FILED JULY 25, 2013

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	**Case Nos.: 11-O-17733 (11-O-19264; 12-O-10771; 12-O-10976; 12-O-11717)-DFM**
LEON ARAKELIAN,	)	
Member No. 243180,	)	**DECISION**
A Member of the State Bar.	)	

INTRODUCTION

Respondent **Leon Arakelian** (Respondent) is charged here with nineteen counts of misconduct, involving five different client matters. At the end of the trial of this matter, two of those charges were dismissed pursuant to the stipulation of the parties. The remaining seventeen counts include allegations that Respondent willfully violated (1) rule 3-110(A) of the Rules of Professional Conduct[1] (failure to perform with competence) [three counts]; (2) Business and Professions Code section 6068, subdivision (m)[2] (failure to respond to client inquiries) [three counts]; (3) rule 3-700(D)(2) (failure to refund unearned fees) [four counts]; (4) rule 4-100(B)(3) (failure to render accounts of client funds) [two counts]; (5) section 6106 (moral turpitude) [two counts]; (6) section 6068, subdivision (i) (failure to cooperate in State Bar investigation) [two

[1] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

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

counts]; and (7) section 6068, subdivision (a) (failure to comply with laws – unauthorized practice of law). The court finds culpability and recommends discipline as set forth below.

PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on December 20, 2012. An initial status conference was held in the matter on January 28, 2013. At that time the case was given a trial date of April 23, 2013, with a two-day trial estimate. Respondent did not appear for this status conference.

On February 14, 2013, Respondent filed his response to the NDC, a week after the State Bar had filed a motion for entry of Respondent's default.

Trial was commenced on April 23, 2013, and was completed on April 26, 2013. The State Bar was represented at trial by Deputy Trial Counsel Charles T. Calix. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on June 6, 2006, and has been a member of the State Bar at all relevant times.

Case No. 11-O-17733 (Ellingsworth Matter)

On or about July 11, 2011, Pat Ellingsworth, Jr. hired Respondent to prepare and file the documents required to create a corporation named Mother Earth Caregivers in order to distribute medical marijuana. The documents contemplated and requested by Ellingsworth included, inter

alia, articles of incorporation and license and permit applications. On July 11, 2011, Ellingsworth paid Respondent $5,000 as advanced fees for that work.

On or before July 26, 2011, Ellingsworth met with Respondent and signed various documents, including articles of incorporation and a certification of adoption of bylaws for the corporation.

On September 6, 2011, Respondent and Ellingsworth were scheduled to meet again. Shortly before the meeting, Ellingsworth sent an email to Respondent, indicating that he was unable to meet that night and needed to postpone. Respondent sent a reply email, offering to meet the next day and informing Ellingsworth that "the seller's permit is to be issued by the end of this week. The supervisor for the Van Nuys division of the BOE has taken a liking in me and is expediting the approval for all my clients." (Exh. 8, p. 1.) In response, Ellingsworth sent an email to Respondent on the following day, September 7, 2011, indicating that he was in the process of seeking to lease a location where the corporation would conduct its operations, and he wanted to have "all the necessary documents prepared for when we meet."

Respondent and Ellingsworth met at a restaurant on September 13, 2011. Respondent arrived without any of the necessary papers, but promised to provide them to Ellingsworth in two days from then. He did not subsequently do so.

On September 21, 2011, after Ellingsworth had still not received any documents from Respondent, Ellingsworth sent a "certified" letter to Respondent demanding to receive the corporate formation materials from Respondent, including the articles of incorporation, the seller's permit, and the federal employer identification number. Ellingsworth received nothing in response.

On September 25, 2011, Ellingsworth emailed Respondent to complain about Respondent's lack of progress on the matter:

> Below is an email that you wrote on July 18th indicating you would send documents – nothing was ever received, and still I have nothing two months later – honestly, this is a very long delay and I'm still wondering when I'll receive everything from you, and I also can't see why you haven't spent 30 seconds to text me your new office and my tax id number – I need that information asap and have requested it multiple times.

On September 28, 2011, Respondent forwarded via email several of the documents that Ellingsworth had signed on July 26. There was no indication on the documents that any of them had yet been filed with any of the requisite governmental authorities. Instead, in his email, Respondent stated, "I need the corporate number to be issued by the government to be able to get your seller's permit and federal tax id number. I will check with them again tomorrow to see if it has been issued or not." (Exh. 10, p. 1.)

On October 5, 2011, Ellingsworth emailed Respondent to state that he was still waiting to receive the corporate formation documents.

Not hearing anything from Respondent, on October 11, 2011, Ellingsworth again complained to Respondent via email: "I still need the remaining documents ASAP to commence operations. Right now I do not have any proof from the courts that my company indeed exists." (Exh. 11.)

On October 11, 2011, within an hour of the above email, Respondent responded to it by email. (Exh. 11.) In his response he stated:

> I have submited [sic] the required docs to each and every state agency as I have said to you, now for the 100th time. As soon as I get the license and permit numbers, believe me, I will forward them to you.

On October 18, 2011, Ellingsworth asked Respondent if he had "any sort of receipt showing when [he] had submitted Mother Earth Caregivers to the California Dept. of Corporations?"

Two days later, on October 20, 2011, Ellingsworth wrote another email to Respondent, complaining that he had heard nothing from him since Respondent's email of October 11. Respondent did not respond to it.

