

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 11-TE-14708-LMA
	)	
PIOTR GABRIEL REYSNER	)	
	)	DECISION AND ORDER OF INACTIVE
Member No. 210937	)	ENROLLMENT
	)	[BUS. & PROF. CODE SECTION 6007,
A Member of the State Bar.	)	SUBD. (c)]

**Introduction<sup>1</sup>**

This case is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) seeking to involuntarily enroll respondent Piotr Gabriel Reysner (respondent) as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1), and rule 5.226 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

This matter involves respondent's representation of multiple clients who paid respondent advanced fees, received little or no work, and then were effectively abandoned by respondent. During the time period in question, respondent was heavily addicted to amphetamines and alcohol.

---

<sup>1</sup> 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.

In defense of this proceeding, respondent filed a declaration stating that he has been sober since July 26, 2010. In addition, respondent states that he is now being treated for a severe bipolar disorder which was not diagnosed until approximately three months ago.

After reviewing and considering this matter, the court finds that respondent's conduct poses a substantial threat of harm to his clients or the public, and respondent is ordered involuntarily enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(1).

### **Significant Procedural History**

On August 2, 2011, the State Bar filed a verified application seeking respondent's involuntary inactive enrollment pursuant to section 6007, subdivision (c)(2). On August 8, 2011, respondent filed a response to the application. The State Bar was represented by Deputy Trial Counsel Maria J. Oropeza. Respondent represented himself.

A hearing was held on September 6, 2011. During oral argument, neither the State Bar nor respondent submitted any further evidence. This matter was submitted for decision that same day.

### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 5, 2000, and has been a member of the State Bar at all times since.

### **Findings of Fact and Conclusions of Law**

Section 6007, subdivision (c) authorizes the court to order an attorney's involuntary inactive enrollment upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has

caused or is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;<sup>2</sup> and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. (Section 6007, subd. (c)(2).)

Respondent was given notice of this proceeding pursuant to rule 5.226(E) of the Rules of Procedure. The application is partially based on matters that are the subject of disciplinary charges pending in the State Bar Court. In addition, the application is based on five matters not yet the subject of disciplinary charges pending in the State Bar Court. (See Rules Proc. of State Bar, rule 5.226(C).)

The court's findings of fact are based on clear and convincing evidence.

The evidence before the court comes by way of declaration and requests for judicial notice. (Rules Proc. of State Bar, rule 5.230(A).) The State Bar submitted 12 declarations with their application. Based on the content of these declarations, the court finds these declarations to be generally credible.

On the other hand, respondent provided the court little in the way of tangible evidence. Respondent's answer is supported only by his own declaration. Respondent acknowledges that he was heavily addicted to amphetamines and alcohol until he "got clean" on July 26, 2010. Respondent also notes that he was diagnosed with bipolar disorder about three months ago. Aside from respondent's statements in his declaration, the record does not establish that

---

<sup>2</sup> But where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

respondent no longer suffers from the substance abuse and mental health issues which led to his misconduct.

### **The Sullivan Matter (Case No. 10-O-03987)**

On or about December 5, 2009, Steve Sullivan (Sullivan) hired respondent to pursue a bankruptcy on his behalf. Sullivan paid respondent \$2,000 in advanced fees.

Respondent filed a petition for bankruptcy on Sullivan's behalf in the United States Bankruptcy Court, Eastern District of California, using the Central District's form. Respondent subsequently filed bankruptcy schedules 15 days late. These schedules were incomplete, as they failed to include two significant assets, despite respondent being advised about the assets by Sullivan.

Respondent failed to appear at the initial creditors meeting, due to a personal emergency. Sullivan terminated respondent; and respondent filed a motion to withdraw as counsel. Before the court ruled on respondent's motion to withdraw, he failed to appear at the continued creditors meeting.

The court subsequently ordered respondent to disgorge his fee due to his failures to appear, his failure to timely file the schedules, and his failure to file accurate schedules. Respondent, however, did not disgorge his fee. Respondent's conduct delayed the proceedings and caused Sullivan to repeatedly miss work.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];<sup>3</sup> and
- b. Rule 3-700(A)(2) [Improper Withdrawal from Employment].<sup>4</sup>

**The Cheatham Matter (Case No. 10-O-05098)**

On May 20, 2007, Chad Cheatham hired respondent to defend him in a suit regarding a promissory note. In addition to defending the suit on the promissory note, respondent advised Cheatham to bring suit for compensation over the breakup of a business partnership.

