

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 09-O-15692-RAH (09-O-15886;
)	09-O-16944; 09-O-17851;
)	09-O-19212; 10-O-02020;
THOMAS LLEWELLYN REED,)	10-O-03919; 10-O-09663;
)	10-O-10963)
Member No. 122624,)	
)	DECISION AND ORDER
)	
A Member of the State Bar.)	
_____)	

Introduction¹

This matter involves a Stipulation Re Facts, Conclusions of Law and Disposition executed by the State Bar of California (State Bar) and respondent Thomas Llewellyn Reed and, thereafter, approved by the State Bar Court. The matter was later returned to the State Bar by the California Supreme Court for further consideration of the recommended discipline.

Upon further consideration of the recommended discipline, the court concludes that the recommended discipline should be increased to two years' stayed suspension and three years' probation with conditions, including a one-year (actual) suspension that will continue until respondent refunds unearned fees totaling \$47,730 (with interest) in nine separate client matters.

Significant Procedural History

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

On November 11, 2011, respondent signed a Stipulation Re Facts, Conclusions of Law and Disposition (Stipulation) in the above-captioned matters. On November 15, 2011, the State Bar also signed the Stipulation, which was modified and then approved as modified by State Bar Court Judge Donald F. Miles, as a settlement judge, in an order filed on November 28, 2011.² The matter, including the approved Stipulation, was thereafter filed in the Supreme Court under case number S199843.

On June 21, 2012, the Supreme Court filed an order returning the matter “for further consideration of the recommended discipline in light of the applicable attorney discipline standards. [Citations.]” On August 22, 2012, the matter was reassigned to the undersigned State Bar Court Judge for all purposes. (Rules Proc. of State Bar, rule 5.46(F).)

On October 25, 2012, the parties filed a supplement to the Stipulation. (Rules Proc. of State Bar, rule 5.55.)

On November 1, 2012, the State Bar filed a motion for an order permitting the State Bar to introduce additional facts to supplement the Stipulation. The court granted the State Bar’s motion, in part, at trial in this matter. Specifically, the court allowed additional evidence on the issue of harm incurred by respondent’s clients.

Trial on the issue of discipline in this matter was held on November 8 and 19 and December 20, 2012. The State Bar was represented by Deputy Trial Counsel Anthony Garcia. Respondent appeared in propria persona.

Findings of Fact and Conclusions of Law³

² There is no notice of disciplinary charges in the present proceeding; the Stipulation was the initial pleading in this proceeding.

³ Except where otherwise indicated, the facts are taken from the Stipulation (often verbatim) and from the parties’ October 25, 2012, supplement to the Stipulation.

Respondent was admitted to the practice of law in California on February 21, 1986, and has been a member of the State Bar of California at all times since that date.

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Case Number 09-O-15692 – Fee Splitting and Personal Use of Client Trust Account

Facts

On February 18, 2009, respondent entered into an agreement with RJV, a business that provides loan modification services, to provide loan modification services to respondent's clients. RJV agreed to provide general office support to respondent including loan negotiators and office equipment. Respondent agreed to give RJV a portion of the legal fees he received from his loan-modification clients.

At the same time, respondent entered into an agreement with Unison Marketing (Unison). Unison agreed to advertise for respondent, collect fees for respondent, collect financial documents for respondent's clients and forward the documents and fees to respondent. Respondent agreed to give Unison a portion of the legal fees he received from his loan-modification clients.

Between February 2009 and April 2009, respondent received advanced legal fees from the following loan-modification clients and split those fees with RJV and Unison as follows:

On February 19, 2009, Lathion Ingram paid \$7,770 in advanced fees to respondent for legal services involving loan modifications. Respondent retained \$700 of Ingram's funds as his fee for legal services. Respondent disbursed \$1,900 of Ingram's funds to RJV and \$5,170 of Ingram's funds to Unison.