On November 1, 2011, Ellingsworth again emailed a complaint to Respondent about the lack of progress on his matter and Respondent's lack of response to his communications:

> It has been over three months since you allegedly filed my application for Mother Earth Caregivers, and I still have zero proof that the NPO even exists. For all I know, you have not filed anything because there is nothing to show me that you have done so except for your word which is very unreliable and untrustworthy.

(Exh. 14.)

On November 13, 2011, Ellingsworth sent another email to Respondent, asking to hear from him. In it, he noted that he had not heard from Respondent for over a month. (Exh. 15.)

Ellingsworth did not hear from Respondent until January 17, 2012, when Respondent sent him an email. (Exh. 15.) In this email, Respondent stated, "Patrick, your business license will be available after 1/18/2012."

On the next day, Respondent sent a follow-up email to Ellingsworth, asking, "Where do you want the license sent too [sic]." Respondent also indicated in this message that he needed additional minutes for the corporation to be signed. (Exh. 16.)

Later that same day, Ellingsworth sent an email to Respondent, terminating the relationship and demanding a full refund:

> Our relationship is terminated. I have checked again with the California Secretary of State and it remains to show that there is no record of Mother Earth Caregivers ever being submitted for licensing. I have received nothing from you but

> fabrications and false claims. I expect a complete refund of the $5,000.00 provided to me within the next 10 business days. Your failure to comply will result in prosecution.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." Respondent was hired to form a corporation for Ellingsworth, including filing the necessary incorporation documents with the State of California, obtaining a federal taxpayer identification number, and the like. He failed to complete any of these tasks, despite the many requests and complaints by his client. His ongoing lack of diligence on the matter was a willful violation by him of rule 3-110(A).

Count 2 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

Section 6068, subdivision (m), of the Business and Professions Code obligates 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."

As reflected in the above chronology, Ellingsworth repeatedly and reasonably requested a status report from Respondent on the progress of getting the corporation contemplated by Ellingsworth incorporated and licensed to do business. Respondent repeatedly failed to respond promptly to those requests. This conduct by Respondent was a willful violation by him of his obligations under section 6068, subdivision (m). (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855 [respondent violated § 6068, subd. (m) by failing to respond to letters from clients about respondent's intentions regarding pursuit of appeals].)

Count 3 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]
Count 4 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

In these counts, the State Bar alleges that Respondent (1) violated rule 4-100(B)(3) by failing to provide an accounting to Ellingsworth of what time had been expended on the Mother Earth Caregivers matter and (2) violated rule 3-700(D)(2) by failing to refund unearned fees. This court agrees.

Rule 4-100(B)(3) requires a member to "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]"

Rule 3-700(D)(2) provides that an attorney must "promptly refund any part of a fee paid in advance that has not been earned."

Respondent argues that he did not fail to refund unearned fees because the $5,000 was a non-refundable retainer fee. For the same reason, he contends that he had no duty to provide an accounting of the advanced fees that he had received and retained.

These contentions by Respondent lack merit. (*In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757-758.) As discussed by the Review Department in the *Fonte* matter:

> Respondent contends that he did not have to account for the advanced fee in the Newport case because it was a retainer and earned on receipt. He also argues that since the word "fees" does not appear in rule 4-100(B)(3), fees are not encompassed in the rule's accounting requirement, and the rule applies only to funds received from the client and placed in a trust account, such as advanced costs, or to property received from a third party for the client, such as settlement proceeds.
>
> Rule 3-700(D)(2) . . . describes a true retainer fee as a "fee which is paid solely for the purpose of ensuring the availability of the member for the matter." The California Supreme Court amplified the definition to some degree in a footnote in *Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4, stating, "A retainer is a sum of money paid by a client to secure an attorney's availability over a given

> period of time. Thus, such a fee is earned by the attorney when paid since the attorney is entitled to the money regardless of whether he actually performs any services for the client."
>
> It is evident that the Fairchilds were paying for more than the respondent's availability. In this case, there is no indication that the respondent made any particular provision to allot or set aside blocks of time specifically devoted to pursuing these clients' claims or that he turned away other business in order to proceed with their matters.

As a result of the above analysis, the Review Department in *Fonte* concluded that the respondent there had duties both to account to the client for what portion of the advanced fee the attorney was claiming was earned and also to refund any unearned fees.

> In *Matthew v. State Bar* (1989) 49 Cal.3d 784, the Supreme Court found that in two instances an attorney who worked on a $5,000 and a $1,000 "non-refundable retainer" violated former rules 2-111(A)(3) and 8-101(B)(4) (eff. prior to May 26, 1989) by failing to refund the unearned portion of fees in excess of reasonable services when he failed to complete legal services contracted by the clients. Notwithstanding the attorney's characterization of the fees, the Court held that since the attorney had completed only a portion of the services for which he was retained, the fees were partly unearned, and, he had an obligation to return the unearned amount. (*Id.* at p. 791.)

As was the case in the *Fonte* matter, Respondent's retainer agreement with Ellingsworth, even if it had been signed, did not qualify as a true retainer agreement. (See also *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, 950-51.) As a result, when Respondent was terminated before he had performed all of the services contemplated by the retainer agreement, he had a duty to provide an accounting of that portion of the fees he was contending had been earned and promptly refund that portion that was unearned. His failures to do either, notwithstanding the demand by Ellingsworth for a refund, constitute willful violations by him of both rule 3-700(D)(2) and rule 4-100(B)(3). (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 789 [attorney may not retain advanced fees where services specified in fee agreement not

performed even though "nonrefundable retainer"]; *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424 [attorney may not retain advanced fees if minimal services performed are of no value to client]; *In the Matter of Brockway*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 952 [culpability established for failure to account despite lack of formal demand for accounting].)

