

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of ) Case Nos.: **12-O-17622-YDR**  
) (12-O-18037; 13-O-11787;  
**GREGORY MOLINA BURKE,** ) 13-O-12643)  
)  
**Member No. 188891,** ) **DECISION**  
)  
A Member of the State Bar. )

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

In this matter, Gregory Molina Burke (Respondent) is charged with the following seventeen counts of misconduct: (1) five counts of violating section 6103 (failure to obey a court order); (2) five counts of violating section 6068, subdivision (a) (unauthorized practice of law); (3) five counts of violating section 6106 (moral turpitude); (4) one count of violating rule 4-200(A) (illegal fee); and (5) one count of violating section 6068, subdivision (c) (maintaining an unjust action). The Office of the Chief Trial Counsel of the State Bar of California (State Bar) had the burden of proving these charges by clear and convincing evidence. This court finds by clear and convincing evidence that Respondent is culpable on six of the seventeen counts.

Based on the nature and extent of culpability, as well as the applicable aggravating and mitigating circumstances, the court recommends that Respondent be actually suspended from the practice of law for a minimum period of one year and until he pays specified court-ordered sanctions in full.

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<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.

### **Significant Procedural History**

The State Bar initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) in case numbers 12-O-17622 (12-O-18037, 13-O-11787; 13-O-12643) on October 28, 2013.

Respondent filed a response to the NDC on December 2, 2013.

Pursuant to the State Bar's request, this matter was abated on March 12, 2014. On August 21, 2014, this matter was taken out of abatement and the proceedings resumed.

The parties filed a Stipulation as to Facts and Admission of Documents on December 9, 2014 (stipulation). The parties supplemented the stipulation on January 12, 2015.

Trial took place January 12, 13, and 16, 2015. The State Bar was represented by Supervising Senior Trial Counsel Kim Kasrelivich and Deputy Trial Counsel Shane Morrison. Respondent represented himself. The matter was submitted for decision on January 16, 2015, and the parties filed their respective closing briefs on or before February 6, 2015.

On March 10, 2015, the State Bar filed a Notice of Finality of Prior [Discipline] which attached a California Supreme Court Order, filed March 3, 2015, in case number S223248.<sup>2</sup> On its own motion, the court takes judicial notice of this Order.<sup>3</sup>

### **Findings of Fact**

Respondent was admitted to the practice of law in California on June 3, 1997, and has been a member of the State Bar of California at all times since that date. These findings of fact are based on the record, evidence admitted at trial, and facts set forth by the parties in their factual stipulation.

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<sup>2</sup> Pursuant to the Supreme Court's Order, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years, including a suspension of nine months and until Respondent pays specified sanctions ordered by the San Bernardino Superior Court.

<sup>3</sup> At trial, this court admitted the underlying Hearing and Review Department decisions associated with Supreme Court Order number S223248. (Exh. 26.)

### **Background Facts Regarding Respondent's December 29, 2011 Suspension**

Omar Easley (Easley), an employee with the California State Bar Member Services Department (Member Services), caused a Notice of Intent to Suspend Bar Membership for Failure to Pay Court-Ordered Child Support (Notice of Intent) to be sent to Respondent at his membership records address<sup>4</sup> on or about November 29, 2011. It is not clear whether Respondent received the Notice of Intent. Respondent credibly testified that he never received the Notice of Intent and believes it may have been forwarded to another postal customer with the same last name at the mail center at which he receives mail.<sup>5</sup> The Notice of Intent was not returned to the State Bar.

On December 1, 2011, the California Supreme Court filed an Order in case number S174881, which required, pursuant to rule 9.22 of the California Rules of Court, that Respondent be suspended from the practice of law in California on December 29, 2011, as a result of his failure to pay court ordered child or family support. It further ordered that the suspension would remain in place until terminated by order of the California Supreme Court. (Stipulation, Fact No. 10.)

The suspension order became effective December 29, 2011. On that date, Respondent was administratively suspended from the practice of law in California. (Stipulation, Fact No. 11.) Subsequently, Member Services prepared a letter to be sent to Respondent at his membership records address which advised Respondent that the suspension order became effective on December 29, 2011. (Stipulation, Fact No. 12.) In accordance with State Bar Member Services procedure, Easley caused this letter to be placed in the internal mail outbox for

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<sup>4</sup> Respondent has maintained the same membership records address since 2009.

<sup>5</sup> Respondent testified that on several occasions he received mail addressed to an Edmund Burke, Esq., and submitted evidence of correspondence addressed to an Edmund Burke, Esq. (See Exhibits 55-013 through 55-023.)

