

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case No.: **12-TE-10663-LMA**
)
SEAN PATRICK GJERDE)
) **DECISION AND ORDER OF INACTIVE**
) **ENROLLMENT**
Member No. 217467) **[BUS. & PROF. CODE SECTION 6007,**
) **SUBD. (c)]**
A Member of the State Bar.)

Introduction¹

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 Sean Patrick Gjerde (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 generally involves respondent’s representation of multiple clients who paid him advanced fees and received little or no competent work in exchange. When these clients requested refunds, respondent typically ignored or rejected these requests. On the limited occasions when respondent promised to provide a refund, it often did not come to fruition.

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

Despite the extraordinary number of client complaints, respondent steadfastly accepts little to no responsibility for the repeated misconduct. Instead, respondent blames the majority of the delays, mistakes, and problems on his clients.

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 September 12, 2011, the State Bar filed a notice of disciplinary charges against respondent in case nos. 10-O-05663; 10-O-10049; 10-O-07415; 11-O-12301; 11-O-11106; 11-O-13830; 11-O-12619; and 11-O-12634 (NDC #1).

On February 16, 2012, the State Bar filed a second notice of disciplinary charges against respondent in case nos. 11-O-10005; 11-O-12632; 11-O-13877; 11-O-14849; 11-O-14872; 11-O-17895; 11-O-18091; 11-O-18146; 11-O-18662; and 11-O-19627 (NDC #2).

On February 28, 2012, the State Bar filed a verified application seeking respondent's involuntary inactive enrollment pursuant to section 6007, subdivision (c)(2). On March 9, 2012, respondent filed a response to the application. On March 14, 2012, respondent filed a supplemental response.

A hearing was held on April 5, 2012. The State Bar was represented by Deputy Trial Counsel Maria J. Oropeza. Respondent was not present at the hearing, but was represented by Michael R. Locks. 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 11, 2001, 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;² 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 based on matters that are 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, requests for judicial notice, and transcripts. (Rules Proc. of State Bar, rule 5.230(A).)

² 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.

The State Bar submitted over 20 declarations with their application. Based on the content of these declarations, the court finds, with noted exceptions, that these declarations are generally credible.

While respondent introduced useful exculpatory evidence on some of the matters, the court found that much of his declaration lacked credibility. Specifically, the court questions respondent's repeated assertions that the numerous errors and delays evidenced in his many filings were the result of client decisions, failures, and mistakes.³ Furthermore, the court finds respondent's recurrent claims of not receiving client communications lack credibility in light of the overwhelming credible evidence to the contrary.

The ARAG Insurance Company Matter (Case No. 10-O-05663)

ARAG Insurance Company (ARAG) is a legal insurance and legal plan provider that refers its plan members to ARAG network attorneys. ARAG pays set network attorney fees for providing ARAG's clients with specified legal services. ARAG requires potential network attorneys to undergo a screening process prior to acceptance.

On December 7, 2007, and July 2, 2008, respectively, ARAG dismissed respondent and James Chandler (Chandler) as network attorneys after determining that they engaged in fraudulent billing practices.

On or about December 2008, respondent contacted attorney Daniel Tichy (Tichy) about joining a law firm that respondent was incorporating.⁴ Respondent subsequently advised Tichy

³ The court has similar concerns regarding the limited declaration provided by Sherman Ratliff (Ratliff), respondent's non-attorney employee. Ratliff's off-the-cuff remarks labeling Judge Angus Saint-Evens as a "tax dodger and incompetent" causes the court to further question the overall credibility of his declaration.

⁴ At the time, Tichy had been a licensed attorney in the State of California for less than four years.

that he would serve as “of counsel” to respondent’s professional law corporation, Northern California Law Center (NCLC). Tichy accepted respondent’s proposal.

On April 13, 2009, Tichy signed an ARAG network attorney application. Respondent filled in the application. Respondent led Tichy to believe that respondent and Chandler were also applying to become ARAG network attorneys.

On August 3, 2009, ARAG received Tichy’s network attorney application and supporting documents. Unbeknownst to Tichy, the application included a letterhead listing him as NCLC’s sole attorney. Tichy was approved as an ARAG network attorney on August 26, 2009.

Shortly thereafter, ARAG received banking information from NCLC. It wasn’t until later that ARAG’s controller realized the bank information provided by NCLC was associated with an account held by respondent.

On or about October 26, 2009, ARAG sent a letter to Tichy at his official membership records address. In the letter, ARAG requested that Tichy sign an affidavit verifying that he provided over \$7,000 in services to 17 clients described in an attached spreadsheet. Tichy had not provided any of these services or any other services for ARAG clients. Tichy never submitted any billings to ARAG for legal services.

On or about November 5, 2009, ARAG received an email from “Taylor Gjerde” at NCLC.⁵ The email requested that ARAG not send any future correspondence to Tichy’s membership records address, and instead send all correspondence to NCLC’s address. The email falsely stated that it was written by Tichy; however, he had no knowledge of the email.

On or about November 10, 2009, a letter was sent to ARAG by NCLC. This letter stated that it was transcribed by Tichy and was accompanied by a sworn affidavit falsely certifying that

⁵ Taylor Gjerde was respondent’s wife, and is also known as Taylor Muir.