On February 26, 2009, Kevin and Alysia Giffin paid \$15,540 in advanced fees to respondent for legal services involving loan modifications. Respondent retained \$1,400 of the

Giffins' funds as his legal fee. Respondent disbursed \$3,200 of the Giffins' funds to RJV and \$10,940 of the Giffins' funds to Unison.

On March 2, 2009, Lisa Vasquez paid \$2,885 in advanced fees to respondent for legal services involving a loan modification. Respondent retained \$350 of Vasquez's money as his fee for legal services. Respondent disbursed \$650 of Vasquez's funds to RJV and \$1,885 of Vasquez's funds to Unison.

On March 6, 2009, Jacob Avila paid \$3,885 in advanced fees to respondent for legal services involving a loan modification. Respondent retained \$250 of Avila's funds as his fee for legal services. Respondent disbursed \$950 of Avila's funds to RJV and \$2,685 of Avila's funds to Unison.

On March 15, 2009, Rebecca Taber paid \$3,000 in advanced fees to respondent for legal services involving a loan modification. Respondent retained \$250 of Taber's funds as his legal fee. Respondent disbursed \$950 of Taber's funds to RJV and \$1,800 of Taber's funds to Unison.

Between February 2009 and November 2009, respondent withdrew funds from his client trust account (CTA) to pay personal and business expenses as follows:

02/27/2009	Explorer Insurance	\$100.00
07/29/2009	Saxon Mortgage Services	\$2,981.02
08/29/2009	Saxon Mortgage Services	\$2,981.02
10/26/2009	Guralnick & Gilliland, LLP	\$522.50
10/28/2009	Four Seasons Pool & Spa	\$216.00
10/30/2009	Saxon Mortgage Services	\$2,981.02

Conclusions of Law

Count One - (Rule 1-320(A) [Sharing Fees with Nonattorneys])

Rule 1-320(A) provides, with limited exceptions, that an attorney must not directly or indirectly share legal fees with a nonattorney. As the parties stipulated, respondent shared legal fees with nonattorneys in willful violation of rule 1-320(A) when he paid out portions of the advanced legal fees he received from Ingram, the Griffins, Vasquez, Avila, and Taber with RJV and Unison as set forth above.

Count Two - (Rule 4-100(A) [Commingling/Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and that no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions not applicable here. As the parties stipulated, respondent willfully violated rule 4-100(A) when he paid his personal and business expenses to Explorer Insurance, Saxon Mortgage Services, Guralnick & Gilliland, and Four Seasons Pool & Spa out of his CTA as set forth above.

Case Number 09-O-15692 – Jacob Avila Matter

Facts

On about March 6, 2009, Jacob Avila hired respondent to modify his home loan and, as noted above, paid respondent \$3,885 in advanced legal fees.

Between about March 6, 2009 and July 16, 2009, Jacob Avila called respondent's office multiple times to request an update on the status of his loan modification. Each time he called, Jacob Avila left a message asking respondent to call him back. Neither respondent nor anyone on his behalf returned Jacob Avila's calls.

Respondent failed to perform the legal services that he was hired to perform for Jacob Avila, and as a result, Jacob Avila's home loan was not modified.

On July 16, 2009, Jacob Avila sent a letter to respondent terminating his employment and demanding a refund of his unearned fees and an accounting. At trial, Jacob Avila credibly

testified that respondent has never accounted for or refunded any portion of the \$3,855 in advanced fees. Moreover, at trial, respondent admitted that he has not refunded any portion of the advanced fees he collected in the nine client matters in this disciplinary proceeding.

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Conclusions of Law

Count Three - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Jacob Avila hired him to perform.

Count Four - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond 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. As the parties stipulated, respondent willfully violated section 6068, subdivision (m) when he failed to respond to Jacob Avila's repeated requests for an update on the status of Avila's home-loan modification.

Count Five - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. Under rule 4-100(B)(3), attorneys have a duty to

maintain adequate records of advanced fees received and how and when they are earned and to provide their clients with that information. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757, 758.) As the parties stipulated, respondent willfully violated rule 4-100(B)(3) when he failed to provide, to Jacob Avila, an accounting of the \$3,885 in advanced legal fees that Jacob Avila paid respondent.