Respondent and Cheatham signed an undated fee agreement. The fee agreement specified an initial \$2,500 payment as an advanced fee, with billing thereafter at the rate of \$200 an hour.

On May 6, 2008, respondent filed suit on behalf of Cheatham, entitled *Cheatham v. Coyle*, case no. 108-CV-112032, filed in the Santa Clara County Superior Court. On or about January 28, 2009, Cheatham gave respondent \$3,000 in advanced costs for depositions. The depositions, however, never took place.

On March 19, 2009, the defense filed a Notice of Motion and Motion to Compel Answers to Interrogatories and for Sanctions against Plaintiff and Plaintiff's counsel (Cheatham and respondent). A hearing was set for the motion, for April 17, 2009. Respondent failed to file a response to the motion to compel, respondent failed to appear at the April 17, 2009 hearing, and the court imposed sanctions against Cheatham in the sum of \$1,090. The court further ordered that responses to discovery be filed within 20 days. Respondent failed to file responses to the discovery within 20 days or at anytime thereafter. Respondent also failed to advise Cheatham

---

<sup>3</sup> Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. The duties set forth in rule 3-110(A) include the duty to supervise the work of subordinate attorney and non-attorney employees or agents.

<sup>4</sup> Rule 3-700(A)(2) provides that an attorney may not withdraw from employment until taking reasonable steps to avoid foreseeable prejudice to the client's rights.

of the defense's March 19, 2009 motion to compel, the April 17, 2009 hearing date on the motion to compel, and the court's April 17, 2009 ruling on the motion to compel and sanction order.

On or about June 8, 2009, the defense filed another Motion to Compel Responses to Discovery. The hearing was set for July 10, 2009, and thereafter continued to July 31, 2009. Respondent failed to appear at the July 31, 2009 hearing on the motion to compel and respondent failed to file any responsive pleadings. The court granted the defense's motion and awarded the defense sanctions against respondent, and ordered a response to the discovery within 20 days.

On or about July 28, 2009, Cheatham asked respondent for a refund of the \$3,000 of advanced costs. Respondent failed to refund the \$3,000, claiming that this money was applied to outstanding fees. Cheatham had not agreed to divert the advanced costs for the deposition to outstanding fees. Respondent did not subsequently refund the \$3,000 in advanced costs to Cheatham.

On or about November 2, 2009, the court issued a minute order setting the matter for further status hearing on December 10, 2009. Respondent subsequently failed to appear at this hearing.

On or about December 10, 2009, the court issued an Order to Show Cause (OSC) to determine why the case should not be dismissed for respondent's and plaintiff's failure to appear at the December 10, 2009 hearing. The court set the hearing on the OSC for January 14, 2010. Cheatham appeared at the OSC, but respondent did not.

On or about May 7, 2010 the defense filed a motion for terminating sanctions with a hearing date set for June 4, 2010. Respondent failed to appear at the June 4, 2010 hearing, and the motion for terminating sanctions was granted. On July 2, 2010, the court issued an order stating that the case against defendant John Coyle was dismissed with prejudice and ordering Cheatham and respondent to pay \$1,615 to counsel for the defendant within 20 days.

As a result of respondent's conduct, Cheatham lost the money he paid respondent and his ability to pursue a lawsuit he believed to be potentially worth millions of dollars. Due to respondent's unreliability, Cheatham was forced to take additional time off of work. Cheatham believes that his absences from work contributed to him losing his job.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Section 6103 [Failure to Obey a Court Order]<sup>5</sup>;
- c. Section 6068, subd. (m) [Failure to Inform Client of Significant Development]<sup>6</sup>; and
- d. Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly].<sup>7</sup>

### **The Nelson Matter (Case No. 10-O-03986)**

On or about August 14, 2008, Bridgit Nelson (Nelson)<sup>8</sup> hired respondent to represent her in her divorce. Nelson paid respondent the sum of \$1,000. Respondent prepared an Attorney-Client Representation Costs & Expense Deposit, Legal Fee Contract and Arbitration Agreement, which Nelson executed. The agreement specified a \$1,000 advanced fee, to be charged at \$180 hourly rate for attorney time.