Count 5 –Section 6106 [Moral Turpitude]

Section 6106 provides in pertinent part: "The commission of any act involving moral turpitude, dishonesty or corruption . . . constitutes a cause for disbarment or suspension." For purposes of State Bar disciplinary proceedings, moral turpitude is "any crime or misconduct reflecting dishonesty, particularly when committed in the course of practice . . . ." (*Read v. State Bar* (1991) 53 Cal.3d 394, 412.)

Acts of moral turpitude include omissions, concealment and affirmative misrepresentations. (*Grove v. State Bar* (1965) 63 Cal.2d 312, 315.) "No distinction can . . . be drawn among concealment, half-truth, and false statement of fact." (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 910 [moral turpitude includes creating false impression by concealment as well as by affirmative misrepresentations].)

In this count the State Bar alleges that Respondent made false statements to Ellingsworth regarding the status of Respondent's work on Ellingsworth's matter, acts of moral turpitude in violation of section 6106. This court agrees.

Respondent repeatedly and falsely represented to Ellingsworth that progress was being made in getting Mother Earth Caregivers incorporated, securing a permit from the Board of Equalization, and obtaining a federal taxpayer identification number and a federal identification

number. At the same time that Respondent was providing these assurances to Ellingsworth, Respondent was aware that he had not filed the articles of incorporation with the Secretary of State's Office to create the corporation. He was also aware that creating the corporation was a prerequisite for all of the other required steps to be completed on behalf of the corporation.

By way of example, on September 6, 2011, Respondent represented to Ellingsworth that he had met with a representative of the Board of Equalization and that "the seller's permit is to be issued by the end of the week." In contrast to this representation, when Respondent was asked at trial about this meeting, he testified that he was told during the meeting that a permit could not be issued because there was no location for the business. He also recalled being told by the Board's representative that a bond might be required before any permit would be issued.[3]

Such misrepresentations by Respondent to his client were knowing acts of dishonesty and moral turpitude and represent willful violations by him of the prohibition of section 6106.

Count 6 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

Section 6068(i) of the Business and Professions Code, subject to constitutional and statutory privileges, requires attorneys to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against that attorney.

On December 5, 2011, a State Bar investigator sent a letter to Respondent at his official membership address, advising Respondent of the complaints made by Ellingsworth about Respondent and asking for Respondent to provide a written response to those complaint by December 19, 2011. This letter was returned as undeliverable with no forwarding address.

[3] In Respondent's response to the NDC, he affirmatively alleged that "the referenced permit/license was obtained by Respondent for Ellingsworth. Respondent personally gave an original copy of the above referenced business license to Ellingsworth. Respondent never made a false statement to Ellingsworth, or anyone else for that matter." (Response, ¶ 8.) This statement was itself untrue.

On December 21, 2011, the investigator sent another letter to Respondent regarding the Ellingsworth matter, enclosing a copy of his prior letter, and asking for a response by January 9, 2012. This letter was also returned as undeliverable.

On March 12, 2012, the investigator sent an email message to Respondent regarding the Ellingsworth complaints. He attached to his email message copies of the previous letters that had been sent to Respondent, informed him that the letters had been returned as undeliverable, and asked that a written response be provided by March 19, 2012.

Approximately two hours after the email was sent by the State Bar investigator, Respondent replied to it, expressing surprise that the letter had been returned. Respondent then promised to respond to the inquiry by "Friday of this week."

Notwithstanding Respondent's receipt of the investigator's email and its attached letter and Respondent's assurance that he would respond to the inquiry prior to the deadline stated in the letter, Respondent failed to provide any response to the inquiry.

Respondent's failure to respond to the above inquiry from the State Bar constituted a willful violation of his professional obligations under section 6068, subdivision (i). (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 644 [attorney may be found culpable of violating § 6068, subd. (i), for failing to respond to State Bar investigator's letter, even if attorney later appears and fully participates in formal disciplinary proceeding].)

Case No. 11-O-19264 (Rivera Matter)

In the summer of 2009, Hernan Rivera (Rivera), also known as Hernan Rivera Gutierrez, hired Respondent to file a bankruptcy petition on his behalf. The parties agreed that Rivera would pay $1,000 for the legal fees for Respondent to prepare and file the bankruptcy petition.

In addition, it was agreed that Rivera would pay the filing fee (approximately $300) required for the bankruptcy petition to be filed.

In February 2010, Respondent prepared a bankruptcy petition on behalf of Rivera, which the client signed. At the same time that Rivera was signing the drafted bankruptcy papers, Rivera paid to Respondent the agreed $1,000 of advanced legal fees. He did not, however, provide to Respondent the necessary filing fee. Rivera instead was "hoping" to get a fee waiver, because he was short of money. Respondent then sought a fee waiver on Rivera's behalf from the bankruptcy court, but that request was denied by the court. Because Respondent did not have the required filing fee, he did not file the executed petition.[4]

Approximately a year later, Rivera contacted Respondent through their respective Facebook accounts in April 2011. At that time, Rivera indicated that he was again interested in filing the bankruptcy petition. The tone and content of the electronic communications at that time between the parties, all posted on the Facebook account of the other, were quite friendly, and there was no indication of any unhappiness at the time by Rivera regarding Respondent's failure to file the petition during the prior 12 months. Instead, the parties agreed to meet again to discuss Rivera's renewed desire to pursue a bankruptcy. During the course of these communications, Respondent indicated that he would prefer their communications to be through "text capabilities" or "just call!"

