FILED OCTOBER 12, 2011

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of **STANLEY GOUMAS HILTON,** **Member No. 65990,** A Member of the State Bar.	))))))))	Case No. **10-O-03137-LMA; 10-C-04781** **11-O-10651 (Cons.)** **DECISION INCLUDING DISBARMENT RECOMMENDATION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this contested proceeding, respondent **STANLEY GOUMAS HILTON** was charged in two client matters with six counts of professional misconduct for alleged violations of Business and Professions Code,[1] sections 6068, subdivision (a)/6125/6126 and 6106 and rules 3-700(D)(1), 4-100(B)(3) and (4) and 4-200(A) of the Rules of Professional Conduct.[2] In addition, a conviction for violation of Vehicle Code section 23103.5 was referred by the Review Department to ascertain whether it involved moral turpitude or other misconduct warranting discipline and, if so, the recommended discipline to be imposed. The court finds, by clear and convincing evidence, that respondent is culpable on five counts and that the conviction does not involve moral turpitude but does involve other misconduct warranting discipline.

[1] Further references to section are to this source unless otherwise stated.
[2] Further references to rules are to this source unless otherwise stated.

In view of respondent's serious misconduct, the evidence in aggravation, including one prior record of discipline and the lack of compelling mitigating factors, the court recommends that respondent be disbarred from the practice of law and that he be ordered to make restitution as set forth below.

II. Significant Procedural History

Deputy Trial Counsel Erica Dennings represented the State Bar. Respondent was represented by William Balin.

The three matters were consolidated on July 25, 2011.

Trial commenced on August 29, 2011, at which time the parties filed a stipulation of facts, which the court approves. After briefing and the opportunity to present additional witnesses, the matter was taken under submission on September 8, 2011.

III. Findings of Fact and Conclusions of Law

The findings of fact are based on the evidence adduced at trial and the parties' stipulation. Many of the court's findings of fact are based, in large part, on credibility determinations. After carefully observing and considering respondent's testimony, including, among other things, his demeanor while testifying; the manner in which he testified; the character of his testimony; his interest in the outcome in this proceeding; his capacity to perceive, recollect, and communicate the matters on which he testified; and after carefully reflecting on the record as a whole, the court finds that much of respondent's testimony lacks credibility. (See, generally, Evid. Code, § 780; *In the Matter of Berg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 725, 736-737; see also *REO Broadcasting Consultants v. Martin* (1999) 69 Cal.App.4th 489, 498, fn. 7 [trial court is not bound to accept as true the sworn testimony of a witness even in the absence of evidence contradicting it].)

Respondent's testimony, at times, was inconsistent and implausible, particularly when he testified that he told Daniel O'Leary that respondent was not entitled to practice law and that he was acting as a paralegal. It was not credible that O'Leary told respondent what case law and statutes to put in the complaint.

Respondent was admitted to the practice of law in California on December 18, 1975, and has been a member of the State Bar of California since that time.

A. Findings of Fact

1. 10-O-03137 – The Borg Matter

Facts

On January 22, 2007, respondent and Donald Borg entered into a contingency fee agreement for respondent to represent Borg in a civil action. (*Borg v. Principal Life Insurance Company and Target Stores,* United States District Court for the Northern District of California, case no. C-07-3149.)

On April 9, 2009, respondent and Borg entered into a contingency fee agreement for respondent to represent Borg in another civil action. (*Borg v. Mills-Peninsula Health Service, Joanne Perez, R.N., et al,* San Mateo County Superior Court, case no. CIV-48587.)

Borg initially paid respondent $13,000 as costs for the two cases.

From late in 2009 until August 2010, Borg requested an accounting of the $13,000 that Borg had paid and requested that respondent refund any amount that respondent had not used for costs. Respondent failed to provide an accounting to Borg until August 10, 2010.

On September 21, 2010, the State Bar Court ordered respondent and Borg to attend binding fee arbitration.

Respondent delayed going to fee arbitration by making himself available for fee arbitration only on December 23 and 24, 2010.

Respondent and Borg agreed to a binding fee arbitration over the $13,000. At the January 2011 arbitration, the panel found that respondent should keep $1,994.25 in costs reimbursement and should refund the remaining $11,005.74 to Borg.

Despite Borg's request that respondent refund the $11,005.74 as awarded by the arbitration panel, respondent has not refunded any portion of that money.

Respondent informed Borg that he had been placed on involuntary inactive status by the State Bar on August 10, 2009, pursuant to section 6233.

Respondent filed a Notice of Lien for Attorneys Fees and Costs in the San Mateo County Superior Court litigation.