---

<sup>5</sup> Section 6103 provides that "[a] wilful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, which he ought in good faith to do or forbear, and any violation of the oath taken by him, or of his duties as such attorney, constitute causes for disbarment or suspension."

<sup>6</sup> Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

<sup>7</sup> 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 member which the client is entitled to receive.

<sup>8</sup> Also known as Bridgit Thurman.

At their initial meeting, Nelson told respondent that she and her husband were not disputing any property issues, that her husband's attorney—Joseph Hoffman (Hoffman)—would draft the divorce agreement, and that Nelson simply wanted respondent to review the divorce agreement on her behalf. Nelson gave respondent Hoffman's information and asked respondent to make contact with him.

Following some initial court filings by both sides, communications between respondent and Hoffman broke down. According to Hoffman, his office called, emailed, and sent certified mail to respondent for almost a year with no response. And at one point, respondent moved his office without telling Nelson.

On August 3, 2009, Nelson received an email from respondent indicating that her matter had been set for trial and requesting an additional \$2,500 in fees to proceed. This was the first correspondence Nelson has received from respondent since December of the previous year. Nelson emailed respondent and set a time for him to contact her on her cell phone the next day. The next day, respondent didn't call. Nelson then contacted respondent by email and asked why he did not call. Respondent replied that he "had an emergency."

On or about September 14, 2009, Nelson terminated respondent and requested an accounting. Respondent advised Nelson that he would provide her with a breakdown of the work done and charges to her retainer.

On or about September 25, 2009, Nelson requested a refund of her \$1,000 retainer from respondent. Respondent failed to provide Nelson with either a refund, or an accounting.

In or about September 2009, Nelson asked respondent to sign a substitution of attorney form. Nelson received no response and thereafter made numerous efforts to obtain a



substitution of attorney from respondent. In August, 2010, Nelson went to respondent's office unannounced and obtained an executed substitution of attorney from respondent.

As a result of respondent's conduct, Nelson and her husband suffered considerable unnecessary stress. Since respondent did not refund Nelson's retainer, she has not had the money to hire another attorney.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-700(A)(2) [Improper Withdrawal from Employment]; and
- b. Rule 4-100(B)(3) [Failure to Render Accounts].<sup>9</sup>

### **The Machabeli Matter (Case No. 10-O-09169)**

In December 2009, Khatuna Machabeli (Machabeli) approached Chase Bank, the servicer of her home loan, for a loan modification. At the time she was not in arrearages, but anticipated that she might need a loan modification in the near future.

In January 2010, Machabeli received an unsolicited letter from a company named Veritas, offering loan modification and/or predatory lending evaluation. Machabeli contacted Veritas and they conducted a review of her loan documents. Machabeli was informed by Veritas that there were numerous lending violations and that she should not make any more mortgage payments. Machabeli followed Veritas' advice.

In April 2010, Machabeli made contact with Veritas after she was served with a Notice of Default (NOD). Veritas referred her to respondent.

---

<sup>9</sup> Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession.

On or about May 19, 2010, Machabeli hired respondent to sue Chase bank in an effort to address her impending foreclosure. At that time, the parties signed a retainer agreement and Machabeli paid respondent \$4,000 in advanced attorney fees. On or about July 1, 2010, Machabeli made an additional \$1,000 payment to respondent.

After hiring respondent, he did not file suit against Chase, as set forth in the retainer agreement, nor did he provide any other services of value to Machabeli. Between May 19, 2010 and August 9, 2010, Machabeli sent emails to respondent's office requesting to meet with him regarding the status of her case. Meetings were scheduled, however, respondent never made the meetings.

On or about July 12, 2010, Machabeli sent respondent an email and requested the return of her paperwork and her money back. Respondent failed to respond. On or about August 2, 2010, Machabeli sent another email to respondent, requesting the return of all her paperwork and the \$4,000 in advanced attorney fees. Respondent did not refund the fees to Machabeli or return her paperwork.

On August 9, 2010, Machabeli terminated respondent's services, and requested the return of her client file, an accounting, and a refund of the unearned fees. Respondent refunded Machabeli the additional \$1,000 advanced attorneys fees paid on July 1, 2010, but failed to refund the full initial advanced attorney fees of \$4,000. In addition, respondent never provided Machabeli with an accounting.