Tichy represented the plan members and performed the legal services indicated in the aforementioned spreadsheet. The affidavit was purportedly signed by Tichy. Tichy's signature was notarized by respondent's wife, signing as Taylor Muir. Tichy's signature was a forgery.⁶

On January 13, 2010, ARAG dismissed Tichy as a network attorney. When Tichy learned of the dismissal, he was surprised and upset. He arranged a meeting with respondent and asked that respondent bring the ARAG application and additional documentation. A few hours before the meeting, respondent canceled.

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 charge:

- a. Section 6106 [Moral Turpitude].⁷

The Wheeler Trust Matter (Case No. 11-O-12634)

This matter involves the State Bar's allegations in Counts 2 - 5 of NDC #1. It is alleged that respondent engaged in misappropriation and a scheme to defraud funds and property from the John G. Wheeler trust (the Wheeler trust). The State Bar presented little credible evidence in support of these allegations.⁸

Respondent, on the other hand, presented a declaration from Renee Wheeler (Renee), the sole beneficiary of the Wheeler trust. In her declaration, Renee wrote that she approved all of respondent's transactions and that he did not misappropriate any of her funds.

⁶ Respondent presented declaratory evidence that his wife's notary stamp had been stolen. The court does not find this evidence to be credible.

⁷ Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty, or corruption.

⁸ The court was not provided certified bank records of respondent's client trust account, or any other account.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is **NOT** a reasonable probability that the State Bar will prevail based on the limited evidence before the court, as to Counts 2, 3, 4, and 5 of NDC #1.

The Alvarez Matter (Case No. 10-O-10049)

On June 27, 2008, Quina Alvarez (Alvarez) hired respondent to represent her in litigation regarding the Alvarez family trust. The opposing party in the litigation was Alvarez' sister and co-trustee, Victoria Alvarez. On September 12, 2008, Alvarez paid respondent \$5,000 in advanced fees.

On November 26, 2008, respondent signed a stipulation agreeing to receive and hold \$3,000 for the Alvarez family trust. Respondent stipulated that this money would be used only for emergencies and upon 12-hour notice to opposing counsel.⁹

On December 3, 2008, the arbitrator ordered the parties to abide by the terms of the stipulation. That same day, respondent deposited a \$3,000 check from the Alvarez Family Bypass Trust into his client trust account. In its memo line, the check stated, "Emergency Repair Fund."

On December 10, 2008, the stipulation was filed with the Sacramento County Superior Court Probate Department.

At some point prior to August 24, 2010, Thomas Barth (Barth) became Alvarez' attorney of record. On or about August 24, 2010, Alvarez sent a letter addressed to respondent requesting

⁹ The stipulation also contained the following conditional language: "Account is until by decision of the Arbitrator, order of the Court, a stipulation of the parties for withdrawal, remittance, or expenditure therefrom in writing no distributions shall be made." [sic] This vague and confusing language gives the court little understanding of the parties' intentions. The evidence is also unclear as to if and when the arbitrator issued a decision.

that the \$3,000 in funds held in trust be transferred to Barth. Respondent did not respond to Alvarez' letter or release the funds to Barth.

Respondent acknowledges that he did not release the emergency repair funds to Alvarez. Respondent contends that Alvarez agreed that he could keep the \$3,000 and apply the amount toward her outstanding balance for his services. Respondent provided the court with a copy of this purported agreement.¹⁰ (See respondent's Exhibit T.)

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is **NOT** a reasonable probability that the State Bar will prevail based on the limited evidence before the court, as to Counts 6, 7, 8, 9, and 10 of NDC #1.

The Smith Matter (Case No. 10-O-07415)

On October 20, 2009, Dina and Gregory Smith (the Smiths) hired respondent to represent them in a chapter 7 bankruptcy. The Smiths paid respondent \$2,000 in advanced fees and \$300 for a filing fee.

On January 8, 2010, respondent electronically filed a chapter 7 voluntary petition for the Smiths in the United States Bankruptcy Court, Eastern District of California. Unbeknownst to the Smiths, respondent listed Chandler as their attorney. The Smiths had never met or spoken to Chandler.

On or about January 8, 2010, the bankruptcy court filed a notice of incomplete filing that listed 17 documents that were missing from the Smiths' initial filing. The notice required that the missing documents be provided by January 22, 2010.

¹⁰ In NDC #1, the State Bar alleges that this purported agreement is fabricated. Alvarez' declaration, however, is silent on this issue.

On February 16, 2010, respondent electronically filed with the bankruptcy court 16 pages of schedules relating to financial obligations, creditors, property, income, and expenditures, in addition to a summary of schedules in the Smiths' case. A declaration under penalty of perjury by an individual debtor was attached to these documents and signed by the Smiths with an electronic signature. The Smiths, however, never signed this document and were unaware that it was being filed on their behalf.

On February 17, 2010, respondent and the Smiths appeared at the scheduled meeting of creditors. At the meeting, the trustee informed respondent that the Smiths' bankruptcy petition was filed incorrectly and that the documentation was incomplete. Respondent advised the trustee that he was not working personally on the Smiths' matter and that his law firm assistants would remedy the problem. The trustee continued the meeting of creditors hearing to March 17, 2010.