[4] The court notes that the February 2010 petition was incorrectly prepared in the name of Hernan "Riviera," rather than "Rivera." Whether this was a reason why the petition was not filed at the time or, on the other extreme, whether the parties even noticed the mistake at the time or ever, is unknown to the court.

Respondent then prepared a new bankruptcy petition on Rivera's behalf, using an execution date throughout the document of May 5, 2011.[5] Rivera thereafter executed the new petition sometime shortly after May 5, 2011. Respondent actually took the petition to Rivera's residence for Rivera to execute. Rivera did not, however, provide Respondent with the necessary filing fee, although he understood that it was his obligation to pay that fee. He again was hoping that Respondent would be able to get a fee waiver for him.

On June 10, 2011, the bankruptcy petition had not yet been filed. Rivera on that date posted a message to Respondent on Facebook, complaining that he needed the "BK done!" Respondent posted a Facebook reply that same day, stating:

> I need the filing fee Hernan. You never gave that to me. Plus, you don't make that out to me, it needs to be a money order made out to the "Central District Bankruptcy Court" for $299.

(Exh. 37.)

On June 10 and 11, 2011, Rivera posted two new messages on Respondent's Facebook page, asking where he should send the check. In Rivera's June 10 message, Rivera indicated that "the checks [sic] made out." In direct contrast to that representation, in Rivera's posted message on the very next day he inquired, "Ok, so where do I need to send this check, and who do I make it out to?" (Exh. 39 [emphasis added].) As quoted above, Respondent had just provided Rivera with that information on the preceding day. He had also instructed Rivera that he needed to provide the filing fee in the form of a money order, not a check.

Rather than send Respondent the required $299, Rivera continued to post complaints on Facebook about Respondent's failure to file the bankruptcy petition. On June 15, 2011, Rivera began demanding that Respondent pay the filing fee himself.

[5] As he had done with the 2010 draft petition, he drafted the May 2011 petition in the name of Hernan "Riviera," rather than "Rivera."

On that same day, Respondent replied on Facebook, "What are you talkin about? I told you to send it to my office so I can submit it already. Just mail it to me. Let me know if you don't have the address." (Exh. 39.)

Despite this posted message and instruction from Respondent, Rivera still did not send the filing fee to Respondent. Instead, he continued to post various complaints about Respondent on Facebook, coupled with continuing demands that Respondent pay the $300 filing fee. Many of these complaints were clearly without justification, such as the repeated allegation that Respondent had not provided any information regarding how the "check" should be made out. Some were nonsensical: "Hey what's up Leon. I've left your phone a couple voice mails since last Thursday and have not heard back from you yet. Have you changed your phone number?" (Exh. 41.)[6]

Rivera then began to publicly accuse Respondent of fraud and demanded that Respondent refund the $1,000 that Rivera had paid to have the petition prepared. In response, Respondent again formally reminded Rivera on Facebook that the hold-up was Rivera's failure to send Respondent the filing fee:

> Excuse me? We talked about when your case will be filed last we spoke. Just to remind you, it's WHEN YOU PAY ME THE FILING FEE. I'm not running a pro-bono workshop here. Very classy of you posting this on fb.

(Exh. 45 [emphasis in original].)

Rather than pay the filing fee, Rivera just continued to complain that Respondent had "neglected to tell me who to make it out to." (Exh. 45.) During the course of these complaints, Rivera disclosed that he had been keeping screenshots of his Facebook communications with

[6] During his trial testimony, Rivera stated that he was waiting for Respondent to provide him with the file number of the case before he would make out the check for the filing fee. This was a need for information that he never disclosed to Respondent at the time. Until the case is filed, of course, it will not have a file number.

Respondent. The screenshots were provided by Rivera to the State Bar and used by it as exhibits at trial. Hence, it is clear that Rivera had in his possession at all times during his many Facebook complaints the text of Respondent's instruction of June 10, 2011, informing Rivera exactly how to designate the payee of the required money order.

On January 18, 2012, Rivera sent a letter to Respondent's office address in Encino, terminating Respondent's engagement and demanding a refund of the entire $1,000. In this letter, Rivera again erroneously alleged that he had never been provided the information as to whom the filing fee should be paid.

Count 7 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

In this count the State Bar alleges that, "By not filing a bankruptcy petition for Rivera, and by otherwise not performing any services of value to Rivera, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence." In conjunction with that count, the State Bar also alleged that Respondent did not respond to Rivera's inquiries or otherwise communicate with Rivera about the status of his bankruptcy filing" except that 'on or about October 5, 2011, Rivera received a message from Respondent through Facebook, indicating that Respondent would be filing his bankruptcy petition."

The evidence fails to provide clear and convincing proof that Respondent failed to perform services with competence in willful violation of rule 3-110(A).

Respondent was hired to prepare a bankruptcy petition for Rivera, and he did so – twice. He even took the extra step of hand-delivering that second petition to Rivera at Rivera's apartment so that it could be executed.

The allegations by Rivera, and subsequently by the State Bar, that Respondent failed to communicate with Rivera about the status of the bankruptcy filing are belied by the Facebook screenshots saved by Rivera. They confirm Respondent's testimony that he was consistently telling Rivera that the court would not grant a fee waiver and that the petition could not be filed until Rivera advanced the required fee. They also make explicit that Respondent informed Rivera in June 2011 that Rivera needed to purchase a money order in the amount of $299, made payable to "Central District Bankruptcy Court." There is no evidence from any source that Rivera ever purchased such a money order. Respondent had no professional obligation to pay the fee required to file the bankruptcy petition, especially when he and Rivera had previously agreed that the required fee would be paid by Rivera.