Machabeli hired respondent to save her house from foreclosure, and his failure to act made her situation worse. On respondent's advice, Machabeli ignored all telephone calls from her bank so that respondent could deal with them, but he never did. In August 2010, Machabeli received a trustee sale notice on her house. Machabeli, who operates a day care

business from her home, suspended operation of her business due to the uncertainty surrounding the trustee sale.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees];<sup>10</sup>
- c. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries];
- d. Rule 4-100(B)(3) [Failure to Render Accounts]; and
- e. Rule 3-700(D)(1) [Failure to Release File].<sup>11</sup>

### **The Boswell Matter (Case No. 10-O-09170)**

On or about April 15, 2010, John Boswell and his wife (the Boswells) hired respondent to file suit against J.P. Morgan Chase (Chase) alleging fraud in the way Boswells' loan was processed. That same day, the Boswells signed a retainer agreement with respondent and paid respondent \$3,500 in advanced attorney fees. On or about June 2, 2010, the Boswells paid respondent an additional advanced fee of \$1,000.

Thereafter, respondent did not file suit against Chase, nor did he perform any significant legal services for the Boswells. On or about June 1, 2010, the Boswells sent respondent numerous text messages asking about the status of their case. Respondent received Boswells' text messages and scheduled an appointment with Boswells for June 25, 2010. At the appointment, respondent advised that he would have papers prepared within 10 days.

---

<sup>10</sup> Rule 3-700(D)(2) provides that a member whose employment has terminated shall promptly refund any part of a fee paid in advance that has not been earned.

<sup>11</sup> Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property.

Thereafter, during the month of July 2010, the Boswells sent numerous text messages and emails, and left telephone messages for respondent, requesting the paperwork and the status of their case. Respondent failed to respond.

On July 26, 2010, the Boswells terminated respondent's services via an email. In that email, the Boswells explained that they were terminating respondent for failing to return phone calls and text messages, and for failing to keep appointments. The Boswells also requested that respondent return the \$4,500 in advanced attorney fees.

In addition to the email of July 26, 2010, the Boswells sent respondent additional emails, on August 3, 2010 and on August 13, 2010, requesting a full refund of the \$4,500 in advanced attorney fees. Respondent did not provide a refund.

The Boswells retained respondent at a time when they were under great stress regarding their mortgage. Respondent's lack of support and attention to their case made their situation even more stressful. Due to respondent's failure to refund the unearned fees, the Boswells were unable to retain replacement counsel.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **The Skaggs Matter (Case No. 10-O-09173)**

On or about April 16, 2010, Michael Skaggs (Skaggs) hired respondent to represent him in a family law matter, *Rodnick v. Skaggs*, case no. 07FL00272, filed in the Sacramento

County Superior Court. Skaggs and respondent executed an attorney-client representation agreement for a “family law trial” dealing with the custody of Skaggs’ son.

On or about April 16, 2010, Skaggs’ mother, Pamela Horn (Horn), paid respondent the sum of \$2,500, via a personal check, in advanced attorney fees, on Skaggs behalf. Thereafter, respondent failed to perform any significant legal services on behalf of Skaggs.

On or about June 15, 2010, Skaggs terminated respondent’s services, and requested a refund. Skaggs made an appointment with respondent for that date to retrieve his file. Respondent failed to keep the appointment with Skaggs, but Skaggs retrieved his file, which had a note from respondent attached. In this note, respondent requested that Skaggs provide Horn’s address so that respondent could send the remaining retainer funds to her along with an accounting.

On or about June 15, 2010, Skaggs emailed respondent and provided him with Horn’s address so that the refund of the \$2,500 in advanced attorney fees could be sent to her. On or about July 23, 2010, Skaggs sent respondent an email inquiring about the status of the refund of the advanced attorney fees.

On or about July 26, 2010, respondent’s assistant informed Skaggs that they needed Horn’s address in order to send the refund. On or about July 26, 2010, Skaggs sent respondent an email again providing Horn’s address and inquiring when she could expect the refund.

On August 17, 2010, Skaggs sent respondent another email requesting the refund and informing respondent that he intended to file a complaint with the State Bar. Respondent failed to provide Skaggs, or Pamela Horn, with a refund of the \$2,500 in advanced attorney fees and

the accounting he had promised. Consequently, Skaggs lacked the funds to promptly hire replacement counsel.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees]; and
- c. Rule 4-100(B)(3) [Failure to Render Accounts].