On March 17, 2010, the Smiths attempted to contact respondent to remind him about the continued court date and request a meeting with him prior to the 3 p.m. hearing. The Smiths did not personally speak with respondent, and were advised by respondent's assistant that there was no court date on the office calendar. Based on these representations, the Smiths did not attend the scheduled hearing. Respondent also failed to attend the March 17, 2010 hearing.

On March 23, 2010, the trustee filed an order to show cause for failure to attend the aforementioned meeting. The hearing was set for April 27, 2010.

On April 16, 2010, the trustee filed a motion to dismiss the Smiths' bankruptcy petition. This motion stated that respondent ignored repeated requests to provide various documents. The motion was served on Chandler at NCLC.

On April 23, 2010, the Smiths met with respondent to discuss the status of their bankruptcy matter. Respondent told the Smiths that their case was dismissed because they did

not meet the means test standards for a chapter 7 bankruptcy. Respondent offered to file a chapter 13 proceeding if the Smiths paid the \$274 filing fee.

No one appeared at the April 27, 2010 hearing. On or about May 5, 2010, the court issued an order dismissing the Smiths' bankruptcy matter.

On or about April 30, 2010, the Smiths paid respondent \$274 for the chapter 13 filing fee. Respondent also promised to send the Smiths weekly emails to keep them advised of his progress in their case. Respondent, however, did not send the Smiths any weekly emails and failed to file a chapter 13 petition on the Smiths' behalf.

On or about May 25, 2010, the Smiths appeared in bankruptcy court and learned that their case was not on the docket. The Smiths were also informed by the court clerk that their attorney of record was Chandler, not respondent.

In or about May and June 2010, the Smiths telephoned respondent to obtain status updates on their matter. The Smiths left messages for respondent; however, he did not call them back.

On or about June 7, 2010, the Smiths requested that respondent provide an itemized accounting and a refund. Respondent failed to respond to this request.

On or about June 15, 2010, the Smiths contacted respondent's office to inquire about their refund request. Respondent's office staff stated that respondent agreed to refund the \$274 filing fee paid for the chapter 13 bankruptcy petition, but none of the advanced attorney fees. The Smiths were also informed that respondent refused to speak or meet with them.

Respondent asserts that he was never the attorney of record. This fact is of little consequence to the court since the Smiths hired respondent, respondent never advised the Smiths

that he would not be the attorney of record, respondent appeared at the February 17, 2010 meeting of creditors, and respondent continued to meet with the Smiths and act as their 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];¹¹
- b. Rule 4-100(B)(3) [Failure to Render Accounts];¹²
- c. Section 6068, subd. (m) [Failure to Inform Client of Significant Development];¹³
- d. Rule 3-700(D)(2) [Failure to Refund Unearned Fees];¹⁴ and
- e. Section 6068, subd. (a) [Failure to Comply with All Laws].¹⁵

The Knowlton Matter (Case No. 11-O-12301)

On or about July 2010, Amanda and George Knowlton (the Knowltons) hired respondent to assist them with a loan modification and represent them in a bankruptcy proceeding. The Knowltons paid respondent \$3,000. Respondent informed the Knowltons that \$1,000 of the amount would be his fee for the bankruptcy matter.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ Section 6068, subdivision (a) provides that an attorney has a duty to support the laws of the United States and of this state. United States Bankruptcy Court, Eastern District of California, Local Rule 9004-1 states that when an electronic signature is used for the signature of anyone other than the filing attorney, the attorney is representing that an originally signed copy of the document exists and is in the attorney's possession at the time of filing.

On or about January 4, 2011, respondent filed a chapter 7 bankruptcy petition on behalf of the Knowltons in the United States Bankruptcy Court for the Eastern District of California. In the bankruptcy petition, respondent confirmed that he received \$1,000 to represent the Knowltons in the bankruptcy matter.

On or about January 18, 2011, respondent filed, on the Knowltons' behalf, schedules, summaries, and a statement of financial affairs. These documents, however, contained the name of one of respondent's other clients.

On February 11, 2011, respondent failed to appear at a scheduled meeting of creditors. On or about that same day, the bankruptcy trustee filed a motion to dismiss the Knowltons' petition based on respondent's failure to appear at the scheduled meeting of creditors.

In or about February 2011, George Knowlton sent several emails to respondent seeking answers to various questions. As respondent failed to answer the questions and with the motion to dismiss looming, George Knowlton's emails became more aggravated, threatening, and vulgar.¹⁶

On February 26, 2011, George Knowlton threatened to sue respondent and report him to the State Bar if he did not provide a full refund. Respondent replied by stating that the Knowltons owed him money, and that he wanted to end his professional relationship with them due to the Knowltons' behavior.

On or about February 28, 2011, respondent filed an opposition to the motion to dismiss. In his opposition, respondent stated that he had a bad cold and couldn't find substitute counsel.

¹⁶ Reviewing the email chains provided in respondent's Exhibit Q, it appears that some of respondent's responses to George Knowlton's emails were either deleted or not provided in email form.

Prior to March 21, 2011, the Knowltons called respondent about the hearing on the motion to dismiss. Respondent informed them that he quit and would not be appearing at the hearing on the motion. On March 21, 2011, the Knowltons appeared at the hearing and the motion to dismiss was denied. Respondent did not appear.