To the extent that Rivera complained in his many Facebook postings and during his testimony during trial, that Respondent was not responding to his inquiries, those complaints lack credibility, were unsupported at trial by clear and convincing evidence, and were frequently shown by the screenshots themselves to be untrue.

By way of example, Rivera complained in some of his postings that Respondent needed to provide him with the address of his law office. That address, on Ventura Boulevard in Encino, was included in both of the petitions prepared by Respondent in February 2010 and May 2011 and signed by Rivera at those times. The May 2011 petition was signed by Rivera just shortly before Respondent instructed Rivera on June 15, 2011, to send the required money order to his office. During his testimony at trial, Rivera made no claim that he did not know the address of Respondent's office at the times that Respondent directed him to send the filing fee to Respondent's office. Instead, his emails during that same period make clear that he was well aware of where the office was located: "Can I swing by the office one of these days?" (Exh. 33.)

Finally, making clear the sham nature of this allegation, in one of Rivera's last Facebook postings and in his termination letter, Rivera sought to justify his failure to send the filing fee because Respondent had failed to send the address of the bankruptcy court:

> In the summer of 2009 I hired you to file my bankruptcy. …The agreement also stated that I would pay the filing fee of $300 directly to the clerk. …I made more than enough efforts to contact you in order to get the necessary information as to who or what agency to make the $300 payment to and where to submit it. I never received the information I needed."

(Exh. 47 [emphasis added].)

> [E]xcuse me but it's not YOU that I need to pay the filing fee to, as you already told me but neglected to tell me who to make it out to. Im [sic] at the end of my patience, I do not appreciate being strung along and robbed of my money. If you want to resolve this in an amicable manner I suggest you get a hold of me ASAP and get me the proper information that I have been requesting from you for over 1 year now."

(Exh. 45.)

As a final note, the allegation in the NDC that Respondent sent a message via Facebook on October 5, 2011, that he would be filing the bankruptcy petition, is unsupported by any evidence at trial and is belied by Rivera's own screenshot of that Facebook message. (See Exhibit 43.)

This count is dismissed with prejudice.

Count 8 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count the State Bar alleges that Respondent failed to respond to Rivera's "repeated inquiries about the status of his bankruptcy matter for a duration of approximately one year and seven months[.]" This allegation is based on the Facebook postings of Rivera, discussed above, and, as also discussed above, was unsupported by clear and convincing evidence at trial.

This count is dismissed with prejudice.

Count 9 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count, the State Bar alleges that Respondent failed to refund any portion of the $1,000, in willful violation of rule 3-700(D)(2). That rule provides, in pertinent part: "A member whose employment has terminated shall: …(2) Promptly refund any part of a fee paid in advance that has not been earned."

It is undisputed that Respondent failed to refund any portion of the $1,000. There was no clear and convincing evidence that any portion of that fee was unearned. As previously noted, Respondent was hired to prepare a bankruptcy petition for Rivera, and he did so – twice. He even took the extra step of hand-delivering that second petition to Rivera at Rivera's apartment so that it could be executed.

This count is dismissed with prejudice.

Case No. 12-O-10771 (Boyadjian Matter)

In late 2011, Respondent was engaged to act as counsel for Sarkis Boyadjian, who had received a traffic citation for various alleged infractions. At the time that the alleged violations occurred, Boyadjian was still a minor.

On October 29, 2011, Respondent appeared in the juvenile department of the Los Angeles Superior Court as counsel for Boyadjian, appearing in front of Referee Everett Fields. (Exh. 49.) At that time, a further hearing in the matter was scheduled for January 25, 2012.

Effective January 9, 2012, Respondent was ordered enrolled as an involuntary inactive attorney, due to having his default entered in another disciplinary action. (Section 6007, subd. (e).) Respondent was aware that he was ineligible to practice because of this order prior to January 25, 2012.

Notwithstanding his awareness of his ineligible status, Respondent went to court with his client on January 25, 2012. Once there, Respondent did not disclose to the court that he was not eligible to represent his client at the time. Instead, he asked the court, "Can I tell you something that I don't want my client to hear?" In response to that inquiry, the court indicated that he could not. Respondent then appeared for his client and then stated, "My client wants to represent himself." Respondent did not, however, seek to be relieved as counsel in the matter. Nor did he indicate that he was not eligible to represent his client during the proceeding. Instead, he remained with the client in the court room while the client changed his plea to guilty and was then sentenced by the court. Had Respondent indicated to the court that he was not entitled to act as Boyadjian's attorney that day, Referee Fields would have continued the hearing to a later date.

Count 10 – Section 6068, subd. (a) [Failure to Comply with Laws – Unauthorized Practice of Law]

Section 6068, subdivision (a), makes it the duty of an attorney "[t]o support the Constitution and laws of the United States and of this state." Section 6125, provides that "No person shall practice law in California unless the person is an active member of the State Bar." Section 6126, subdivision (b), states that "Any person who has been involuntarily enrolled as an inactive member of the State Bar, or has been suspended from membership from the State Bar, or has been disbarred, or has resigned from the State Bar with charges pending, and thereafter practices or attempts to practice law, advertises or holds himself or herself out as practicing or otherwise entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or a county jail."

Where it is contended that a member has violated sections 6125 and 6126, the appropriate method of charging those violations is by charging a violation of section 6068, subd. (a). (See *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

By appearing in court at a time when he was not eligible to practice, Respondent practiced law while he was not authorized to do so. Such conduct by Respondent constituted a willful violation by him of Business and Professions Code, sections 6068(a), 6125 and 6126.