### **The Merlo Matter (Case. No. 10-O-09175)**

On or about April 14, 2010, Denise Merlo (Merlo) hired respondent to file a bankruptcy on her behalf. Merlo retained respondent over the telephone. Merlo paid respondent the sum of \$2,000 in advanced attorney fees.

Thereafter, Merlo submitted documentation to respondent, including her certificate of credit counseling, and information on her debt, income, and tax information. Subsequently, she emailed respondent's office to verify that respondent had received the information. Respondent's assistant confirmed that the documentation had been received. Merlo then verified that her check for the advanced attorney fees had been cashed.

Merlo had a Saturday appointment with respondent in early April to discuss her bankruptcy. While en route to this appointment, Merlo received a text message from respondent, cancelling the appointment.

After respondent cancelled the Saturday appointment with Merlo, Merlo called in April and May, seeking the status of her case. Merlo spoke to respondent once in the end of April, 2010. Thereafter, Merlo left messages in May and June 2010, on respondent's answering

service. Respondent's office staff scheduled another meeting between respondent and Merlo, but respondent again cancelled the appointment. Merlo also scheduled several telephone consultations with respondent, through his office staff, but respondent failed to telephone Merlo as scheduled.

Respondent failed to file a bankruptcy petition on Merlo's behalf, and did not perform legal services of any value for Merlo. On or about August 21, 2010, Merlo retained the services of attorney Craig Lundgren and terminated respondent's services.

On January 27, 2011, Merlo sent respondent a letter, via certified mail, return receipt requested. In this letter, Merlo requested a full refund of the \$2,000 advanced fee. Merlo received the return postcard, indicating that respondent's staff signed for the certified letter. Respondent, however, failed to refund \$2,000 to Merlo and failed to provide Merlo with an accounting.

Respondent's conduct caused Merlo a great deal of frustration and delayed the filing of her bankruptcy for at least six months.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

### **The DeHaven Matter (Investigation Case No. 11-O-13076)**

On or about October 29, 2010, Bradley DeHaven (DeHaven) hired respondent to represent him in a wrongful foreclosure case and related action against Chase Home Finance.

The wrongful foreclosure matter was related to DeHaven's bankruptcy which another attorney was handling. At that time, respondent and DeHaven executed a fee agreement in which DeHaven agreed to pay respondent \$3,500 in advanced attorney fees and monthly attorney fees of \$1,200. On that same date, respondent received \$3,500 in advanced attorney fees from DeHaven. Thereafter, DeHaven made monthly payments for three months, for a total payment of \$7,100.

Respondent filed the suit against Chase on or about November 10, 2010, but failed to properly serve the opposing party. On or about that same day, DeHaven received a phone call from Chase, and immediately emailed respondent because he wanted advice on how to respond to Chase. Respondent did not respond to the November 10, 2010 email. Two days later DeHaven again emailed respondent seeking advice. Respondent failed to respond to the second email. On November 15, 2010, DeHaven sent respondent a text message referring to the previous emails and asking for advice. Respondent replied two days later, explaining that he had been in trial.

DeHaven made an appointment with respondent to meet on or about November 22, 2010, to discuss his case. Respondent failed to keep that appointment. On or about November 26, 2010, DeHaven sent respondent a text message seeking the status of his matter. Respondent failed to respond to DeHaven's text message.

On or about December 21, 2010, DeHaven sent respondent a text message inquiring as to whether his lawsuit had been served. A few days later DeHaven and respondent exchanged text messages and arranged to meet on the following Wednesday. Respondent again failed to keep the appointment.



On or about January 3, 2011, respondent set another appointment with DeHaven. Once again, respondent failed to keep the appointment. On or about January 12, 2011, respondent informed DeHaven that Chase had been served. This statement was false.

At DeHaven's insistence, respondent set up another appointment, to meet in January 2011. Once again, respondent failed to keep the appointment. On February 3, 2011, DeHaven requested a status inquiry via text message. Respondent responded back to DeHaven and promised he would provide a status update. Respondent never provided the status update to DeHaven.

Throughout the rest of February and into March 2011, DeHaven sent respondent numerous emails and text messages seeking status updates on his case. Frequently, respondent failed to respond, and he never provided DeHaven with any documentation to support respondent's claim that the lawsuit had been served. At one point, respondent represented that a request for default had been entered, and that he was getting a hearing date for the default. Later, respondent claimed that the court clerk had issues with the proof of service and that it would delay the default.