On March 29, 2011, the trustee, Antonia Darling (Darling), filed a motion to disgorge attorney fees paid to respondent by the Knowltons. On March 30, 2011, respondent filed a motion to withdraw as counsel claiming irreconcilable differences with the Knowltons.

On April 13, 2011, respondent filed an opposition to the motion to disgorge fees. In his opposition, respondent falsely claimed that he did not receive any fees from the Knowltons in the bankruptcy.

On May 2, 2011, the bankruptcy court granted the trustee's motion to disgorge fees and ordered respondent to return \$1,000—the amount he stated was paid to him in the original petition. The court also ordered that respondent pay one half of the trustee's costs in bringing the motion to disgorge.

On or about May 3, 2011, the bankruptcy court entered the order requiring respondent to disgorge \$1,000 in fees back to the Knowltons. Respondent did not subsequently pay any money back to the Knowltons.

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];
- b. Section 6106 [Moral Turpitude – Misrepresentation]; and
- c. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

The Mickelsen Matter (Case No. 11-O-11106)

On August 24, 2009, Harvey and Stephanie Mickelsen (the Mickelsens) hired respondent to file a bankruptcy petition on their behalf. Respondent told the Mickelsens that he was an experienced bankruptcy attorney. The Mickelsens paid respondent \$2,000.

On October 19, 2009, respondent filed the Mickelsens' bankruptcy petition.¹⁷ Respondent incorrectly completed the petition's supporting documents by improperly asserting federal exemptions for the Mickelsens' assets instead of California exemptions and by improperly characterizing two life insurance policies, a personal injury claim, the loss of the Mickelsens' vehicle, and the proceeds from the sale of their Arizona residence. Respondent also failed to properly identify the Mickelsens' applicable exemptions and failed to properly disclose their assets.

On November 23, 2009, the day before the meeting of creditors, respondent's office called the Mickelsens to inform them that Chandler would attend the meeting of creditors. The Mickelsens had never met Chandler.

Moments before the November 24, 2009 meeting of creditors, Chandler told the Mickelsens that he was unprepared and had not reviewed their client file. Because Chandler was unprepared, the bankruptcy trustee continued the meeting of creditors to December 9, 2009.

Respondent was present at the December 9, 2009 meeting of creditors. At the meeting, respondent told the trustee that he lacked experience with bankruptcy matters. On or about that

¹⁷ In his declaration, Harvey Mickelsen asserted that the petition was filed without his actual signature on the original petition and supporting documentation. Respondent, however, produced, in Exhibit S, what he purports to be a true and legible copy of the Mickelsens' bankruptcy petition prior to filing. This petition contains what appear to be the Mickelsens' signatures.

same day, respondent filed amended schedules. He did not have the Mickelsens review or sign the amended schedules and did not provide them with copies.

On or about February 8, 2010, the Mickelsens terminated respondent and employed attorney Candy Dahl Goldman (Goldman) to represent them in the bankruptcy matter. At about this same time period, the trustee initiated an action to obtain the Mickelsens' life insurance policy proceeds because respondent had improperly characterized them.

On or about May 6, 2010, the Mickelsens requested that respondent refund the \$2,000 they paid him to complete the bankruptcy matter. Respondent refused the request.

On July 21, 2010, the Mickelsens moved for an order compelling respondent to disgorge attorney fees. On October 5, 2010, the bankruptcy court ordered respondent to disgorge fees in the amount of \$2,000.

On or about November 3, 2010, the Mickelsens filed a motion to compel respondent to comply with the October 5, 2010 order and for contempt sanctions.

On November 24, 2010, the bankruptcy court issued an order requiring respondent to appear on December 14, 2010, to explain why he had not disgorged \$2,000. The court also issued an order requiring respondent to show cause why his electronic filing privileges should not be terminated.

Respondent failed to appear at the December 14, 2010 hearing. On January 10, 2011, the court issued an order of contempt against respondent for failing to explain why he had not disgorged the \$2,000. The court ordered that all of the filing privileges of respondent or any attorney associated with respondent's law firm were revoked.¹⁸ The court further ordered that

¹⁸ Respondent stated that he was never prohibited from filing bankruptcies and that only his electronic filing privileges were revoked. These assertions, however, are contradicted by the

no case may be filed in the Eastern District of California by respondent, his firm, or any attorney associated with his firm without prior permission from the chief judge.

On March 8, 2011, the Mickelsens filed a motion for attorney fees and costs incurred in prosecuting the contempt action against respondent. On or about April 4, 2011, respondent paid the Mickelsens \$2,000 to reimburse them for the attorney fees paid to respondent and \$3,000 toward the attorney fees they incurred in prosecuting the contempt action against respondent.

On April 14, 2011, the court ordered respondent to pay the Mickelsens \$10,026 in attorney fees and \$46.62 in costs, with a credit for the \$3,000 paid by respondent on April 5, 2011. Respondent did not subsequently comply with the April 14, 2011 order.

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. Section 6103 [Failure to Obey a Court Order].¹⁹

Violation of Contempt Order (Case No. 11-O-12301)

As noted above, the Bankruptcy Court of the Eastern District of California issued a January 10, 2011 order revoking all of the filing privileges of respondent or any attorney associated with respondent's law firm without prior permission from the chief judge.

plain language of the January 10, 2011 Order of Contempt, which states that "all filing privileges of [respondent], [NCLC], or any attorney associated with [NCLC] are revoked."