Count 11 – Section 6106 [Moral Turpitude]

In this count, the State Bar alleges that Respondent made misrepresentations to the State Bar regarding his appearance in the juvenile court for Boyadjian on January 25, 2012. This court agrees.

On April 10, 2012, Respondent sent a letter to the State Bar, responding to an inquiry regarding the report made to it by Referee Fields that Respondent had appeared in court on January 25, 2012, while not eligible to practice. In this response, Respondent referred to, attached, and incorporated by reference a Voluntary Settlement Conference Statement that he had previously provided to this court in the prior disciplinary matter. In that statement, Respondent made the following representation regarding the January 25, 2012 appearance:

> In regards to Referee EVERETT FIELDS (hereinafter "Fields") report that I appeared in court to represent a client on a traffic matter, I concede the fact that I was in court, but I was in court as the guardian of the minor I was accompanying. The minor's name is Sarkis Boyadjian, and, at the request of his parents (Melcon Boyadjian and Marine Boyadjian), I have been his mentor since September 2010. As his mentor, I have kept a close eye on Sarkis' schooling, and have joined him in many out of school activities (camping, fishing, NASCAR events, etc.)[.] As such, I did not represent Sarkis as an attorney, but accompanied him to the Pasadena Court at the request of Mr. and Mrs. Boyadjian. I also had a handwritten letter drafted by Mrs. Boyadjian, indicating my capacity as guardian for her minor son; this was represented to the court without further inquiry.

(Exh. 53, pp. 4-5.)

This was a significant misrepresentation by Respondent to the State Bar. Respondent became counsel of record for Sarkis Boyadjian on or before October 29, 2011, and he appeared in court in that capacity with his client on January 25, 2012. Contrary to the above statement by Respondent, Referee Fields also testified credibly, and this court finds, that Respondent never sought to represent to Referee Fields on January 25, 2012, that Respondent was appearing that day as the minor guardian of Mr. Boyadjian. Indeed, as pointed out by Referee Fields during his testimony in this matter, Sarkis Boyadjian was not even a minor on January 25, 2012. He turned 18 on November 3, 2011.

Respondent's written misrepresentation to the State Bar regarding the nature of his appearance on January 25, 2012, was an intentional act of dishonesty, an act of moral turpitude, and a willful violation by him of section 6106.

Case No. 12-O-10976 (Nargizian Matter)

In August 2011, Hovig Nargizian hired Respondent to prepare and file documents creating a Mutual Benefit Cooperative for the purpose of distributing medical marijuana. The Retainer Agreement signed by Nargizian listed 19 categories of legal services that Respondent was to perform and provided for a $4,000 set fee which was characterized as a "non-refundable retainer." Nargizian paid $2,000 of the fee on August 4, 2011; he paid the additional $2,000 on or about September 15, 2011.

Respondent performed some, but not all, of the legal services set forth in the retainer agreement. When Nargizian terminated the agreement, Respondent gave to Nargizian his file, including the completed documents. When Nargizian subsequently demanded a refund of the $4,000, Respondent testified that he provided an accounting and did not owe any unearned fees.

Count 12 – Rule 3-110(A) [Failure to Perform with Competence]

In this count the State Bar alleged that Respondent failed to act with competence during his representation of Nargizian. The complaining witness in this matter, Hovig Nargizian, failed to appear to testify in this matter. During the latter portion of the trial, the State Bar asked that this count be dismissed. To formalize this court's oral order at that time, this count is dismissed with prejudice.

Count 13 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

In this count the State Bar alleged that Respondent failed to respond to reasonable status inquiries of his client. The complaining witness in this matter, Hovig Nargizian, failed to appear to testify in this matter. During the latter portion of the trial, the State Bar asked that this count be dismissed. To formalize this court's oral order at that time, this count is dismissed with prejudice.

Count 14 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

In this count, the State Bar alleges that Respondent failed to return unearned fees to Nargizian after being terminated and before all services had been performed pursuant to the retainer agreement. The State Bar, however, failed to present clear and convincing evidence to support this charge. The complaining witness in this matter, Hovig Nargizian, failed to appear to testify in this matter. The only evidence received by the court was that Respondent had provided an accounting to Nargizian after being terminated and did not owe any unearned fees. It was the State Bar that had the burden of proof on this issue. No evidence contrary to Respondent's testimony was received, and no evidence was offered that Respondent was discharged with cause or concerning the reasonable value of the services that he had performed. (*Oliver v. Campbell* (1954) 43 Cal.2d 298, 304; *Lessing v. Gibbons* (1935) 6 Cal.App.2d 598, 607-609 [attorney

discharged without cause may recover reasonable value of services rendered even though such reasonable value exceeds contract price].)

This count is dismissed with prejudice.

Case No. 12-O-11717 (Retig Matter)

On July 29, 2010, David Retig and his wife retained Respondent to represent them in filing for bankruptcy relief under Chapter 7 of the Bankruptcy Code. The retainer agreement provided for a $1,500 set fee which was characterized as a "non-refundable retainer." The retainer, however, stated that this retainer included "all fees associated with the bankruptcy petition, including the "Credit Report and Counseling fees." On August 11, 2010, Retig paid $1,558.50 to Respondent.

Respondent prepared the papers for Retig to file a Chapter 7 bankruptcy petition, which Retig then signed and sought to return to Respondent by mail, using the return envelope that Respondent had provided. These documents, however, were returned by the post office to Retig as "not deliverable."