On or about March 2011, DeHaven terminated respondent's services and requested a full refund. Respondent did not provide DeHaven with a refund. Respondent's conduct caused DeHaven stress and required him to spend thousands of dollars to retain another attorney.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];

- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees];
- c. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries]; and
- d. Section 6106 [Moral Turpitude – Misrepresentation].

**The Gillard Matter (Investigation Case No. 11-O-12370)**

On or about September 23, 2010, Anthony Gillard (Gillard) consulted with respondent in regards to filing a personal bankruptcy. Respondent quoted him a fee of \$1,300. Gillard explained to respondent that he did not have that much money. Respondent agreed to undertake the bankruptcy matter for \$650 up front with monthly installments. On or about September 30, 2010, Gillard hired respondent and gave him \$650 in cash.

After about three weeks without any contact from respondent, Gillard began placing calls to respondent's message center. Over the next four months Gillard left approximately ten messages seeking status updates on his matter. Respondent failed to respond to Gillard's status inquiries. During this same time period, Gillard visited respondent's office approximately ten times, but neither respondent nor his assistant were ever there.

In February 2011, Gillard sent respondent a text message requesting a meeting. Respondent replied to the request and a meeting was set for February 5, 2011. At the meeting Gillard terminated respondent's services and requested a refund of the advanced attorney fees. Respondent informed Gillard that he didn't have his checkbook and that he would send Gillard the refund. Respondent, however, did not subsequently refund Gillard's advanced attorney fees.

Since his meeting with respondent, Gillard has tried calling and texting respondent on many occasions, but has not received a reply. Since Gillard did not have the money to hire an attorney, he had to file bankruptcy in pro per.

## **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-700(D)(2) [Failure to Refund Unearned Fees]; and
- b. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries].

### **The Hill Matter (Investigation Case No. 11-O-14079)**

In December 2009, Autumn Hill (Hill) hired respondent to file a personal bankruptcy. Respondent advised Hill that in addition to the bankruptcy Hill had a good case to file an adversary proceeding against the credit union that held the mortgage on the ranch owned by Hill. Respondent told Hill that the requirements prior to issuance of a Notice of Default (NOD) had not been met. Respondent assured Hill that by filing the proceeding against the mortgage holder would lead to a loan modification or an award of damages.

In subsequent meetings in January and February 2010, respondent told Hill he would immediately file the adversary proceeding. Respondent, however, did not.

In March 2010, respondent met with Hill and informed her that she needed to sign a declaration. After discussing the declaration, respondent assured Hill that he would file the adversary action that day. He did not. During this meeting, Hill also signed a fee agreement requiring her to pay respondent \$1,200 monthly advanced attorney fees to pursue the action against her lender.

In April 2010, Hill discovered that the complaint in the adversary proceeding had not yet been filed. She asked respondent when it would be filed and he told her it would be filed that afternoon or, at the latest, the following day.

Respondent did not actually file the complaint in the adversary proceeding until June 22, 2010. Thereafter, respondent failed to appear at any of the scheduled court appearances after September 2010, in the adversary proceeding.

In November 2010, respondent falsely informed Hill that the court appearance scheduled for November 10, 2010, in the adversary proceeding had been taken off calendar. Hill attended the hearing on November 10, 2010, without respondent. Hill proceeded to respondent's office after the hearing, but could not locate him. Hill immediately texted respondent and requested access to her client file. Respondent did not respond to Hill's text.

Hill made several more attempts to contact respondent and was unsuccessful. Hill eventually retrieved her file. Hill also requested that respondent file an amended complaint in the adversary proceeding within 48 hours. Respondent did not file an amended complaint.

After November 2010, Hill did not hear from respondent. Hill paid respondent \$8,500 in advanced attorney fees. Respondent did not refund the \$8,500 in advanced attorney fees, nor did he provide Hill with an accounting. Hill's adversary proceeding was dismissed.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees];
- c. Rule 4-100(B)(3) [Failure to Render Accounts];
- d. Rule 3-700(A)(2) [Improper Withdrawal from Employment];
- e. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries]; and
- f. Section 6106 [Moral Turpitude – Misrepresentation].

