

PUBLIC MATTER



**FILED**  
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STATE BAR COURT  
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LOS ANGELES

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No.: 13-O-11267-WKM
	)	
<b>PAUL LAWRENCE STANTON,</b>	)	<b>DECISION &amp; PUBLIC REPROVAL</b>
	)	<b>WITH CONDITIONS ATTACHED</b>
<b>Member No. 58378,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**Introduction**

In this contested, original disciplinary proceeding, the State Bar's Office of the Chief Trial Counsel (OCTC) charges respondent **PAUL LAWRENCE STANTON**, with five counts of professional misconduct in a single client matter. Specifically, OCTC charges respondent with willfully violating (1) rule 3-110(A) of the State Bar Rules of Professional Conduct<sup>1</sup> (failure to perform with competence); (2) rule 4-100(B)(3) (failure to account for client funds); (3) section 6068, subdivision (m) of Business and Professions Code<sup>2</sup> (failure to respond to client inquiries); (4) section 6068, subdivision (m) (failure to inform client of significant developments); and (5) rule 3-700(D)(1) (failure to release file).

For the reasons set forth below, the court finds, by clear and convincing evidence, that respondent is culpable on three of the five counts. Moreover, the court concludes that the

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<sup>1</sup> Unless otherwise noted, all future references to rules are to the State Bar Rules of Professional Conduct.

<sup>2</sup> Unless otherwise noted, all future references to sections are to the Business and Professions Code.

appropriate level of discipline for the found misconduct is a public reproof with conditions attached for two years, including paying restitution with interest to his former clients for the \$1,100 that they paid a successor attorney to complete the legal services respondent failed to perform.

### **Significant Procedural History**

OCTC filed the notice of disciplinary charges (NDC) in this matter on December 23, 2014. Thereafter, respondent filed his response to the NDC on January 13, 2015.

This matter was originally assigned to State Bar Court Judge Patrice E. McElroy. However, effective May 20, 2015, the matter was reassigned to the undersigned State Bar Court Judge for all purposes.

On August 12, 2015, the parties filed a partial stipulation of facts and admission of documents. A one-day trial was held on August 12, 2015. Both parties filed post-trial briefs, and the court took the matter under submission for decision on August 26, 2015.<sup>3</sup>

At trial, OCTC was represented at trial by Deputy Trial Counsel Ann J. Kim. Respondent was represented by Kevin Gerry, Esq.

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

The following findings of fact are based on respondent's response to the NDC, the parties' August 12, 2015, partial stipulation of facts and conclusions of law and admission of documents, and the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in the State of California on December 20, 1973. Respondent has been a member of the State Bar of California since that date.

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<sup>3</sup> Respondent filed his post-trial brief one day late, on August 27, 2015.

## Case Number 13-O-11267 – The Kazliner Matter

### Findings of Fact

On April 12, 2008, Bernard Kazliner executed an amendment to his living trust, the Bernard Kazliner Family Living Trust, in which he (1) disinherited all of his relatives, including his two nephews, James Kazliner and Martin Kazliner (collectively the Kazliners) and (2) named Ray Heusen,<sup>4</sup> his caregiver, as the successor trustee and the sole beneficiary of the trust upon his death (the trust amendment). Before Bernard Kazliner executed the amendment, the Kazliners were the only beneficiaries of the Bernard Kazliner Family Living Trust.

On April 14, 2008, Bernard Kazliner executed a will (April 2008 will). In the April 2008 will, Bernard Kazliner again disinherited all of his relatives, including the Kazliners. Moreover, the April 2008 will contains a pour-over provision giving all of Bernard Kazliner's estate to the Bernard Kazliner Family Living Trust. In sum, under the trust amendment and the April 2008 will, Heusen was to have acquired all of the Bernard Kazliner's assets when he died.

After Bernard Kazliner established his living trust, he failed to transfer all of his assets into the trust. For example, he transferred a bank account into the trust, but failed to transfer his house, which was his largest asset.