After receiving the documents back from the post office, Retig spent several months seeking to contact Respondent. When Retig was eventually successful in reaching Respondent via text message, Retig then forwarded the signed bankruptcy papers to Respondent electronically. Respondent, however, did not follow-up on the matter to file a bankruptcy petition on Retig's behalf. Nor did he contact Retig to discuss future handling of Retig's matter, despite many efforts by Retig to discuss the matter with him.

For nearly a year thereafter, Retig sought to contact Respondent without success. In October 2011, Retig even went to the address of Respondent's office, only to discover that Respondent no longer had an office there. Finally, Retig sent an electronic message to

Respondent, terminating him and demanding a refund. Despite this demand, Respondent failed both to provide an accounting and to return the portion of the retainer that was unearned.

Retig subsequently hired another attorney, who successfully filed a successful Chapter 7 petition on the Retigs' behalf.

Count 15 – Rule 3-110(A) [Failure to Perform with Competence]

Rule 3-110(A) provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence." By failing to file a bankruptcy petition on behalf of Retig for more than a year before finally being fired by Retig, despite the fact that Retig had signed the documents, paid "all fees associated with the bankruptcy petition," and had attended the required pre-filing seminar, Respondent intentionally, recklessly and repeatedly failed to perform legal services with competence, in willful violation of rule 3-110(A).

Respondent testified that he told the Retigs that he was refusing to file the Chapter 7 petition because he had discovered, while doing a property search for the couple, that they had not disclosed property owned by the wife. This testimony was not credible. Respondent stated that he had this discussion with the Retigs when they came into the office and signed the very petition that Respondent now claims he was refusing to file. If Respondent had discovered that there was a reason preventing him from filing the petition, one would expect that he would have disclosed that fact to the Retigs before they came into the office and certainly without allowing them to sign the documents that Respondent allegedly felt were fraudulent. In contrast to Respondent's testimony, Retig credibly testified that there never was such a meeting.

Count 16 – Section 6068, subd. (m) [Failure to Respond to Client Inquiries]

As discussed above, Respondent had a professional obligation to respond to reasonable status inquiries by his clients and to notify them of significant developments. Respondent did

neither. He failed to respond to numerous inquiries by Retig regarding the unfiled bankruptcy petition. He also failed to notify them that he had moved offices and had new contact information.

Respondent's failures to communicate with his clients constituted willful violations by him of section 6068, subdivision (m).

Count 17 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]
Count 18 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

As discussed above, when Respondent was terminated by the client before completing the services that he had been retained to provide, he was obligated to provide an accounting to the client and return any unearned fees. Respondent's failed to do either. Given that the paperwork that he did had no value to the Retigs because of Respondent's failure to file the documents and because the $1,500 retainer included the required filing fee that was never paid, Respondent's failure to provide an accounting and return the unearned retainer constituted violations of both rule 4-100(B)(3) and rule 3-700(D)(2).

Count 19 – Section 6068, subd. (i) [Failure to Cooperate in State Bar Investigation]

On March 29, 2012, a State Bar investigator sent a letter to Respondent, requesting Respondent to provide a written response to the complaints made about Respondent by Retig to the State Bar. The letter also requested Respondent to provide a complete copy of his file on the Retig matter and an accounting for any work that had been done. A deadline of April 12, 2012, was included in the letter.

This letter was sent to Respondent's official membership address. Because the investigator had previously sent letters to that same address that had subsequently been returned as undeliverable, he had actually gone to the address prior to March 29, 2012, to determine whether it was a valid address and also to check on Respondent's well-being. When he arrived,

he observed that there actually was a mailbox for Respondent at the address, but that it was overflowing with mail. When Respondent did not answer the door, the investigator left a business card at the door.

Aware of the problem with mail being sent successfully to Respondent at his official membership address, on the same day that the investigator mailed the March 29, 2012 letter to Respondent at his official membership address, the investigator also sent the letter electronically to an email address at which the investigator had successfully been communicating with Respondent. Although the letter mailed to Respondent was subsequently returned as undeliverable, Respondent did receive the letter sent to him electronically. Nonetheless, he failed to provide a written response to the letter. He also failed to provide to the State Bar a copy of his Retig file or an accounting for any time that had been spent on the matter. This lack of cooperation by Respondent with the State Bar's investigation was a willful violation of Respondent's obligations under section 6068, subdivision (i).

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)[7] The court finds the following with regard to aggravating factors.

Multiple Acts of Misconduct

Respondent has been found culpable of 13 counts of misconduct in the present proceeding. The existence of such multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

[7] All further references to standard(s) or std. are to this source.

Significant Harm

Respondent significantly harmed his clients Ellingsworth and Retig by failing to complete the matters that they had hired him to perform. His delay in taking steps to incorporate the business contemplated by Ellingsworth prevented that business from beginning its operations and resulted in additional regulatory requirements being added before a license would be issued. (Std. 1.2(b)(iv).) The Retigs were forced to hire another attorney to complete the bankruptcy that they had hired Respondent to handle. (*In the Matter of Peterson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 73, 79 [counsel's abandonment harmed clients because they had to hire new counsel to finish outstanding matters and counsel failed to cooperate with new counsel].)

Respondent's misrepresentation to the State Bar investigator interfered with that investigation and represented significant harm to the administration of justice. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 913.)