Member Services on December 29, 2011. However, Easley was unable to confirm whether the December 29<sup>th</sup> letter was actually placed in the U. S. mail the same day he placed it in the internal mail outbox. The State Bar observed a New Year's Eve and New Year's Day holiday recess from December 30, 2011 thru January 2, 2012. (Exh. 28.) According to Respondent, he did not receive the December 29<sup>th</sup> letter until on or about January 10, 2012.

Meanwhile, on January 5, 2012, Member Services received a release – pursuant to Family Code section 17520 – relating to Respondent's child support obligations. (Stipulation, Fact No. 15.) On January 6, 2012, Member Services faxed a letter to the Clerk of the California Supreme Court certifying that Respondent was no longer out of compliance with rule 9.22 of the California Rules of Court. (Stipulation, Fact No. 16.)

Thereafter, the California Supreme Court, by Order number S174881 filed January 23, 2012, terminated Respondent's December 29, 2011 suspension. (Stipulation, Fact No. 18.) On January 24, 2012, Member Services mailed a letter to Respondent indicating that his suspension had been terminated effective January 23, 2012. (Stipulation, Fact No. 19.)

#### **Case No. 12-O-17622 – The Herman Norris Matter**

##### **Facts**

At all times relevant to the instant matter, Respondent represented plaintiff Herman Norris (Norris) in *Herman Norris v. San Bernardino Medical Center*, San Bernardino County Superior Court case number C1VDS908975 (*Norris*). (Stipulation, Fact No. 3.)

On January 3, 2012, Respondent prepared and served the *Norris* defendant with documents entitled “Plaintiff's Responses to Requests for Admission, Set One” and “Plaintiff's Responses to Form Interrogatories, Set Two.” Both documents were signed by Respondent as “counsel for Plaintiff.” (Stipulation, Fact No. 13.) In addition, Respondent appeared

telephonically at a case management conference in the *Norris* matter on January 4, 2012, and stated he was appearing “on behalf of the plaintiff Herman Norris.” (Stipulation, Fact No. 14.)

### **Conclusions of Law**

#### ***Count One – § 6068, Subd. (a) [Unauthorized Practice of Law]***

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6125 provides that only active members of the State Bar may lawfully practice law in California. In Count One, the State Bar charges that by signing and serving discovery responses in the *Norris* matter on January 3, 2012, Respondent held himself out as entitled to practice and practiced law in violation of sections 6125 and 6126, thereby willfully violating section 6068, subdivision (a).

#### ***Count Two – § 6106 [Moral Turpitude]***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In Count Two, the State Bar charges that by signing and serving discovery responses in the *Norris* matter on January 3, 2012, when Respondent knew or was grossly negligent in not knowing that he was not an active member of the State Bar, he willfully violated section 6106 by committing an act involving moral turpitude, dishonesty, or corruption.

#### ***Count Three – § 6068, Subd. (a) [Unauthorized Practice of Law]***

In Count Three, the State Bar charges that by appearing telephonically at a case management conference in the *Norris* matter on January 4, 2012, Respondent held himself out as entitled to practice and practiced law in violation of sections 6125 and 6126, in willful violation of section 6068, subdivision (a).

***Count Four – § 6106 [Moral Turpitude]***

In Count Four, the State Bar charges that on January 4, 2012, by appearing telephonically at the case management conference in the *Norris* matter when Respondent knew or was grossly negligent in not knowing that he was not an active member of the State Bar, Respondent willfully violated section 6106 by committing an act involving moral turpitude, dishonesty or corruption.

***Counts One through Four – Discussion***

It is undisputed that Respondent engaged in the conduct identified in Counts One through Four. Specifically, on behalf of his client, Respondent signed and served discovery responses on January 3, 2012 and made the January 4, 2012 court appearance in the *Norris* matter. However, the State Bar did not establish by clear and convincing evidence that the aforementioned conduct was knowing and willful. (*See In The Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639, 641-642; *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384 [violation of a court order involves moral turpitude if disobedience of order was intentional or grossly negligent]; *In The Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318-319).

It was not established by clear and convincing evidence that Respondent received either the Notice of Intent or the December 29, 2011 suspension order before engaging in the *Norris* conduct laid out in Counts One through Four. The court finds credible Respondent's testimony that he had not received the December 29<sup>th</sup> letter advising of Respondent's suspension before executing the discovery or making the telephonic court appearance. The court makes this finding based on the State Bar holiday recess and uncertainty in the record as to whether the December 29, 2011 letter entered the U. S. mail before or after the holiday recess.