From late in 2009 to January 23, 2010, Donald Borg asked respondent to return his files in the two cases referenced above on at least three occasions. Respondent received these requests. Respondent's counsel credibly testified that he personally obtained everything that pertained to Borg from respondent's home. Although Borg was credible, it is unclear whether he really did not receive the last files he requested.

Conclusions of Law

1. Count One - Failure to Render Accounting of Client Funds – Rule 4-100(B)(3)

Rule 4-100(B)(3) requires, in relevant part, that an attorney maintain complete records of all client funds, securities or other property coming into the attorney's or law firm's possession and render appropriate accounts to the clients regarding them. The attorney is to preserve such records for no less than five years after final appropriate distribution of the funds or property.

By not providing Borg with an accounting of the funds as requested, respondent wilfully violated rule 4-100(B)(3).

2. Count Two - Failure to Pay Client Funds Promptly – Rule 4-100(B)(4)

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities or other properties in the possession of the attorney which the client is entitled to receive.

By not refunding any costs to Borg, respondent failed to promptly pay funds, as requested by the client, which the client is entitled to receive and wilfully violated rule 4-100(B)(4).

3. Count Three - Failure to Release File – Rule 3-700(D)(1)

Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

There is not clear and convincing evidence that respondent wilfully violated rule 3-700(D)(1).

2. 10-C-04781 – The Conviction Referral Matter

Facts

On January 24, 2011, respondent pled nolo contendere to violating California Vehicle Code, section 23103.5 (reckless driving in place of violation of Vehicle Code, section 23152).

This conviction resulted from an incident that occurred on June 11, 2009, in which respondent's vehicle left the paved area of Airport Boulevard in San Mateo County and ended up in the bushes. Only respondent's vehicle was damaged.

Respondent contends that another vehicle was driving on the wrong side of this divided road, that he swerved to avoid the oncoming vehicle, and that he lost control of his car, which jumped the curb and ended up in the bushes.

Respondent called for roadside assistance. When the tow truck operator arrived and observed respondent, he called the police because he believed that respondent was under the influence of alcohol.

Officer D. Perna of the Burlingame Police Department arrived with his partner and administered roadside sobriety tests on respondent, which Perna believes respondent failed.

Both at the scene and at the Burlingame Police Department, the police administered breath tests to respondent which both returned results of zero alcohol in respondent's blood.

Respondent told the police that he was taking a prescribed medication, Xanax, and he agreed to give a blood sample for testing. The police sent this blood sample to the San Mateo County Sheriff's Lab for testing for Xanax. On June 18, 2009, the Sheriff's Lab prepared a report that gave the test results as zero for alcohol. There was no indication of testing for Xanax.

No action in the case was taken until March 29, 2010, when the office of the San Mateo County District Attorney's office requested from a private laboratory that respondent's blood be tested for Xanax. The test results, dated April 6, 2010, showed a positive result for Xanax within therapeutic levels.

Despite requests from respondent's counsel, the District Attorney never provided any reason for the delay or for the renewed interest in respondent's case more than nine months after the incident.

Respondent's counsel requested information on the chain of custody of respondent's blood sample and of its maintenance, and received incomplete information from the District Attorney.

Respondent contends that he had not taken Xanax the day of the accident until shortly after the accident occurred, to calm himself down. He took two Xanax. There were no witnesses to what respondent did between the time of the accident and the time when the tow truck driver arrived.

This conviction did not result from any activity involving respondent's practice of law.

Conclusions of Law

The court finds that the facts and circumstances surrounding respondent's conviction of violating Vehicle Code, section 23103.5 do not constitute moral turpitude but do constitute other misconduct warranting discipline.

3. 11-O-10651 – The O'Leary Matter

Facts

On August 10, 2009, respondent was placed on involuntary inactive status pursuant to section 6233 and, at all relevant times, was not permitted to practice law.

On December 17, 2010, Daniel O'Leary hired respondent and paid him $1,000 to represent him in an action regarding the foreclosure of his home. Respondent told O'Leary that he was on inactive status because he was taking a sabbatical to write a book. He agreed to prepare pleadings that O'Leary would then file in pro per. O'Leary provided respondent with several documents regarding the foreclosure of his home for his review. O'Leary believed he was hiring an attorney. O'Leary credibly testified that he does not know about cases and statutes and that he wanted to hire an attorney to help him save his home from foreclosure. Respondent advised O'Leary about what pleadings he should file and agreed to prepare them. By doing so, respondent practiced law.

Respondent wrote a complaint, an ex-parte application for a temporary restraining order, a declaration and a proposed order granting an ex-parte application for a temporary restraining order for Dan O'Leary.