Bernard Kazliner died in December 2010. Thereafter, Heusen filed a petition for probate of the April 2008 will, for letters testamentary, and for authorization of independent administration of Bernard Kazliner's estate (petition for probate).

On about March 7, 2011, the Kazliners retained respondent to represent them "in connection with [their] claim as beneficiaries of [the Bernard Kazliner Family Living Trust] ...

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<sup>4</sup> Heusen is also son of the owner of the Garden of Angel Care Nursing Home, which is where Bernard Kazliner lived before he died.

[and] any related actions.” Not long thereafter, the Kazliners paid respondent \$50,000 in advanced attorney’s fees.<sup>5</sup>

Between March 8 and April 20, 2011, respondent not only filed objections to the petition for probate, but he also filed a petition seeking a declaration that the trust amendment was invalid and seeking the imposition of a constructive trust (petition to invalidate the trust amendment). Sometime in late April or early May 2011, Heusen and the Kazliners agreed to go to mediation.

The Kazliners agreed to go to mediation even though they suspected (or knew) that Heusen and his mother had withdrawn or accepted large sums of money from Bernard Kazliner before, and possibly after, he died. Further, before mediation, both respondent and the Kazliners knew that, while Bernard Kazliner was living at the Garden of Angel Care Nursing Home, Bank of America made a \$250,000 loan that was secured by a mortgage and deed of trust on Bernard

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<sup>5</sup> In his fee agreement with the Kazliners, respondent improperly denominated the \$50,000 as “[a] non-refundable retainer” that was “deemed fully earned upon receipt.” Denominating the \$50,000 as a non-refundable retainer and stating that it was fully earned upon receipt does not make it so. (*In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907, 923.) Legal fees paid to an attorney in advance must always be refunded under rule 3-700(D)(2) of the State Bar Rules of Professional Conduct unless, and until, they are actually earned. The only legal fee that is earned upon receipt is the *very* rare “true retainer fee,” which is earned upon receipt because it is not paid for legal services to be performed, but is paid *solely* to ensure an attorney’s availability to perform legal services in the future. (*Matthew v. State Bar* (1989) 49 Cal.3d 784, 787-788.) If any attorney performs any legal service in return of the retainer or if the client is to be given credit towards legal services for the retainer, the retainer is not a “true retainer fee.” Clearly, the Kazliners did not pay respondent \$50,000 solely for the purpose of ensuring respondent’s availability to represent them because the fee agreement itself provides that the \$50,000 will be applied to respondent’s hourly fees. (*In the Matter of Lais, supra*, 3 Cal. State Bar Ct. Rptr. at p. 923.)

Another improper and overreaching provision in respondent’s fee agreement with the Kazliners authorizes respondent’s law office:

to honor (without [a] duty to investigate or verify the authenticity of) any purported liens (whether or not incurred by us on your behalf, or purported to relate to this matter). You authorize us, without notice or other formality, to satisfy all such liens from the proceeds of any judgment, settlement or other disposition of this matter, or from sums on account in our trust account at the conclusion of our participation in this matter.

Kazliner's house.<sup>6</sup> After the mediation, the Kazliners asked respondent on a number of occasions to determine whether they had a valid predatory lending claim against Bank of America.

The parties attended and settled their disputes at the mediation. That same day, the parties signed a written settlement agreement, which respondent approved as to form *and* content for the Kazliners and which opposing counsel Paul N. Gautreau also approved as to form *and* content for Heusen. That agreement includes the following terms:

