 1.7(b), 2.2(a), and 2.4(a) which all recommend disbarment.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silvertown* (2005) 36 Cal.4th 81, 92.)

Although the present case marks respondent’s third discipline, the court gives diminished weight to respondent’s prior discipline due to the fact that much of the present misconduct occurred in the same time period. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171.) The court therefore considers the totality of the findings in respondent’s present and prior discipline to determine what the discipline would have been had all the charged misconduct in this period been brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

An attorney's habitual disregard for the interests of his or her clients combined with failure to communicate with those clients is grounds for disbarment. (*Farnham v. State Bar, supra*, 47 Cal.3d at p. 446.) Considering respondent’s most recent prior discipline together with the present discipline demonstrates an extensive pattern of misconduct and client abandonment. This

misconduct covers a five-year span, from April 2006 to March 2011. During this time period, respondent committed 93 counts of misconduct in 19 client matters, including numerous incidents of client abandonment. In addition, respondent accepted and retained unearned and illegal fees in excess of \$70,000. This pervasive pattern of legal misconduct clearly establishes respondent's habitual disregard for his clients' interests.

The State Bar urges that respondent be disbarred. Respondent requests an additional actual suspension to run consecutively with his current three-year actual suspension, followed by a term of lifetime probation.

In determining the appropriate level of discipline, the court is guided by *Cannon v. State Bar* (1990) 51 Cal. 3d 1103; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315; and *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416.

In *Cannon*, the Supreme Court found disbarment to be appropriate for an immigration attorney's multiple instances of misconduct involving moral turpitude in five matters, i.e., repeatedly refusing to return unearned fees even after clients obtained arbitration awards and judgments against him, failing to perform services, issuing checks against insufficient funds and failing to communicate with clients. He had been in practice only six years before his first act of misconduct. There was no evidence in mitigation or aggravation. The Supreme Court concluded that a suspension would afford insufficient protection to the public and to the profession, and that disbarment was warranted. (*Cannon v. State Bar, supra*, 51 Cal. 3d 1103 at p. 1115.)

In *Phillips*, the attorney was disbarred for his misconduct involving five client matters and two non-client matters over a period of nearly four years. His misconduct included charging an illegal fee, failing to return clients files, sharing legal fees with a non-lawyer, forming a law partnership with a non-lawyer, failing to perform legal services, failing to refund unearned fees, failing to render an accounting, and improper solicitation. The attorney began to commit

professional misconduct soon after he was admitted to practice law and the misconduct was surrounded by little evidence in mitigation, but significant evidence in aggravation.

In *Gadda*, the attorney was disbarred for his misconduct in nine immigration client matters over five years, including failing to perform services, failing to return unearned fees, failing to communicate with clients, and commingling. He had been previously disciplined once for the same type of misconduct and did not learn from his prior discipline.

In this case, respondent has been found culpable of misconduct in ten client matters involving 54 acts of misconduct, demonstrating a habitual disregard of client interests. Although the court is impressed with respondent's commitment to his sobriety and rehabilitation, his five-year period of egregious misconduct is of paramount concern. During this five-year period, respondent completely abandoned the ethical tenets he swore to uphold. Respondent took his clients' money and deprived them of the competent representation they sought and deserved. And similar to *Gadda*, respondent has demonstrated an unwillingness or inability to learn from his first discipline involving his unauthorized practice of law.

After consideration of the extensive circumstances involved in this case, the court concludes that only disbarment offers adequate protection for the public and the courts.

## **VI. RECOMMENDED DISCIPLINE**

The court recommends that respondent **Lee Allen McCoy** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is further recommended that Lee Allen McCoy make restitution as follows:

(1) To Paul Simmonds in the amount of \$2,000 plus 10 percent interest per annum from July 1, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Paul Simmonds in accordance with Business and Professions Code section 6140.5);<sup>10</sup>

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<sup>10</sup> Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

(2) Michelle Rhea in the amount of \$5,000 plus 10 percent interest per annum from May 21, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Michelle Rhea in accordance with Business and Professions Code section 6140.5);

(3) Paul Thomas in the amount of \$720 plus 10 percent interest per annum from July 9, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Paul Thomas in accordance with Business and Professions Code section 6140.5);

(4) Eduardo Garcia in the amount of \$3,500 plus 10 percent interest per annum from July 1, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Eduardo Garcia in accordance with Business and Professions Code section 6140.5);

(5) Toheed Asghar in the amount of \$2,000 plus 10 percent interest per annum from July 15, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Toheed Asghar in accordance with Business and Professions Code section 6140.5);

(6) Kenneth Pengal in the amount of \$2,500 plus 10 percent interest per annum from July 1, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Kenneth Pengal in accordance with Business and Professions Code section 6140.5);

(7) Analiese Danner in the amount of \$5,051 plus 10 percent interest per annum from July 1, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Analiese Danner in accordance with Business and Professions Code section 6140.5);

(8) William Dolan in the amount of \$3,500 plus 10 percent interest per annum from November 1, 2007 (or reimburses the Client Security Fund to the extent of any payment from the fund to William Dolan in accordance with Business and Professions Code section 6140.5);

(9) Dr. Ralph Mazingo in the amount of \$7,500 plus 10 percent interest per annum from July 17, 2008 (or reimburses the Client Security Fund to the extent of any payment from the fund to Dr. Ralph Mazingo in accordance with Business and Professions Code section 6140.5); and

(10) Addison Tringale in the amount of \$5,000 plus 10 percent interest per annum from September 11, 2009 (or reimburses the Client Security Fund to the extent of any payment from the fund to Addison Tringale in accordance with Business and Professions Code section 6140.5);

**A. 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.<sup>11</sup>

**B. 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.

**VII. Order of Involuntary Inactive Enrollment**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

Dated: January 5, 2012.

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RICHARD A. PLATEL  
Judge of the State Bar Court

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<sup>11</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)