Case Number 09-O-15886 – Vasquez Matter

Facts

On February 18, 2009, Lisa Vasquez hired respondent to modify her home loan. As noted above, Vasquez paid respondent \$2,885 in advanced legal fees on March 2, 2009. The retainer agreement between respondent and Vasquez expressly stated that respondent would refund Vasquez's fee if he did not obtain a successful home-loan modification for her within 120 days.

Respondent failed to perform the legal services that he was hired to perform for Vasquez, and as a result, Vasquez's home loan was not modified. In fact, on about July 2, 2009, Vasquez's home was sold at auction. On about July 8, 2009, Vasquez sent an email to respondent terminating respondent's employment and demanding a refund of all unearned advanced legal fees. Respondent received the email. However, as Vasquez testified and as respondent admitted at trial, respondent failed to refund any portion of the \$2,885 in advanced fees.

Conclusions of Law

Count Six - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Vasquez hired him to perform.

Case Number 09-O-16944 – Ingram Matter

Facts

On February 19, 2009, Lathion Ingram hired respondent to modify the loans on two separate properties that he owned and, as noted above, paid respondent \$7,770 in advance legal fees. Respondent, however, failed to perform the legal services that he was hired to perform for Ingram, and as a result, Ingram’s two loans were not modified.

On July 21, 2009, Ingram sent a letter to respondent terminating his employment and demanding an accounting and a refund of all the advanced legal fees that Ingram paid. Respondent failed to provide Ingram with an accounting for the advanced legal fees that Ingram paid. In addition, as respondent admitted at trial, he has not refunded any portion of the advanced fees in the nine client matters in this disciplinary proceeding.

Conclusions of Law

Count Seven - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Ingram hired him to perform.

Count Eight - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

As the parties stipulated, respondent willfully violated rule 4-100(B)(3) when he failed to provide, to Ingram, an accounting of the \$7,770 in advanced legal fees that Ingram paid respondent.

Case Number 09-O-17851 – Taber Matter

Facts

On March 15, 2009, Rebecca Taber hired respondent to modify her home loan and, as noted above, paid respondent \$3,000 in advanced fees.

Respondent's fee agreement promised a full refund to Taber if he failed to modify her home loan within 120 days. Respondent failed to perform the legal services that he was hired to perform for Taber within 120 days or at any time, and as a result, Taber's home loan was not modified.

On October 3, 2009, Taber sent a letter to respondent noting that 120 days had passed and that her home loan was not modified. In the letter, Taber terminated respondent's employment and demanded a refund of all unearned advanced legal fees. Again, at trial, respondent admitted he has not refunded any of the advanced fees in the nine client matters in this disciplinary proceeding.

Conclusions of Law

Count Nine - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Taber hired him to perform.

Case Number 09-O-19212 – Giffin Matter

Facts

On February 12, 2009, Kevin and Alysia Giffin hired respondent to modify the loans on four properties that the Giffins owned. As noted above, the Giffins paid respondent \$15,540 in advanced fees on February 26, 2009. The retainer agreement between respondent and the Giffins provided that respondent would refund the advanced fees to the Giffins if a successful loan modification was not accomplished within 120 days.

In May 2009, respondent stopped working at RJV. Respondent never notified the Giffins that he was no longer working at RJV.

Moreover, respondent failed to perform the legal services that he was hired to perform for the Giffins, and as a result, the Giffins' loans were not modified. In fact, in August 2009, the Giffins contacted their lender and learned that neither respondent nor anyone from his office had contacted the lender to begin loan negotiations on any of their loans. Also, when the Giffins attempted to contact respondent in August 2009, they found that respondent's telephone number was no longer in service.

Alysia Giffin credibly testified and respondent admitted at trial that respondent has not refunded any portion of the \$15,540 in advanced fees the Giffins paid him.