¹⁹ 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."

On or about October 2010, respondent filed a chapter 13 bankruptcy for Michael and Jennifer Peters (the Peters). This matter was subsequently dismissed. On or about March 2011, a second bankruptcy case was filed on the Peters behalf. This case was filed by Chandler, and was subsequently dismissed on April 1, 2011.

On April 13, 2011, a paralegal associated with respondent, Shaun Smith (Smith), filed a third bankruptcy petition on the Peters' behalf. The petition falsely stated that the Peters were representing themselves in pro per.

The bankruptcy trustee brought a motion in the Mickelsen case to hold both respondent and Chandler in contempt for filing two Peters bankruptcy petitions in violation of the court's January 10, 2011 order. Michael Peters stated in a declaration that he had never met or hired Smith, and that respondent was his attorney. The court found both respondent and Chandler in contempt of its order.

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 charge:

- a. Section 6103 [Failure to Obey a Court Order].

The Jorgensen Matter (Case No. 11-O-12301)

On or about March 15, 2010, Kimberly Jorgensen and her husband (the Jorgensens) hired respondent to represent them in a chapter 13 bankruptcy petition. The Jorgensens paid respondent \$3,500.

On or about September 1, 2010, respondent filed a bankruptcy petition on the Jorgensens' behalf.²⁰ In the petition, Chandler was listed as the Jorgensens' attorney. The Jorgensens had never met Chandler.

At an October 6, 2010 creditors meeting, the trustee informed respondent that the documents he submitted to the court on the Jorgensens' behalf contained several errors. Thereafter, respondent failed to correct the errors.

On October 8, 2010, the trustee filed a motion to dismiss based upon the errors contained in the Jorgensens' bankruptcy documents. Respondent did not file the necessary amendments, oppose the motion to dismiss, or appear at the hearing on the motion to dismiss. On December 2, 2010, the court dismissed the case.

On January 20, 2011, the Jorgensens contacted respondent and requested that he return their client file and the fees they paid him. Respondent returned the client file, but did not refund any fees to the Jorgensens.

On March 29, 2011, the trustee moved the bankruptcy court to disgorge the fees paid by the Jorgensens. On April 27, 2011, the court ordered that respondent and Chandler disgorge \$3,000 in fees to the Jorgensens by May 13, 2011.

Respondent and Chandler did not subsequently pay any money to the Jorgensens. On December 12, 2011, respondent and Chandler were held in civil contempt for failing to pay

²⁰ In her declaration, Kimberly Jorgensen asserted that the petition was filed without her actual signature on the original petition and supporting documentation. Respondent, however, produced, in Exhibit V, what he purports to be a true and legible copy of the Jorgensens' bankruptcy petition prior to its filing. This petition contains what appear to be the Jorgensens' signatures.

the \$3,000. There is no indication in the record that respondent or Chandler has since paid any portion of the \$3,000 to the Jorgensens.²¹

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]; and
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

The Richards Matter (Case No. 11-O-13830)

On December 22, 2010, Sara Richards (Richards) paid respondent \$1,500 to represent her in a chapter 7 bankruptcy proceeding.

On February 24, 2011, Richards gave respondent a \$399 check for filing fees. This check was deposited into respondent's general account.²² Respondent did not inform Richards that as of January 10, 2011, he was prohibited from filing new bankruptcy petitions in the United States Bankruptcy Court in the Eastern District of California.

On March 6, 2011, a paralegal from respondent's office called Richards and told her that the chapter 7 petition would be filed that week. Richards, however, did not receive subsequent communications from respondent's office.

On May 16, 2011, Richards went to court and learned that her petition had not been filed and that respondent was prohibited from filing petitions with the bankruptcy court. That same day, Richards sent respondent a letter demanding a refund of her fees.

²¹ Respondent asserts that he is financially unable to pay the disgorged fees.

²² Respondent states that his staff did not record this payment as a filing fee and it was therefore deposited in the general account.

On May 18, 2011, respondent replied to Richards' letter with a check for \$525 and an invoice indicating that he had earned \$975. In the letter, respondent denied receiving any funds for a filing fee and respondent failed to refund any of the \$399 filing fee.

On May 23, 2011, Richards sent respondent a letter demanding that he refund all of the advanced fees and the \$399 filing fee. On May 31, 2011, respondent sent Richards a refund of the \$399 filing fee.

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, subd. (m) [Failure to Inform a Client of a Significant Development]; and
- d. Rule 4-100(A) [Failure to Deposit and Maintain Funds in Trust].²³

The Cummings Matter (Case. No. 11-O-12619)

On September 10, 2010, Julie Cummings (Cummings) hired respondent to represent her in a civil matter involving a family member. Cummings paid respondent \$2,000 in advanced attorney fees. Respondent provided Cummings with a fee agreement in which respondent stated that he would render billing statements at the end of each month.

On September 23, 2010, Cummings terminated respondent. On or about that same day, respondent signed a substitution of attorney, substituting himself out of the civil matter. On or about September 27, 2010, Cummings filed the substitution of attorney with the court.