Lack of Candor

As discussed above, Respondent displayed a lack of candor with this court both before and during his testimony in this matter. Such a lack of honesty with this court is a substantial aggravating factor. (Std. 1.2(b)(vi); *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-2); *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-3.)

Lack of Insight and Remorse

Respondent has demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He remains defiant and has no insight regarding his unethical behavior.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with regard to mitigating factors: No mitigating factors were shown by the evidence presented to this court.

No Prior Discipline

Although Respondent has no prior record of discipline, this factor warrants no consideration in mitigation due to the fact that Respondent began practicing law less than four years prior to the commencement of the present misconduct. (*In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 456, 473 [four years of practice prior to misconduct is not mitigating].)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.)

In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.3, which provides: "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law."

Acts of moral turpitude by an attorney are grounds for suspension or disbarment even if no harm results. (*In the Matter of Jeffers*(Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 221, 220.) Respondent engaged in multiple acts of moral turpitude, and they were all committed in the course of his practice of law. Thus, the magnitude of Respondent's misconduct and its direct relation to his practice of law call for significant actual suspension, if not disbarment.

Of particular concern to this court is Respondent's lack of candor with the State Bar and with this court. Both the Supreme Court and the Review Department of this court have emphasized the importance of a member being honest in dealing with the State Bar's disciplinary

process. Knowingly false statements by a member to the State Bar have been described by the Supreme Court as "particularly egregious" and "may perhaps constitute a greater offense than misappropriation." (*Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Warner v. State Bar* (1983) 34 Cal.3d 36, 44; *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961.) This is true even though no harm results from the wrongful act. (*Olguin, at p. 200*; *Barreiro v. State Bar* (1970) 2 Cal.3d 912, 926.) "[D]eception of the State Bar may constitute an even *more serious offense* than the conduct being investigated.' [Citation.]" (*In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282.)

In many of the instances where the Supreme Court found that an attorney had knowingly made misrepresentations to the State Bar or the State Bar Court, it disbarred the attorney. The State Bar asks that this court do so here as well, although that request is premised on the State Bar's assumption that this court would find culpability on all counts.

Although this court is extremely concerned about Respondent's demonstrated willingness to employ dishonesty to seek to avoid professional discipline, especially in view of Respondent's multiple acts of other misconduct involving his several clients, it does not conclude that disbarment is necessarily the only level of discipline that will protect the public, the profession, and the courts in the future. Respondent is still a young person and a relatively inexperienced practitioner. He has never been previously disciplined, and he appears to have practiced at all times since his admission to the bar without the benefit of a sage mentor or even significant supervision. There is ample reason to believe that he may be rehabilitated by the disciplinary process. At the same time, the gravity of his misconduct and his current lack of recognition of its impropriety make clear that a significant period of suspension, coupled with the requirement that

he demonstrate his rehabilitation, fitness to practice, and learning and ability in the general law before he is allowed to return to practice, is necessary and appropriate to protect the public and the profession.

Accordingly, the court recommends a three-year period of suspension, stayed, and a three-year period of probation, with conditions of probation including a minimum two-year period of actual suspension; a requirement that Respondent make restitution to his former clients, Ellingsworth and the Retigs, of the advanced fees he received from them and for which they received no services of value; and a requirement that he be required to demonstrate his rehabilitation, fitness to practice, and learning and ability in the general law pursuant to standard 1.4(c)(ii) before he is allowed to return to practice.

RECOMMENDED DISCIPLINE

Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Leon Arakelian,** State Bar No. 243180, be suspended from the practice of law for three years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for a minimum of the first two years of probation, and he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Within one year after the effective date of the Supreme Court order in this matter, Respondent must make restitution to the following payees (or reimburse the Client

Security Fund, to the extent of any payment from the fund to the payees, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles:

a. Pat Ellingsworth, Jr. in the amount of $5,000 plus 10 percent interest per year from July 11, 2011; and

b. David and Cheryl Retig in the amount of $1,558.50 plus 10 percent interest per year from August 13, 2010.

3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

4. Respondent must maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current office address and telephone number or, if no office is maintained, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office and the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Respondent's home address and telephone number will not be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

5. Within thirty (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 and 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 as directed and upon request.

6. Respondent must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Respondent is on probation (reporting dates).[8] However, if Respondent's probation begins less than 30 days before a reporting date, Respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

    (a) in the first report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

    (b) in each subsequent report, whether Respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

During the last 20 days of this probation, Respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

[8] To comply with this requirement, the required report, duly completed, signed and dated, must be received by the Office of Probation on or before the reporting deadline.

7. Subject to the proper or good faith assertion of any applicable privilege, Respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Respondent, whether orally or in writing, relating to whether Respondent is complying or has complied with the conditions of this probation.

8. Within one year after the effective date of the Supreme Court order in this matter, Respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, Respondent is ordered not to claim any MCLE credit for attending and completing this course. (Rules Proc. of State Bar, rule 3201.)

9. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter.

10. At the termination of the probation period, if Respondent has complied with all of the terms of his probation, the two-year period of stayed suspension will be satisfied and the suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Respondent take and pass the Multistate Professional Responsibility Examination during the period of his actual suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within that same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

California Rules of Court, Rule 9.20

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and 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.[9]

Costs

It is further recommended that costs be awarded to the State Bar in accordance with section 6086.10 and that such costs be enforceable both as provided in section 6140.7 and as a money judgment. It is also recommended that Respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and that such payment obligation be enforceable as provided for under Business and Professions Code section 6140.5.

Dated: July _____, 2013

DONALD F. MILES
Judge of the State Bar Court

[9] 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.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)