Conclusions of Law

Count Ten - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that the Giffins hired him to perform.

Count Eleven - (§ 6068, subd. (m) [Failure to Communicate])

As the parties stipulated, respondent failed to keep a client reasonably informed of significant developments in willful violation of section 6068, subdivision (m) when he failed to inform the Giffins that he had stopped working at RJV.

Case Number 10-O-02020 – Sara Avila Matter

Facts

On March 31, 2009, Sara Avila hired respondent to negotiate a home-loan modification on her behalf. Sara Avila paid \$2,900 in advanced fees to respondent for his services.

Respondent failed to perform the legal services that he was hired to perform for Sara Avila and, as a result, Sara Avila's home loan was not modified. Respondent has not refunded any of Sara Avila's legal fees.

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Conclusions of Law

Count Twelve - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Sara Avila hired him to perform.

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

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. As the parties stipulated, respondent willfully violated rule 3-700(D)(2) when he failed to refund Sara Avila's advanced fee.

Case Number 10-O-03919 – Rodrigues Matter

Facts

On March 20, 2009, Maria Rodrigues hired respondent to negotiate a home-loan modification on her behalf. Rodrigues paid \$2,500 in advanced fees to respondent for his services. Respondent failed to perform the legal services that he was hired to perform for Rodrigues, and as a result, Rodrigues's home loan was not modified.

In October 2009, Rodrigues contacted respondent complaining that her home loan had not been modified. In her communication, Rodrigues terminated respondent's employment and

demanded a refund of all unearned advanced legal fees. Respondent, however, has not refunded any of Rodrigues's legal fees.

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Conclusions of Law

Count Fourteen - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Rodrigues hired him to perform.

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

As the parties stipulated, respondent willfully violated rule 3-700(D)(2) when he failed to refund Rodrigues's advance fee.

Case Number 10-O-09663 – Phan Matter

Facts

On April 7, 2009, Lam Phan hired respondent to modify two home loans. Phan paid \$5,000 to respondent in advance legal fees for his services. Respondent's fee agreement promised a full refund to Phan if respondent failed to modify her home loans within 120 days.

Respondent failed to perform the legal services that he was hired to perform for Phan within 120 days or at any other time, and as a result, Phan's home loan was not modified. Again, respondent admitted at trial that he has not refunded any portion of the advanced fees in the nine client matters in this proceeding.

Conclusions of Law

Count Sixteen - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

As the parties stipulated, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) when he failed to perform the legal services that Phan hired him to perform.

Case Number 10-O-10963 – Nava Matter

Facts

On March 11, 2009, Sergio Jimenez Nava (Nava) hired respondent to modify the loans on two properties that he owned.

On or about April 5, 2009, Nava paid respondent \$4,250 in advance legal fees for his services.

The retainer agreement between respondent and Nava provided that Nava would receive a full refund if a successful loan modification was not accomplished within 120 days.

Respondent failed to perform the legal services he was hired to perform for Nava within 120 days or at any other time, and, as a result, Nava's home loan was not modified. Respondent admits that he has not refunded any of the advanced fees in the nine client matters in this proceeding.

Conclusions of Law

Count Seventeen - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. By not performing the services that he was hired to perform resulting in his failure to modify Nava's loan, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

Aggravation⁴

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent engaged in multiple acts of wrongdoing

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Uncharged/Unstipulated Misconduct (Std. 1.2(b)(iii).)

In each of the nine client matters in this disciplinary proceeding, respondent stipulated that he “failed to perform the legal services he was hired to perform” and that “By not performing the services that he was hired to perform ... Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of rule 3-100(A).” Accordingly, the Stipulation and the parties’ October 25, 2012, supplement to the Stipulation clearly establish that respondent failed to earn any portion of the advanced fees he collected from the client or clients in each of the nine client matters in this proceeding. Thus, once respondent’s employment was terminated in each of the nine client matters, respondent was required to promptly refund all of the advanced fees he collected in each of the nine client matters under rule 3-700(D)(2). However, as repeatedly noted above, respondent admitted at trial that he has not refunded any portion of the advanced fees in any of the nine client matters.