²³ Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in an identifiable bank account which is properly labeled as a client trust account and no funds belonging to an attorney or law firm shall be deposited in such an account or otherwise commingled with such funds.

At the end of September, respondent did not provide Cummings with a billing statement. On or about October and November 2010, Cummings requested an accounting on four different occasions.

On or about December 9, 2010, respondent provided Cummings with an accounting. The accounting indicated that Cummings owed respondent \$20. On or about December 26, 2010, Cummings sent respondent a letter challenging his accounting and indicating that it contained erroneous billing entries and double billing. Respondent received this letter but did not respond to Cummings.

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 charge:

- a. Section 6068, subdivision (m) [Failure to Respond to Client Inquiries].

The Sturmer Matter (Case No. 11-O-12632)

On or about January 2010, Donald Sturmer (Sturmer) hired respondent to assist him in a probate matter. On or about February 5, 2010, Sturmer signed a fee agreement with respondent, agreeing to pay him 10% of the total funds recovered in the probate matter.

On or about March 12, 2010, Sturmer hired respondent to represent him in a pending DUI matter. Respondent charged Sturmer \$40,000 in attorney fees, to be paid out of inherited funds from Sturmer's deceased mother.

On or about March 29, 2010, respondent told Sturmer that he was increasing his fee in the probate matter from 10% to 15% because of extended circumstances. Sturmer wanted his money from the inheritance, and therefore agreed to pay the increased amount.

On March 31, 2010, respondent received a cashier's check for Sturmer in the amount of \$300,000. Out of the \$300,000, respondent paid various sums of money to Sturmer and on Sturmer's behalf. Sturmer contends that respondent owes him \$164,300; however, this figure is partially based on Sturmer's own assessment of what certain services rendered by respondent were actually worth. Respondent, on the other hand, contends that Sturmer was paid additional monies and that Sturmer actually owes him an additional \$4,000. Based on the vague and incomplete evidence currently before the court, including the lack of competent bank records, the court cannot make a clear determination on whether respondent misappropriated funds belonging to Sturmer.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is **NOT** a reasonable probability that the State Bar will prevail based on the limited evidence before the court, as to Counts 1, 2, and 3 of NDC #2.

The Almazan Matter (Case No. 11-O-14872)

On or about January 28, 2009, Chris Almazan (Almazan) and his then current wife employed respondent to represent them in a bankruptcy, marital dissolution, and loan modification. They paid respondent \$5,000 to represent them in all three matters. Respondent did not provide the Almazans with a retainer agreement.

Based on respondent's advice, the Almazans stopped making payments on their house. Between February and September 2009, the Almazans repeatedly informed respondent that they wanted their matters to move forward. During this time period, respondent did little to nothing to move these cases forward. The Almazans heard from their real estate broker that respondent

had not contacted their mortgage company. The mortgage company began foreclosure proceedings, and the Almazans lost their home.

On September 23, 2009, the Almazans sent respondent an email terminating his services and requesting a full refund. That same day, respondent sent a reply email rejecting the refund request and stating that the Almazans' bill was already over the retainer limit.

The Almazans later learned that respondent did file something with the family law court regarding their marital dissolution, but it was never completed. The Almazans ultimately re-filed the dissolution petition in pro-per, upon the suggestion of the court clerk. Respondent did not provide the Almazans any services of value.

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]; and
- b. Rule 3-700(D)(2) [Failure to Refund Unearned Fees].

The Hamilton Matter (Case No. 11-O-17895)

On May 5, 2011, Brenda and Michael Hamilton (the Hamiltons) hired respondent to pursue a loan modification on their behalf.²⁴ They paid respondent \$4,000 to obtain the modification.

Respondent did not update the Hamiltons for several months, so they called Bank of America and learned that respondent had not made any phone calls or sent any letters to the bank, with the exception of a single mailing on May 9, 2011.

²⁴ While respondent asserts that he was hired to file a lawsuit against the Hamiltons' lender, the evidence demonstrates that the purpose of respondent's representation was to obtain a loan modification for the Hamiltons.

On August 26, 2011, the Hamiltons sent a letter to respondent requesting a full refund. On August 31, 2011, respondent sent a letter to the Hamiltons stating that he would prepare a billing statement and return the balance of funds and the case file.

The Hamiltons did not receive a billing statement or any refund from respondent. Respondent did not provide any services of value for the Hamiltons.²⁵

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. Section 6106.3 [Violation of Loan Modification Provisions].²⁶

The Heitz Matter (Case No. 11-O-18146)

On July 13, 2010, Ryan Heintz and his wife (the Heintzes) hired respondent to file a chapter 7 bankruptcy on their behalf. The Heintzes paid respondent a total of \$1,250.

On November 19, 2010, the Heintzes met with respondent to discuss his delay in filing their bankruptcy petition. Respondent stated that their petition would be filed before Christmas.

Respondent did not file the bankruptcy petition, as promised. Between January and April 2011, the Heintzes left several messages for respondent requesting a refund. Respondent did not respond to these messages and did not provide the Heintzes with a refund.

²⁵ Respondent claims that the Hamiltons owe him money, and respondent has filed a civil lawsuit against them. Respondent failed to present credible evidence in support of his assertion that he performed \$4,000 worth of work in the Hamiltons' matter.