It has also not been established that Respondent acted with moral turpitude or deception when practicing law on January 3 and 4, 2012. Accordingly, this court does not find Respondent culpable on Counts One, Two, Three or Four, and these Counts are dismissed with prejudice.

**Case No. 12-O-18037 – The Topa Matter**

**Facts**

At all times relevant to the instant matter, Respondent represented plaintiffs Robert Castaneda (Castaneda), Raj Champaneri (Champaneri), and 1st American Warehouse Mortgage, in *1st American Warehouse Mortgage Inc. v. Topa Insurance Co.*, Los Angeles County Superior Court case number BC451031 (*Topa*). (Stipulation, Fact No. 2.)

On May 4, 2011, the court filed an order in the *Topa* matter compelling Champaneri to provide responses and produce documents in response to the defendant's first request for production of documents. The order further required Champaneri and Respondent to pay sanctions to the defendant in the amount of \$1,000 by May 26, 2011. Respondent's client paid these sanctions nearly two years later, by check dated April 10, 2013. (Stipulation, Fact No. 7.)

Pursuant to Supreme Court Order S192652 (State Bar Court case number 08-O-14650), Respondent was placed on a 60-day actual suspension, effective August 7, 2011. (Exh. 5.)

On August 15, 2011, Respondent sent a letter to James Henshall (Henshall), counsel for Topa Insurance Co., stating that Respondent had been "suspended from the practice of law for a period of 60-days, beginning August 8, 2011 and ending October 8, 2011." The letter further indicated that Respondent had not yet complied with the May 4, 2011 order compelling responses and production of documents in response to the defendant's first request for production of documents. Respondent stated he would comply with the order when his 60-day suspension was lifted. (Stipulation, Fact No. 9.)

Respondent also notified opposing counsel Alan Yuter (Yuter) of his suspension period. Despite Respondent's acknowledgement of his suspension, Respondent attempted to negotiate a global resolution to the *Topa* action during an August 18, 2011 call with Henshall and Yuter.

On the other hand, Respondent testified he apprised opposing counsel that he sought only to resolve his fees, not the entire *Topa* matter. According to Respondent, he confirmed with the State Bar Ethics Hotline that during his suspension, he could negotiate a lien for his attorneys fees; however, if a dismissal of the action was negotiated and/or required, separate counsel would need to be retained to represent Respondent's client.

In emails with opposing counsel, Respondent stated that his clients had separate counsel to review and approve the settlement of his lien. (Exh. 54-004.) Separate counsel, however, never contacted Henshall or Yuter. They were only contacted by Respondent, who sent mixed messages regarding the resolution of the fee dispute and the resolution of Castaneda's underlying action.<sup>6</sup> For example, in an August 19, 2011 email to Yuter, Respondent stated:

I already discussed the matter with 1<sup>st</sup> American, Castaneda and Champaneri and they would have separate counsel on the agreement. They are interested in having the [attorney's fees] lien resolved since the Cantu matter has effectively been defended by the order having the requests for admissions deemed admitted. It is my understanding that your client is willing to pay my outstanding fees incurred in the underlying matter at its panel counsel rate *to resolve the matter*. (Exh. 54-004 (emphasis added).)

Respondent's August 19, 2011 email signature block was signed "Gregory M. Burke, Esq."

In another mixed message dated September 15, 2011, Respondent followed-up with his August 19<sup>th</sup> email to Alan Yuter by stating:

In reviewing the file it appears I didn't respond to your email dated August 19, 2011, asking whether the settlement of my lien in the underlying action is permissible since it would require a release from 1<sup>st</sup> American,

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<sup>6</sup> Castaneda's underlying action was *John Cantu v. Robert Castaneda, et al.*, Riverside County Superior Court case no. RIC 507426 (*Cantu*).

Castaneda and Champaneri. I drafted a response but for some reason it wasn't sent. In the response I indicate that the parties have separate counsel to review and approve the settlement on my lien. Please review the email below and get back to me if your client is still interested in resolving the lien. As you may already know, the court denied the motion for summary judgment so the Cantu case is going to trial.

(Exh. 54-004.)

On January 6, 2012, Respondent appeared at a deposition on behalf of Champaneri that had been scheduled in *Topa*, wherein Champaneri was to be deposed. After being advised by Henshall that Respondent was not eligible to practice law at that time, Respondent and Champaneri left the deposition. (Stipulation, Fact No. 17.)