Even though the record clearly establishes that respondent willfully violated rule 3-700(D)(2) in each of the nine client matters, the parties stipulated that respondent willfully violated rule 3-700(D)(2) in only two of the nine client matters (i.e., the Sara Avila and the Rodrigues client matters). Even though the parties failed to stipulate that respondent willfully violated rule 3-700(D)(2) in the other seven client matters (i.e., the Jacob Avila, the Vasquez, the Ingram, the Taber, the Giffin, the Phan, and the Nava client matters), the court considers

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

respondent's willful violations of rule 3-700(D)(2) in those seven matters as aggravation under standard 1.2(b)(iii) (other violations). (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent's misconduct caused significant client harm.

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Mitigation

No Prior Record of Discipline (Std. 1.2(e)(i).)

Respondent is entitled to significant mitigation based on his 23 years of misconduct free practice even though the present misconduct is serious. As the review department noted in *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13, the Supreme Court has repeatedly given mitigation under standard 1.2(e)(i) for no prior record of discipline in cases in which the misconduct was serious. (E.g., *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029.)

Remorse/Recognition of Wrongdoing (Std. 1.2(e)(vii).)

Respondent admitted culpability at an early stage of the proceedings which is indicative of his remorse and recognition of his wrongdoing.

Other Mitigating Facts.

Respondent's misconduct took place within a relatively short period of time.

Respondent's misconduct ended in 2010 and has not reoccurred.

Discussion

Respondent is culpable of failing to perform legal services competently and failing to return unearned fees in nine client matters; failing to render appropriate accounts in two of the nine matters; failing to promptly respond to one client's status inquiries; failing to keep another

client informed of significant developments; misusing his CTA; and splitting legal fees with two nonattorneys. Respondent's misconduct caused significant client harm. In mitigation, respondent has 23 years of misconduct-free practice and was candid and cooperative with the State Bar. In addition, respondent's misconduct took place within a relatively short period of time and has not reoccurred. On return from the Supreme Court for further consideration of the recommended discipline, the State Bar now contends that the appropriate level of discipline is one year's actual suspension and until restitution; while respondent contends that nine months' actual suspension is adequate. The parties, however, failed to cite any authority to support their positions.

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (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.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides, in pertinent part, 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. The most severe of the applicable sanctions in the present proceeding is found in standard 2.2(b), which applies to respondent's willful violations of rule 4-100(A) and 4-100(B)(3). Standard 2.2(b) provides:

Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three

month actual suspension from the practice of law, irrespective of mitigating circumstances.

Notwithstanding standard 2.2(b)'s seemingly mandatory three-month minimum suspension, standard 2.2(b) is a guideline and is not strictly applied. (*Dudugjian v. State Bar* (1991) 52 Cal.3d 1092, 1100.) Nevertheless, it is clear that "The Rules of Professional Conduct requiring attorneys' correct handling of ... trust accounts have long been directed at prohibiting the more serious risk of loss or misappropriation of those funds, whether through carelessness or design. [Citations.]" (*In the Matter of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct, Rptr. 411, 420.) Thus, in the present case, the court concludes that the other misconduct (e.g., nine counts of failure to perform legal services in willful violation of rule 3-110(A)) and the serious aggravating circumstances surrounding respondent's willful violations of rule 4-100(A) and 4-100(B)(3) warrant the imposition of an actual suspension significantly longer than the minimum three-month suspension provided for in standard 2.2(b).

Indeed, substantial discipline is necessary in this proceeding to impress upon respondent that his relationships with nonattorneys RJV and Unison were highly inappropriate and that his repeated failures to perform legal services in nine client matters are inimical to the professional standards of this state.

The court finds *Young v. State Bar* (1990) 50 Cal.3d 1204 and *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498 instructive on the issue of discipline.