### **The Clymer Matter (Investigation Case No. 10-O-11357)**

On April 17, 2009, Douglas Clymer and his wife (the Clymers) hired respondent to file a bankruptcy on their behalf. The Clymers signed an attorney fee agreement and paid \$1,774 in advanced attorney's fees. Respondent advised the Clymers to stop making payments to their creditors, except for the credit cards they intended to keep.

On May 19, 2009, respondent filed a Chapter 13 petition on the Clymers' behalf; however, the required schedules were not attached to the petition. Respondent did not file the required schedules until June 6, 2009. On July 30, 2009, a motion to dismiss for undue delay was filed. Respondent did not respond to the motion to dismiss.

On August 24, 2009, respondent filed an amended Chapter 13 plan. On August 25, 2009, the motion to dismiss was dropped.

On December 8, 2009, another motion to dismiss for undue delay was filed. Respondent failed to file a response to the motion to dismiss. On December 29, 2009, the motion to dismiss was conditionally granted.

On January 2, 2010, respondent filed a motion to convert the Chapter 13 bankruptcy to a Chapter 7 bankruptcy. On January 4, 2010, the court granted the motion to convert from a Chapter 13 to a Chapter 7.

On January 6, 2010, the court granted a conditional dismissal. On March 3, 2010, a creditors meeting was held. Respondent failed to appear at the creditors meeting. On March 5, 2010, the court dismissed the bankruptcy petition.

Respondent informed the Clymers that the bankruptcy petition had been dismissed, but did not clearly tell them the reason why the petition was dismissed. Between March 2010 and November 2010, the Clymers emailed respondent more than 25 times seeking legal advice, a

status report on their case, or a meeting with him. Respondent only responded to a few of those emails. On occasion, respondent's assistant responded to the emails and set up appointments to speak with respondent on the telephone or meet with him in the office. Respondent, however, did not keep any of these appointments. During this same time period, the Clymers also left several telephone messages for respondent, but he failed to respond

In or about June 2010, respondent informed the Clymers that they could file a new Chapter 13 bankruptcy petition for an additional filing fee of \$300. The Clymers agreed and provided respondent with the \$300 filing fee on June 17, 2010. Respondent, however, failed to file a subsequent bankruptcy petition.

After paying the additional filing fee, the Clymers' communications with respondent more or less stopped. Respondent did not attempt to contact the Clymers, nor did he respond to their telephone calls or emails. The Clymers did not receive an accounting or a refund of any of the attorney fees they paid to respondent. In October 2010, respondent's assistant informed the Clymers that respondent would provide them with an update the following week. No update was provided.

In May 2011, the Clymers gave up trying to contact respondent and retained a new attorney. The Clymers did not recover any of the money they paid to respondent. In addition, respondent's conduct delayed the Clymers' bankruptcy and caused considerable inconvenience.

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 3-110(A) [Failure to Perform with Competence];

- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees];
- c. Rule 4-100(B)(3) [Failure to Render Accounts];
- d. Rule 3-700(A)(2) [Improper Withdrawal from Employment]; and
- e. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries].

**The Joyce Zervas Matter (Investigation Case No. 11-O-13533)**

In December 2008, Joyce Zervas (Zervas) hired respondent to settle a real estate commission dispute she was having with her former business partner. She paid respondent \$2,000 in advanced attorney fees.

Initially, respondent promised to arrange for an arbitration date on Zervas' claim. On January 13, 2009, Zervas emailed respondent and requested an update. In response, respondent informed Zervas that he had not heard from "Mr. Tanner," and would follow up with him. Respondent also told Zervas that he sent a letter to RE/MAX demanding that they freeze the payment of the commissions.

On April 6, 2009, respondent informed Zervas that he was trying to get an arbitration date on her matter. On April 29, 2009, respondent requested that Zervas provide him with additional information. Zervas sent him the additional information. Over the next year, Zervas would email and leave telephone messages seeking a status update, but respondent did not respond. Zervas also tried going to respondent's office, but he was never in when she dropped by.

On June 6, 2010, Zervas terminated respondent's services via email and demanded an accounting of his work. Respondent did not provide Zervas with an accounting or a refund.

Due to respondent's conduct, Zervas' case remains unresolved, and she lacks the funds to hire another lawyer.<sup>12</sup>

### **Legal Conclusions**

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to the following charges:

- a. Rule 4-100(B)(3) [Failure to Render Accounts];
- b. Rule 3-700(A)(2) [Improper Withdrawal from Employment]; and
- c. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries].