On March 9, 2012, the court filed an order in *Topa* requiring Respondent to pay sanctions to defendant Topa Insurance Company in the amount of \$2,255 on the grounds that Respondent was unable to proceed with the January 6, 2012 deposition. (Exh. 10-024 – 10-025.) To date, these sanctions have not been paid. (Stipulation, Fact No. 20.)

On March 28, 2012, the court filed an order in *Topa* compelling Castaneda and Champaneri to provide further responses and produce further documents within seven days from the order, and to appear for depositions to respond to questions relating to those documents within 20 days from the order. The order further required Castaneda, Champaneri, and Respondent to pay sanctions to the defendant in the amount of \$2,340. Respondent's clients paid these sanctions more than ten months later, by check dated February 10, 2013. (Stipulation, Fact No. 21.)

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## **Conclusions of Law**

### ***Count Five – § 6103 [Failure to Obey a Court Order]***

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. In Count Five, the State Bar alleges Respondent failed to timely comply with the May 4, 2011 sanctions order filed in *Topa*.

The May 4, 2011 sanctions order compelled Respondent and/or his client, Champaneri, to pay the Topa Insurance Company \$1,000 in monetary sanctions by May 26, 2011, for failure to respond in good faith and failure to produce documents in response to the Topa Insurance Company's first request for production of documents. The parties stipulated that Champaneri paid the \$1,000 sanction by check dated April 10, 2013, almost two years after the sanctions were ordered to have been paid.

Respondent did not contend that he was unaware of the court order compelling payment of the \$1,000 in sanctions. Rather, Respondent argued that he made his client aware of the discovery sanctions order and his client agreed to pay all sanctions. Respondent also stated, incorrectly, that the sanctions order did not provide a deadline by which the sanctions should be paid. (See Exh. 11.)

Consequently, this court finds Respondent culpable on Count Five. By knowingly and willfully failing to pay the \$1,000 sanction by May 26, 2011, as ordered by the *Topa* court, Respondent willfully violated section 6103.

### ***Count Six – § 6103 [Failure to Obey a Court Order]***

In Count Six, the State Bar alleges Respondent failed to comply with a March 9, 2012 monetary sanctions order filed in *Topa*. The March 9, 2012 sanctions order compelled

Respondent to pay defendant Topa Insurance Company \$2,255 in monetary sanctions. This sanction was based on Respondent's inability to proceed with Champaneri's January 6, 2012 deposition, due to Respondent's suspension. This sanction has not been paid.

Although the March 9, 2012 sanctions order did not contain a deadline, Respondent is required to pay it or obtain relief from it within a reasonable time period. (See *In The Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 867-868.) Here, Respondent was aware of the March 9, 2012 sanctions order against him, but failed to obey it or have it set aside. Notwithstanding the fact that as of January 6, 2012, Respondent may not have known when he appeared at the deposition that he was suspended from the practice of law, he certainly knew the *Topa* court had rendered an order compelling him to pay \$2,255 in sanctions. Despite this knowledge, Respondent made no effort to comply with the court order.

Accordingly, this court finds Respondent culpable on Count Six.

***Count Seven – § 6103 [Failure to Obey a Court Order]***

In Count Seven, the State Bar alleges Respondent failed to timely comply with a March 28, 2012 sanctions order, filed in *Topa*. The parties stipulated that the March 28, 2012 sanctions order compelled Respondent and/or his clients, Castaneda and Champaneri, to, among other things, pay sanctions to the Topa Insurance Company in the amount of \$2,340.

Respondent's client subsequently paid these sanctions by check, dated February 10, 2013. (Stipulation, Fact No. 21.)

Respondent did not contend that he was unaware of the court order compelling payment of the \$2,340 in sanctions. Rather, Respondent argued that he made his client aware of the discovery sanction orders and his client agreed to pay all sanctions. Respondent also stated that the sanctions order did not provide a deadline by which the sanctions should be paid.

As illustrated above, when a sanctions order does not contain a deadline the attorney is required to pay it or obtain relief from it within a reasonable time period. Here, the March 28, 2012 sanctions order was ultimately paid by Respondent's client ten months later. While *In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. 862, does not specifically identify when a sanctions payment is no longer "reasonable," it alludes to the fact that payment of a sanctions order within one year is not inherently unreasonable. (*Id.* at p. 868.)

This court concludes, based on the present facts and circumstances, that the payment of the March 28, 2012 sanctions order within a year was not unreasonable. Accordingly, Count Seven is dismissed with prejudice.