In *Young*, the attorney was placed on three years' stayed suspension and three years' probation on conditions, including actual suspension for two years. In that case, the attorney abandoned nine clients as a result of his unannounced move from California to Florida. In addition, he failed to perform legal services competently in eight of the client matters and failed to refund unearned fees in two of the client matters. There was substantial mitigation in *Young*,

including: the attorney suffered from hepatitis, no substantial client harmed, demonstrated remorse, lack of a prior record of discipline, and full cooperation with the State Bar.

In *Valinoti*, the attorney was placed on five years' stayed suspension and five years' probation on conditions, including a three-year actual suspension, for his misconduct in nine immigration matters. In each of the nine matters, the attorney recklessly and intentionally failed to competently perform legal services. In one of the nine matters, the attorney abandoned the client just minutes before the hearing on the client's asylum application. In addition, the attorney in *Valinoti* aided and abetted nonattorneys engaging in the unauthorized practice of law and improperly accepted legal fees from those nonattorneys.

On balance, the court concludes that the appropriate level of discipline for the stipulated misconduct is two years' stayed suspension and three years' probation on conditions, including a one-year actual suspension continuing until respondent refunds all of the advanced fees he collected in the nine client matters with interest.

Recommendations

Discipline

It is recommended that respondent Thomas Llewellyn Reed, State Bar Number 122624, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation⁵ for three years subject to the following conditions:

1. Respondent Thomas Llewellyn Reed is suspended from the practice of law for the first year of probation, and he will remain suspended until the following requirements are satisfied:
 - a. He makes restitution to the following payees (or reimburses the Client Security Fund to the extent of any payment from the fund to the payees in accordance with

⁵ The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles:

- i. Jacob Avila in the amount of \$3,885 plus 10 percent interest per year from August 15, 2009;
 - ii. Lisa Vasquez in the amount of \$2,885 plus 10 percent interest per year from August 7, 2009;
 - iii. Lathion Ingram in the amount of \$7,770 plus 10 percent interest per year from August 20, 2009;
 - iv. Rebecca Taber in the amount of \$3,000 plus 10 percent interest per year from November 2, 2009;
 - v. Kevin and Alysia Giffin in the amount of \$15,540 plus 10 percent interest per year from August 1, 2009;
 - vi. Sara Avila in the amount of \$2,900 plus 10 percent interest per year from April 30, 2009;
 - vii. Maria Rodrigues in the amount of \$2,500 plus 10 percent interest per year from November 30, 2009;
 - viii. Lam Phan in the amount of \$5,000 plus 10 percent interest per year from August 7, 2009; and
 - ix. Sergio Jimenez Nava in the amount of \$4,250 plus 10 percent interest per year from August 5, 2009.
- b. If respondent remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law before his suspension will terminate. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of this probation.
 3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
 4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation

deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy upon request.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of the next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of both the State Bar's Ethics School and the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from respondent's Minimum Continuing Legal Education (MCLE) requirement, and respondent must not receive MCLE credit for attending either Ethics School or Client Trust Accounting School. (Rules Proc. of State Bar, rule 3201.)
8. At the expiration of the period of this probation, if respondent has complied with all the terms of probation, the order of the Supreme Court suspending respondent from the practice of law for two years will be satisfied and that suspension will terminate.

Multistate Professional Responsibility Examination

It is further recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (hereafter MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) within the period of his suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Respondent's failure to pass the MPRE within the specified time may result in

respondent's automatic suspension. (*Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; see also Cal. Rules of Court, rule 9.10(b); Rules Proc. of State Bar, rule 5.161(A)(2), 5.162(A)&(E).)

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter. Failure to do so may result in disbarment or suspension.

Costs

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

Order

The court orders that the State Bar Court's November 28, 2011, order approving the parties' Stipulation Re Facts, Conclusions of Law and Disposition is VACATED.

Dated: March ____, 2013.

RICHARD A. HONN
Judge of the State Bar Court