²⁶ Section 6106.3 states that an attorney's violation of Civil Code section 2944.7 constitutes cause for the imposition of discipline. Civil Code section 2944.7(a)(1) prohibits the collection of advanced fees, after October 10, 2009, in mortgage loan modification matters.

On April 21, 2011, the Heintzes met with respondent. At the meeting, respondent told the Heintzes that their bankruptcy petition would be filed by June 15, 2011. Respondent did not inform the Heintzes that he was prohibited from filing their petition.

In or about June 2011, the Heintzes received a call from Jose Diaz (Diaz) of Angel Law Center. Diaz stated that the Heintzes' case had been transferred to Angel Law Center because respondent could not handle his case load. Respondent never informed the Heintzes that he was going to transfer their file to the Angel Law Center.

Diaz advised that the Heintzes wait until October 2011 to file their petition. However, when the Heintzes contacted the Angel Law Center on October 4, 2011, they were informed that Diaz no longer worked there. The Heintzes were directed back to respondent for further instruction.

On October 9, 2011, the Heintzes called and left a voicemail message for respondent inquiring about their case. Respondent did not return the call. On October 13, 2011, the Heintzes hand delivered a letter to respondent requesting either a status update within five days or a full refund. Respondent, however, did not respond to the letter.

Respondent did not refund any of the Heintzes' fees or provide them with a billing statement. He also failed to perform any services of value for the Heintzes.

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. Section 6068, subd. (m) [Failure to Inform Client of Significant Developments].

The Laino Matter (Case No. 11-O-18091)

On January 20, 2011, Roderick Laino (Laino) hired respondent to prepare and file a chapter 7 bankruptcy petition on his behalf. Laino paid respondent \$3,000 in attorney fees and \$274 in filing fees. Respondent did not inform Laino that he was prohibited from filing Laino's bankruptcy petition.

Respondent stated that he would file the bankruptcy petition within a month after Laino's final installment payment. Laino paid his final installment payment on February 9, 2011; however, respondent did not file the petition as promised. Between January and July 2011, respondent repeatedly informed Laino that he was working on the petition.

On June 22, 2011, Laino sent respondent an email requesting a full refund if he did not promptly file the petition. Respondent did not respond to the email.

On July 21, 2011, Laino sent a letter by certified mail to respondent requesting that he provide either an update on the status of the bankruptcy petition or a full refund. In August 2011, respondent contacted Laino and arranged a meeting at respondent's office to sign the petition. Laino came to respondent's office, but respondent stated that he could not find the petition.

On August 19, 2011, respondent gave Laino an agreement stating that he would send Laino bankruptcy schedules and a case plan by August 22, 2011. Respondent failed to send the bankruptcy schedules and case plan as promised.

Respondent failed to complete and file a bankruptcy petition on Laino's behalf. Respondent did not perform any services of value for Laino and failed to refund any of the fees or costs paid by Laino.

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. Section 6068, subd. (m) [Failure to Inform Client of Significant Developments].

The Whittle Matter (Case No. 11-O-18662)

On December 20, 2010, Thomas Whittle (Whittle) hired respondent to file a bankruptcy petition on his behalf. Whittle agreed to pay respondent \$1,500, and paid him \$750 that same day.

Respondent never informed Whittle that he was prohibited from filing new bankruptcy petitions as of January 10, 2011. On May 4, 2011, Whittle paid respondent the remaining \$750.

On May 5, 2011, Whittle met with respondent and provided him with the documentation he requested to file the petition. During this meeting, Whittle explained to respondent that he was battling cancer and needed to resolve the issues regarding his creditors. Respondent led Whittle to believe that he was working on the petition.

After this meeting, Whittle made numerous calls to respondent's office to check on the status of his case. Respondent did not return these calls.

On July 8, 2011, Whittle sent respondent a letter requesting a status update and timeline. Whittle specifically requested that respondent expedite the bankruptcy petition. On July 25, 2011, Whittle met with respondent to sign the paperwork necessary to file the petition. Respondent claimed that he could not finalize the paperwork because he had given it to

Chandler. Respondent promised to schedule another appointment by August 1, 2011, but never did.

Whittle continued to try to communicate with respondent by email. Respondent arranged for his office staff to set up appointments for Whittle to sign the final paperwork on September 8 and 23, 2011. Respondent subsequently cancelled both of these appointments.

On October 17, 2011, Whittle met with respondent and demanded a full refund. Respondent agreed to provide Whittle with a refund, but subsequently failed to do so.

On November 14, 2011, Whittle sent a letter to respondent requesting payment of the refund within 30 days. Respondent did not respond to the letter or refund any of the money to Whittle. Respondent did not perform any services of value for Whittle.

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. Section 6068, subd. (m) [Failure to Inform Client of Significant Developments].

The Jackson Matter (Case No. 11-O-13877)

On August 18, 2010, Carolyn Jackson (Carolyn) and her husband Mike (Mike), from whom she was separated, employed respondent to file a chapter 7 bankruptcy petition. Carolyn and Mike paid respondent \$1,500 to represent them in the bankruptcy matter.