### **5. DISCUSSION**

The evidence before the court establishes that respondent, in his capacity as an attorney, has committed numerous acts of misconduct in the aforementioned matters.

As mentioned, section 6007, subdivision (c)(2), sets forth three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public. All of the following factors must be found:

- 1. The attorney has caused or is causing substantial harm to his clients or the public;
- 2. The attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and
- 3. That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

---

<sup>12</sup> Zervas' declaration also included some limited information regarding respondent's handling of her husband's tax matter. The court, however, was not provided a declaration from Mr. Zervas. Based on the second-hand information provided in Zervas' declaration, the court finds that there is not a reasonable probability that the State Bar will prevail on any charges relating to Zervas' husband.



### **A. Reasonable Probability the State Bar will Prevail**

Throughout the above Findings of Fact and Conclusions of Law, this court has made findings and conclusions with respect to the third of the above factors; that is, the likelihood of the State Bar prevailing on the merits of the charges presented in the application. As established above, the court finds that there is a reasonable probability that the State Bar will prevail on 42 counts of misconduct involving the 12 aforementioned matters.

### **B. Substantial Harm to the Public or the Attorney's Clients**

Respondent's misconduct has caused substantial harm to his clients. In his representation of his clients, respondent has repeatedly failed to perform with competence, failed to communicate, and failed to timely refund unearned fees. Respondent's conduct has resulted in stress, delay, inconvenience, frustration, and even the dismissal of his clients' causes of action. In addition, respondent has deprived his clients, many of whom were facing bankruptcy or foreclosure, of the precious monies they used to retain his services. Due to respondent's repeated failures to refund unearned attorney fees, several of his clients have been unable to afford new counsel.

Accordingly, the court finds that the Office of the Chief Trial Counsel has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients.

### **C. Likelihood that Harm will Continue**

Although respondent acknowledges much of his misconduct, he does not seem to grasp the severity of his actions and the impact they have had on his clients and the legal community. In addition, respondent continues to harm his clients by failing to refund their unearned fees. Absent the court's intervention, it is likely that respondent's misconduct will continue to harm his present and future clients.

The court also finds that respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifts to respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).) Respondent stated in his declaration that the present misconduct was the result of his drug addiction and mental health problems. The court, however, has received no independent declarations in support of respondent's claim that that he has overcome both his drug addiction and mental health problems. Even if the court were to accept respondent's claim as true, the court would still be concerned by the short amount of time that has elapsed since respondent's stated recovery.<sup>13</sup> Consequently, there is no clear and convincing evidence that respondent has met his burden under Section 6007, subdivision (c)(2)(B).

Therefore, the court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2), has been established by clear and convincing evidence. The court concludes that respondent's conduct poses a substantial threat of harm to his clients and the public. The court further finds that the involuntary inactive enrollment of respondent is merited for the benefit of the public, the courts, and the legal profession.

## **6. ORDER**

Accordingly, **IT IS ORDERED** that respondent Piotr Gabriel Reysner be enrolled as an inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c)(1), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 5.231(D).) State Bar Court staff is directed to give written notice of this

---

<sup>13</sup> Respondent stated that he stopped his daily use of amphetamines and alcohol on July 26, 2010. Respondent also stated that he was diagnosed with bipolar disorder on June 10, 2011, and is currently on medication.

order to respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

**IT IS FURTHER ORDERED** that:

1. Within 30 days after the effective date of the involuntary inactive enrollment, respondent must:

- (a) Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;
- (b) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;
- (c) Provide to each client an accounting of all funds received and fees or costs paid, and refund any advance payments that have not been either earned as fees or expended for appropriate costs; and
- (d) Notify opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment, and file a copy of the notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, respondent must file with the Clerk of the State Bar Court: (1) an affidavit (containing respondent's current State Bar membership records address where communications may thereafter be directed to him) stating that he has fully complied with the provisions of paragraphs 1 and 2 of this order; and (2) copies of all documents sent to clients pursuant to paragraph 1(c) of this order; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment, proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement, or for imposing sanctions.

Dated: September \_\_\_\_\_, 2011

---

LUCY ARMENDARIZ  
Judge of the State Bar Court