***Count Eight – § 6068, Subd. (a) [Unauthorized Practice of Law]***

In Count Eight, the State Bar charges that on or about August 18, 2011, Respondent practiced law while not an active member of the State Bar by attempting to negotiate a settlement on behalf of his clients in *Topa*. It is alleged that said conduct constitutes a violation of sections 6125 and 6126, and a willful violation of section 6068, subdivision (a).

***Count Nine – § 6106 [Moral Turpitude]***

In Count Nine, the State Bar charges that on or about August 18, 2011, by attempting to negotiate a settlement in *Topa* while suspended from the practice of law, when Respondent knew or was grossly negligent in not knowing that he was not an active member of the State Bar, Respondent willfully violated section 6106 by committing an act involving moral turpitude, dishonesty or corruption.

***Counts Eight and Nine – Discussion***

The evidence reflects that during his August 8, 2011 to October 8, 2011 disciplinary suspension, Respondent was attempting to resolve his attorney's fees and to use his fees as

leverage to resolve the entire *Cantu* action. In other words, Respondent was peripherally engaging in the unauthorized practice of law and this court finds him culpable on Count Eight.

While it has been established that Respondent's conduct crossed the line into the unauthorized practice of law, it has not been proven that Respondent's misconduct rises to the level of moral turpitude, dishonesty, or corruption, as charged in Count Nine. Respondent promptly notified opposing counsel that he was suspended and conferred with the State Bar Ethics Hotline in an effort to comply with the suspension order. Accordingly, Count Nine has not been established by clear and convincing evidence, and is dismissed with prejudice.

***Count Ten – § 6068, Subd. (a) [Unauthorized Practice of Law]***

In Count Ten, the State Bar charges that on or about September 7, 2011 through September 15, 2011, by performing legal services for his client, Castaneda, in the *Cantu* matter, Respondent held himself out as entitled to practice law and practiced law in violation of sections 6125 and 6126, thereby willfully violating section 6068, subdivision (a).

Respondent issued billing invoices for Castaneda in the *Cantu* matter for the period of September 7, 2011 through September 15, 2011. These invoices reflect that Respondent performed various tasks in connection with the *Cantu* file during his 60-day period of actual suspension. (See Exh. 12-013.) Respondent's explanation of these invoices was twofold. First, he asserted that none of the invoiced activities during the suspension constitute the practice of law. Second, Respondent testified that the billing entries that reflect charges for activities during the suspension period were erroneously billed so, Respondent corrected the invoices by removing the charges for legal services reflected during the 60-day suspension.

While the evidence certainly suggests that Respondent was practicing law during this time period, these billing entries, standing alone, do not rise to the level of clear and convincing evidence. A suspended attorney may not practice law, but still has a duty to communicate. (*In*

*the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr 563, 575.) Considering that the court has not been presented any supporting evidence indicating the nature of these billing entries<sup>7</sup> and Respondent's testimony that the charges were erroneously billed and subsequently corrected, Count Ten has not been established by clear and convincing evidence, and is therefore dismissed with prejudice.

***Count Eleven – § 6106 [Moral Turpitude]***

In Count Eleven, the State Bar charges that on or about September 7, 2011 through September 15, 2011, Respondent committed an act of moral turpitude by practicing law in the *Cantu* matter when he knew he was not an active member of the State Bar. As discussed above, it has not been established, by clear and convincing evidence, that Respondent practiced law in the *Cantu* matter during this time period. Accordingly, Count Eleven is dismissed with prejudice.

***Count Twelve – Rule 4-200(A) [Illegal Fee]***

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. In Count Twelve, the State Bar charges Respondent with charging his client, Castaneda, \$1,305 for legal services performed between September 7, 2011 and September 15, 2011, during which time Respondent was suspended from the practice of law. Respondent testified that his *Cantu* billing invoice incorrectly reflected charges incurred during Respondent's 60-day suspension. Respondent further testified and counsel for the Topa Insurance Company agreed, that the invoices were revised to reflect \$0 in charges during the suspension. Respondent's testimony on this subject was not contradicted by any percipient witnesses.

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<sup>7</sup> Neither Castaneda nor Champaneri testified in this proceeding.

Accordingly, this court concludes that Respondent's original billing invoice was in error. Respondent subsequently corrected the error and voided the charges. Accordingly, it has not been established, by clear and convincing evidence, that Respondent willfully violated Rule 4-200(A). Consequently, Count Twelve is dismissed with prejudice.