Respondent chose and advised O'Leary on which documents needed to be prepared. The complaint alleged several causes of actions including, among other things, fraud, breach of contract and violations of California fair debt collection practices and consumer protection laws. Respondent made legal arguments in the pleadings, and cited statutes and case law. By doing so, he practiced law.

O'Leary paid respondent $1,000 by check dated December 17, 2010, and respondent accepted this payment as fees for all services that he was to provide for O'Leary. Respondent was not entitled to collect legal fees because he was not entitled to practice law.

Respondent was not supervised by an attorney when drafting O'Leary's documents.

Respondent refunded $200 to O'Leary on March 31, 2011, and the remaining $800 on August 24, 2011.

Conclusions of Law

1. Count One - Unauthorized Practice of Law – Sections 6068, subd. (a)/6125/6126

Section 6068, subdivision (a) requires an attorney to support the Constitution as well as state and federal laws.

Section 6125 requires an individual to be a member of the State Bar in order to practice law in California.

In relevant part, section 6126, subdivision (b) makes a person who has been suspended from membership in the State Bar and practices or attempts to practice, to advertise or to hold him- or herself out as practicing or entitled to practice law guilty of a crime punishable by imprisonment in the state prison or county jail.

By advising O'Leary about his case and choosing authorities and making arguments in the pleadings he prepared, respondent held himself out as entitled to practice law and actually practiced law when he was not so entitled. In so doing, he violated sections 6125 and 6126, subdivision (b) and failed to support the laws of this State in wilful violation of section 6068, subdivision (a). Respondent is not credible when he states that O'Leary told him exactly what to put in the complaint. O'Leary is credible in stating that respondent put in all of the authorities in the complaint. Even if respondent told him that he was on inactive status because he was on sabbatical writing a book, O'Leary still believed that he was hiring a lawyer.

The court believes respondent's counsel that he wrongly advised respondent that he could be a paralegal. However, this is irrelevant because the court finds O'Leary's testimony credible that respondent never told him he was a paralegal.

2. Count Two - Illegal Fee – Rule 4-100(A)

Rule 4-200(A) prohibits an attorney from entering into an agreement for, charging or collecting an illegal or unconscionable fee.

Respondent wilfully violated rule 4-200(A) by entering into an agreement for, charging and collecting an illegal fee in the O'Leary matter.

3. Count Three - Moral Turpitude – Section 6106

Section 6106 makes it a cause for disbarment or suspension to commit any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not.

There is clear and convincing evidence that respondent violated section 6106. Respondent lied to O'Leary when he told him that he was on inactive status because he was on sabbatical writing a book. Moreover, he never told O'Leary that he was a paralegal. In fact, respondent was on inactive status and was not allowed to practice law or negotiate for, charge or

collect fees for doing legal work. Accordingly, he committed an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

IV. Aggravation and Mitigation

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standards 1.2(b) and (e).)[3]

A. Mitigation

1. *Emotional Difficulties*

Extreme emotional difficulties or physical disabilities suffered by the attorney at the time of the misconduct may be mitigating factors. (Std. 1.2(e)(iv).) Limited mitigating weight is afforded to respondent's emotional difficulties. He was diagnosed as bipolar and continued participating in the Lawyer's Assistance Program (LAP) even after being terminated from the court's Alternative Discipline Program (ADP). However, despite treatment, he continued to commit misconduct and, as a result, was terminated from the program, resulting in the prior discipline discussed below.

No mitigating weight is allowed for respondent's severe financial difficulties. The difficulties resulted from his suspension for prior misconduct. Although he had no income from his law practice, respondent has rental properties and collects social security. Rather than trying to find another job, he lied to O'Leary and tried to keep practicing law. He has not even attempted to offer Borg a payment plan.

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

2. *Candor and Cooperation*

Respondent demonstrated spontaneous candor and cooperation to the State Bar during disciplinary investigations and proceedings by stipulating to facts in this matter. (Standard 1.2(e)(v).)

B. Aggravation

There are several aggravating factors.

1. Prior Record of Discipline

Respondent's one prior disciplinary record is an aggravating factor. (Std. 1.2(b)(i).) In a decision filed on June 28, 2011, in State Bar Court nos. 05-O-04119 (06-O-14935; 07-O-12717; 07-O-14195); 08-O-11448, (08-O-13080; 08-O-13110; 08-O-14802; 09-O-10410); 08-C-10286 (Cons.), the State Bar Court recommended discipline consisting of four years' stayed suspension and five years' probation on conditions including actual suspension for three years and until respondent complies with standard 1.4(c)(ii), with credit given for the period of inactive enrollment from April 5, 2011.[4] That matter consisted of a misdemeanor conviction for violating Penal Code section 415(3) [using offensive words in a public place which are inherently likely to provoke an immediate violent reaction] as well as violations in eight client matters, of sections 6068, subdivisions (b), (d) and (m) (one, two and five counts, respectively), 6103 (one count) and 6106 (four counts) and rules 3-110(A) (six counts), 3-700(D)(2) and 4-100(B)(3) (two counts each). Aggravating circumstances included multiple acts and a pattern of misconduct and indifference toward rectification. Mitigating factors included no prior disciplinary record and candor and cooperation. The court notes that the misconduct in these matters occurred between approximately February 2005 and January 2009.