Respondent stated that he would file the bankruptcy petition by the end of October or early November 2010, but he failed to do so. Between November 2010 and January 2011,

Carolyn and Mike telephoned respondent and sent him emails requesting a status update on their matter. Respondent did not respond to their calls or emails and did not provide a status update.

In or about January 2011, respondent arranged a meeting involving Carolyn, Mike, and his paralegal. Respondent's paralegal promised that the petition would be ready by mid-February 2011, but it was not.

In April 2011, Carolyn, out of frustration, consulted another attorney who contacted respondent on her behalf. Respondent stated that he would have the bankruptcy petition ready within a week. Carolyn asked respondent if he needed any updated financial information to prepare the petition, and respondent stated that he did not.

On April 14, 2011, Carolyn reviewed the petition and noted numerous errors. Accordingly, Carolyn refused to sign the petition.

On May 6, 2011, Carolyn contacted respondent and requested a \$900 refund, her portion of the fees. Respondent promised that he would send Carolyn a billing by mail, but he did not. Respondent did not provide Carolyn with a refund or perform any services of value for her.

Mike continues to be represented by respondent; however, his bankruptcy petition still has yet to be filed.²⁷ Mike asserted that his divorce proceeding delayed the bankruptcy, but he did not contradict any of the factual allegations contained in Carolyn's declaration.

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

²⁷ Mike believes that respondent is only prohibited from filing electronically in the bankruptcy court.

c. Section 6068, subd. (m) [Failure to Inform Client of Significant Developments].

The Crane Matter (Case No. 11-O-14849)

The State Bar submitted a declaration from Rachel Crane (Crane). After reviewing both the official file and the court’s file, the court notes that the later file contains an illegible page three of the declaration. In his response, respondent objects to Crane’s declaration on the grounds that it wasn’t made under penalty of perjury and that it appeared that much of the declaration was “erased.”

The court finds that respondent, like the court, received an illegible page three of the Crane declaration. Respondent, therefore, did not have adequate notice or a reasonable opportunity to respond to the allegations contained within Crane’s declaration.²⁸

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is **NOT** a reasonable probability that the State Bar will prevail based on the limited evidence before the court, as to Counts 31, 32, 33, 34, and 35 of NDC #2.

The Weatherly Matter (Case No. 11-O-10005)

On September 7, 2010, the Tulare County Superior Court ordered respondent to pay Steven Weatherly (Weatherly) \$2,500 in the matter of *Weatherly v. Weatherly*, case no. 10-237574. Respondent appealed this order, but his appeal was subsequently dismissed. Respondent has not paid Weatherly any portion of the \$2,500.

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 charge:

²⁸ There is no indication in the record that the State Bar provided respondent with a corrected version of the Crane declaration.

a. Section 6103 [Failure to Obey a Court Order].

The Cyphers Matter (Case No. 11-O-18146)

The State Bar did not present a declaration from Robert Cyphers, Jr., or any other credible evidence in support of the allegations in this matter.

Legal Conclusions

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is **NOT** a reasonable probability that the State Bar will prevail based on the limited evidence before the court, as to Count 38 of NDC #2.

The Campbell Matter (Case No. 11-O-19627)

Beginning in or about June 2011, respondent represented Kirk Campbell (Campbell) in a criminal matter before the Placer County Superior Court. Campbell was charged with numerous felony counts with four prior strike convictions, and was facing a sentence of 25 years to life in prison. Trial was set for October 24, 2011; however, this date was continued upon Campbell's failure to appear.

On October 28, 2011, a new trial date was set for December 5, 2011. At this point, respondent was facing eminent disciplinary suspension commencing on December 16, 2011. Despite this fact, respondent did not inform the court of his suspension.

On December 8, 2011, jury selection was completed. On December 9, 2011, the superior court informed the parties that it learned that respondent's disciplinary suspension was set to begin in one week. Respondent informed the court that he worked with other attorneys who could assist with appearances during his suspension.

Upon hearing that respondent was to be suspended during his post-trial proceedings, Campbell began questioning respondent. Based on the circumstances, Campbell moved for a

mistrial. The court granted the motion and the jury was excused. In his response, respondent asserted that he was under no obligation to inform Campbell of his pending suspension because it “did not affect [Campbell’s] case.”

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 charge:

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

The Habitual Disregard Matter (Case No. 11-O-18146)

The aforementioned misconduct in the Almazan, Hamilton, Heitz, Laino, Whittle, Jackson, Weatherly, and Campbell matters demonstrates respondent’s habitual disregard for the interests of his clients.

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 charge:

- a. Section 6106 [Moral Turpitude].

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.

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 40 counts of misconduct involving 17 of the 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 the dismissal of his clients' matters. 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.

Accordingly, the court finds that the State Bar has established, by clear and convincing evidence, that respondent has caused substantial harm to his clients.

C. Likelihood that Harm will Continue

Respondent denies most of the aforementioned misconduct. He also 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—even when instructed to do so by court order. 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 has not met this burden by clear and convincing evidence.²⁹

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

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²⁹ The court took into consideration the favorable declarations provided in respondent’s pleadings. These declarations, however, do not establish that there is no reasonable likelihood that respondent’s harm will reoccur or continue.

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.

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: May _____, 2012

LUCY ARMENDARIZ
Judge of the State Bar Court