***Count Thirteen – § 6068, Subd. (a) [Unauthorized Practice of Law]***

In Count Thirteen, the State Bar charges that on or about January 6, 2012, by appearing at Champaneri's deposition in the *Topa* matter, on his client's behalf, Respondent held himself out as entitled to practice and practiced law in violation of sections 6125 and 6126 and willfully violated section 6068, subdivision (a). As discussed above, it has not been established by clear and convincing evidence that Respondent was aware of his suspension on January 6, 2012, as it appears that Member Services' notice was not sent out until sometime after the court holidays. Accordingly, this court does not find that Respondent willfully violated section 6068, subdivision (a). Accordingly, Count Thirteen is dismissed with prejudice.

***Count Fourteen – § 6106 [Moral Turpitude]***

In Count Fourteen, the State Bar charges that on or about January 6, 2012, by appearing at Champaneri's deposition in the *Topa* matter, on his client's behalf, Respondent held himself out as entitled to practice and practiced law in violation of section 6106. As addressed in Count Thirteen, this court does not find that Respondent's appearance at Champaneri's deposition constituted the unauthorized practice law, as Respondent had not yet received notice of his suspension. Accordingly, Count Fourteen is dismissed with prejudice.

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**Case No. 13-O-12643 – The Amended Topa Matter**

**Facts**

On May 4, 2012, Respondent filed amendments to the *Topa* complaint, adding defendants Superior Claims Services (SCS) and CRES Insurance Services (CRES) in the *Topa* action.

Counsel for defendants SCS and CRES subsequently made Respondent aware that his causes of action against SCS and CRES, who were not parties to the insurance contract, were not warranted by existing law and lacked evidentiary support. Respondent received multiple letters from counsel for defendants SCS and CRES setting forth argument and legal authority that supported the defendants' position. In these letters, defense counsel requested that SCS and CRES be dismissed and warned that the defendants may seek sanctions. Respondent failed to respond to the defendants' letters.

Although Respondent ultimately dismissed defendants SCS and CRES, his dismissal came in the eleventh hour, after the defendants were forced to file answers, motions for summary judgment, and motions for sanctions pursuant to California Code of Civil Procedure (CCP) section 128.7.

On January 8, 2013, the court filed an order in *Topa* requiring Respondent to pay sanctions to defendants SCS and CRES in the total amount of \$27,334 on the grounds that plaintiffs' causes of action against SCS and CRES were not warranted by existing law and did not have evidentiary support.

The California Court of Appeal subsequently affirmed the trial court's CCP 128.7 ruling. To date, these sanctions have not been paid. (Stipulation, Fact No. 23.)

## **Conclusions of Law**

### ***Count Sixteen<sup>8</sup> – § 6068, Subd. (c) [Duty to Maintain Legal or Just Actions]***

Section 6068, subdivision (c), provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense. Here, the State Bar charges Respondent with maintaining an unjust action by refusing to dismiss defendants SCS and CRES in the *Topa* matter, in willful violation of section 6068, subdivision (c). This court agrees and finds Respondent culpable on Count Sixteen.

### ***Count Seventeen – § 6103 [Failure to Obey a Court Order]***

By Count Seventeen, the State Bar alleges Respondent failed to comply with the January 8, 2013 sanctions order, filed in the *Topa* matter. The sanctions were awarded to SCS and CRES under CCP section 128.7. The January 8, 2012 sanctions order compelled Respondent to pay \$27,334 “on the grounds that plaintiffs’ bad faith cause of action against Doe defendants SCS and CRES were not warranted by existing law and did not have evidentiary support.” (Exh. 22.)

Respondent argued that he acted in good faith and that the trial court “got it wrong.” However, the California Court of Appeal subsequently affirmed the trial court’s CCP 128.7 ruling. Respondent’s personal beliefs regarding the legitimacy January 8, 2012 sanctions order is not a basis for non-compliance.

Although the January 8, 2013 sanctions order did not set a date by which the sanctions were to be paid, the order was filed more than two years ago and has yet to be paid or set aside. As discussed above, the court concludes that Respondent’s failure to pay or set aside the

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<sup>8</sup> For the purposes of clarity, the court addresses Counts Sixteen and Seventeen out of numerical order.

January 8, 2013 sanctions order in over two years is unreasonable. Accordingly, this court finds Respondent culpable on Count Seventeen.