[4] This discipline recommendation is not yet final and is pending before the California Supreme Court. It is still considered a prior instance of discipline, however. (Rule 5.106(A), Rules Proc. of State Bar.)

2. Multiple Acts/Pattern of Misconduct

Respondent's misconduct evidences multiple acts of wrongdoing. (Std. 1.2(b)(ii).)

3. Misconduct Surrounded by Bad Faith and Overreaching

Respondent's misconduct was surrounded by bad faith and overreaching. (Std. 1.2(b)(iii).) He purposely delayed the Borg fee arbitration by limiting his availability to December 23 and 24.

V. Discussion

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. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the victim. Standards 2.3 and 2.6 apply in this matter.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

The court must also consider standard 1.7(c) which indicates that a prior disciplinary record is not a prerequisite for imposing any appropriate sanction, including disbarment.

In this matter, respondent has been found culpable, in two client matters, of violating rules 4-100(B)(3) and (4), 4-200(A) and sections 6068(a)/6125/6126 and 6106 (one count each) as well as a conviction for violating Vehicle Code section 23103.5(A). The latter was not found to constitute moral turpitude, but rather, other misconduct warranting discipline. Aggravating factors include multiple acts of misconduct, misconduct that was surrounded by bad faith and overreaching and a prior disciplinary record. In mitigation, the court afforded limited weight to respondent's emotional difficulties and also considered candor and cooperation.

The following standards apply: 2.2(b), 2.3, 2.6, 2.7 and 3.4. The most severe sanction is found at standard 2.7 which recommends a six-month actual suspension irrespective of mitigating circumstances for culpability of violating rule 4-200.

Respondent seeks a maximum of four years' actual suspension. The State Bar seeks disbarment. The court agrees with the latter recommendation.

The court found instructive *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563. In *Taylor*, the attorney had committed serious misconduct in three client matters, including repeatedly practicing law while suspended, deceiving a court and client by filing an unauthorized lawsuit and not complying with his criminal probation by disobeying two separate court orders requiring him to provide support to his minor children. He also had a prior record of discipline and did not participate in either the present or past disciplinary proceedings. There were no mitigating circumstances. Accordingly, the Review Department found that respondent

was not a good candidate for suspension and/or probation because "... these facts reflect respondent's disdain and contempt for the orderly process and rule of law and clearly demonstrate that the risk of future misconduct is great." (*Id.* at p. 581.)

Although the instant case and Taylor are not factually congruent, the same reasoning applies. The court notes that respondent has been engaged in a continuous course of misconduct since approximately February 2005, when the misconduct in the prior disciplinary matter commenced, until at least December 2010, when the last acts of misconduct charged in the present case occurred. The misconduct has continued despite having been afforded the opportunity of participating in LAP and ADP. The court is very concerned also that respondent does not appear to understand the gravity of his misconduct and that he has tried to avoid responsibility by, for example, delaying the Borg fee arbitration. He also put his interests above those of his clients and violated the Supreme Court's suspension order in the prior disciplinary matter by engaging in the unauthorized practice of law and accepting fees therefor. Accordingly, having considered the nature and extent of the misconduct, the aggravating circumstances, as well as the case law and the standards, the court believes that disbarment is the only means of protecting the public from respondent's further misconduct.

VI. Recommendations

The court recommends that respondent **Stanley G. Hilton** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

A. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with rule 9.20, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in

paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

B. Restitution

It is recommended that respondent make restitution to the following client within 30 days following the effective date of the Supreme Court order in this matter or within 30 days following the Client Security Fund payment, whichever is later (Rules Proc. of State Bar, rule 291): to Donald Borg in the amount of $11,005.74 plus 10% interest per annum from August 10, 2009 (or to the Client Security Fund to the extent of any payment from the fund to Donald Borg, plus interest and costs, in accordance with Business and Professions Code section 6140.5). Any restitution to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

C. 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

It is ordered that respondent be transferred to involuntary inactive enrollment status pursuant to section 6007, subdivision (c)(4). The inactive enrollment will become effective three days from the date of service of this order and will terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court.

Dated: October ___, 2011

LUCY ARMENDARIZ
Judge of the State Bar Court