**Case No. 13-O-11787 – The *Valley v. National Title Co.* Matter**

**Facts**

At all times relevant to the instant matter, Respondent represented plaintiffs John Valley and Lynette Valley (the Valleys) in *Valley v. National Title Co.*, Alameda County Superior Court case no. RG10526283 (*Valley*). (Stipulation, Fact No. 4.)

On July 25, 2012, the *Valley* court filed an order compelling the Valleys to serve verified amended responses to the subject discovery and to produce responsive documents. The order further required Respondent to pay sanctions to the defendant in the amount of \$2,150. Respondent was aware of this order. As of the date of trial in the instant matter, these court-ordered sanctions had not been paid. (Stipulation, Fact No. 22.)

**Conclusions**

***Count Fifteen – § 6103 [Failure to Obey a Court Order]***

In Count Fifteen, the State Bar alleges Respondent's failure to pay monetary sanctions in *Valley* constitutes a failure to obey a lawful court order, in willful violation of section 6103. This court agrees, and finds Respondent culpable on Count Fifteen.

**Aggravation<sup>9</sup>**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Standards for Atty. Sanctions for Prof. Misconduct, std. 1.5) The court finds the following with regard to aggravating factors.

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<sup>9</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

**Prior Record of Discipline (Std. 1.5(a).)**

In aggravation, Respondent has a record of two prior disciplines, discussed below.

***Supreme Court Order No. S192652 – July 8, 2011***

On March 15, 2011, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation in State Bar Court case number 08-O-14650. In that matter, Respondent stipulated that he commingled personal funds in his client trust account and used the account to pay personal expenses, in violation of rule 4-100(A). He also stipulated that he hired his wife as his bookkeeper and failed to properly supervise her. As a result, she wrote checks and made electronic debits against insufficient funds in the account.

On July 8, 2011, the California Supreme Court filed an order in case number S192652 (State Bar Court case number 08-O-14650), wherein Respondent was suspended from the practice of law in California for two years, with execution of that period of suspension stayed. Respondent was also placed on probation for two years with conditions, including a 60-day actual suspension.

***Supreme Court Order No. S223248 – March 3, 2015***

In case number S223248 (State Bar Court case numbers 11-O-17393 (12-O-10066; 12-O-11429)), the California Supreme Court filed an order addressing Respondent's culpability involving seven counts of misconduct in three client matters, including the unauthorized practice of law while on suspension stemming from Respondent's prior discipline, making misrepresentations in a court pleading and to opposing counsel, and twice failing to pay court-ordered sanctions. The Supreme Court ordered Respondent suspended from the practice of law in California for two years, stayed, with a two-year period of probation, including an actual suspension of nine months and until he provides proof of payment of sanctions ordered by the San Bernardino County Superior Court in the total amount of \$1,615.

### ***Sklar Consideration***

The court notes that some of the misconduct in the present matter occurred before the imposition of discipline in Respondent's first discipline. And, all of the present matter stems from misconduct occurring before the imposition of discipline in Respondent's second discipline. Accordingly, the aggravating force of Respondent's prior discipline is somewhat diminished, as it is not an indication of Respondent's unwillingness or inability to conform to ethical norms following the imposition of discipline. (See *In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 618-619; and *In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136.)

### **Multiple Acts of Misconduct (Std. 1.5(b).)**

Respondent has been found culpable on six counts of misconduct in the instant proceeding. The existence of multiple acts of misconduct is an aggravating circumstance.

### **Mitigation**

It is Respondent's burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6). The court finds the following with regard to mitigating factors.

### **Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)**

Respondent entered into two stipulations to facts and/or admission of documents. Respondent's candor and cooperation with the State Bar warrant some consideration in mitigation.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025; Std. 1.1.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. Standard 1.7 further states that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any additional aggravating or mitigating factors.

In this case, the standards call for the imposition of a sanction ranging from actual suspension to disbarment. (Standards 2.6(a) and 2.8(a).) Standard 2.6(a) provides that disbarment or actual suspension is appropriate when a member engages in the practice of law or holds himself out as entitled to practice law when he is on actual suspension for disciplinary reasons. The degree of discipline under standard 2.6(a) depends on whether the member knowingly engaged in the unauthorized practice of law. Standard 2.8(a) provides that disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney.

Due to Respondent's prior record of discipline, the court also looks to standard 1.8 for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, unless the most compelling mitigation circumstances clearly predominate or the misconduct underlying the prior discipline occurred during the same time period as the current misconduct: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters

coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities. Here, the misconduct that constituted Respondent's second discipline occurred during the same time period as the present misconduct. Accordingly, standard 1.8(b) does not apply.

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

The State Bar requested that Respondent be disbarred. Respondent, on the other hand, argued that he anticipated serving a lengthy period of actual suspension and that progressive discipline is not warranted.

While the present matter involves a repetition of offenses found in Respondent's second discipline, the court must examine the nature and chronology of Respondent's record of discipline. The mere fact that an attorney has three impositions of discipline, without further analysis, may not justify disbarment. (*In the Matter of Miller* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 131, 136 [court did not apply former std. 1.7(b) where prior discipline given less weight because it was imposed after commencement of second disciplinary proceeding].) The misconduct in the present discipline occurred before Respondent's second discipline. The court therefore considers the totality of the findings in Respondent's present and second discipline to determine what the discipline would have been had all the charged misconduct in this period been brought as one case. (*In the Matter of Sklar, supra*, 2 Cal. State Bar Ct. Rptr. 602, 619.)

In determining the appropriate level of discipline, the court is guided by *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, and *In the Matter of Mason* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 639.

In *Wyrick*, the attorney, who was suspended, held himself out as entitled to practice law on multiple occasions in order to procure employment. The attorney's omissions and misrepresentations were found to constitute moral turpitude. In aggravation, the attorney had a prior record of discipline that was found to be remote in time and of minimal severity for the purposes of standard 1.7(a). Additionally, the attorney harmed the administration of justice, undermined the public's confidence in the court system, and committed multiple breaches of his ethical duties. Little, if any, evidence was presented in mitigation. The Review Department recommended that the attorney be suspended from the practice of law for two years, stayed, with a two-year period of probation, including a six-month actual suspension.

In *Mason*, the attorney made a court appearance and signed and served a trial brief while suspended by the Supreme Court for misconduct in a prior discipline. He did not inform either the court or opposing counsel that he was suspended from the practice of law. He was found culpable of moral turpitude in practicing law while suspended. In aggravation, the attorney had one prior record of discipline for an unrelated offense. The attorney's volunteer and pro bono work was considered in mitigation. The Review Department recommended that the attorney be suspended for three years, stayed, with a three-year period of probation, including a 90-day actual suspension.

The facts and circumstances reflected in the present case are somewhat divergent from *Wyrick* and *Mason*. While on disciplinary probation, Respondent practiced law during the period of his actual suspension. In addition, he failed to obey multiple court orders and maintained an unjust action. While the court declines to apply standard 1.8(b), the common thread between

Respondent's present discipline and his most recent prior discipline is concerning. Also, Respondent's conduct indicates an unwillingness or inability to comply with court orders. Clearly, a more significant period of actual suspension is now warranted.

Therefore, in view of Respondent's misconduct, the case law, the standards, and the mitigating and aggravating factors, the court finds that, among other things, a one-year period of suspension and until full payment of the outstanding court sanctions provides adequate protection for the courts, the public, and the legal profession.

### **Recommendations**

It is recommended that respondent **Gregory Molina Burke**, State Bar Number 188891, be suspended from the practice of law in California for three years, that execution of that period of suspension be stayed, and that Respondent be placed on probation<sup>10</sup> for a period of three years subject to the following conditions:

1. Respondent Gregory Molina Burke is suspended from the practice of law for a minimum of the first year of probation, and will remain suspended until the following requirements are satisfied:
  - i. He pays the sanctions ordered by the Los Angeles County Superior Court on March 9, 2012, in the amount of \$2,255, and furnishes satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles;
  - ii. He pays the sanctions ordered by the Alameda County Superior Court on July 25, 2012, in the amount of \$2,150, and furnishes satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles;
  - iii. He pays the sanctions ordered by the Los Angeles County Superior Court in on January 8, 2013, in the amount of \$27,334, and furnishes satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles; and
  - iv. If Respondent remains suspended for two years or more as a result of not satisfying the preceding requirements, he must also provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice, and present learning

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<sup>10</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

and ability in the general law before his actual suspension will be terminated.  
(Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,  
std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.
6. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.<sup>11</sup>

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

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<sup>11</sup> It is not recommended that Respondent be ordered to attend the State Bar's Ethics School, as he has recently been ordered to do so, on March 3, 2015, by the Supreme Court in case no. S223248.

**California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**Multistate Professional Responsibility Examination**

It is not recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination, as he was recently ordered to do so, on March 3, 2015, by the Supreme Court in case no. S223248.

**Costs**

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

Dated: April 16, 2015

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YVETTE D. ROLAND  
Judge of the State Bar Court