1. The Kazliners' objections to the petition for probate would be sustained, and the petition for probate would be denied.
2. The petition to invalidate the trust amendment would be granted.
3. The Kazliners would be appointed as co-executors of Bernard Kazliner's estate, and Martin Kazliner would be deemed the sole successor trustee of the Bernard Kazliner Family Living Trust.
4. All the assets of Bernard Kazliner, including his house, were deemed to be assets of the Bernard Kazliner Family Living Trust and were to be distributed to the Kazliners in equal shares.
5. All of Heusen's interests in Bernard Kazliner's assets were assigned to the Kazliners.
6. The Bernard Kazliner Family Living Trust was to pay Heusen a total of \$100,000 as follows:
  - a. \$50,000 to Heusen within 10 days after the entry of the superior court order approving the settlement agreement *and* the transfer of all of Bernard Kazliner's assets to the trust; and
  - b. \$50,000 to the Paul N. Gautreau client trust account out of the proceeds from the sale of Bernard Kazliner's house.
7. The agreement was binding on the parties, but conditional on approval by the Los Angeles Superior Court.

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<sup>6</sup> Despite both respondent and the Kazliners testifying that they first became aware of the loan at the May 17, 2011, mediation, an email on May 11, 2011, between them clearly indicates that they were aware of the loan.

On June 2, 2011, respondent filed (1) a petition for court approval of the settlement agreement and (2) a petition for an order declaring the trust amendment invalid. The superior court granted both of those petitions at hearing on August 8, 2011. The superior court's rulings were noted in a minute order on August 8, 2011. That minute order directed respondent to prepare a formal order of the court's rulings for the court to sign.<sup>7</sup>

On August 16 and November 15, 2011, the Kazliners emailed respondent regarding the status of certain non-trust assets, which they wanted to make sure were transferred into the trust so that they would not go through probate. Respondent received those emails and responded that the settlement agreement characterized those assets as trust assets to avoid probate.

In August 2011, respondent prepared and submitted to the superior court, a proposed formal order declaring the trust amendment invalid. The proposed formal order respondent prepared and submitted to the court did not approve the settlement agreement. Even though the formal order declared the trust amendment invalid but did not approve the settlement agreement. Gautreau, like respondent, approved the proposed formal order both as to form and content. Respondent submitted the proposed formal order to the superior court on August 29, 2011, and the superior court signed and filed it the same day.

According to respondent, he did not include an order approving the settlement agreement in the proposed formal order he prepared and submitted because the Kazliners did not have \$50,000, which respondent insists that the Kazliners would have been required to pay Heusen within 10 days after the superior court signed an order approving the settlement agreement. After reflecting on the record as a whole and after carefully weighing and considering respondent's demeanor while testifying and the manner in which he testified, his personal

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<sup>7</sup> The superior court's minute order follows the probate notes for August 8, 2011. (See exhibit 10, page 2.) Following the text "Order to be Prepared By:" in the minute order, the court checked the box next the word "Attorney."

interest in the outcome of this proceeding, his capacity to accurately perceive, recollect, and communicate the matters on which he testified, and his attitude toward this disciplinary proceeding (see, e.g., Evid. Code, § 780 [factors to consider in determining credibility]), the court rejects, for want of credibility, respondent's testimony regarding his failure to include the order approving the settlement agreement in the proposed formal order he prepared and submitted to the superior court. The court's adverse credibility determination is supported by the documentary evidence (i.e., respondent's emails and text messages to the Kazliners).

Beginning on about August 31, 2011, and continuing into October 2011, Gautreau repeatedly asked respondent about the status of the formal order approving the settlement agreement and about the Kazliners' intent with respect to paying Heusen \$50,000 within 10 days after the superior court approved the settlement agreement. Both respondent and Gautreau incorrectly believed that the Kazliners were required to pay Heusen \$50,000 within 10 days after the entry of the superior court order approving the settlement agreement. As noted previously, the Bernard Kazliner Family Living Trust, not the Kazliners, was required to pay Heusen the \$50,000, and the trust was not required to pay the \$50,000 until 10 days after the court approve the settlement *and* all of Bernard Kazliner's asset had been transferred into the trust. At the time, respondent knew that all of the assets had not been transferred into the trust because the Kazliners were repeatedly seeking his assistance in transferring assets (e.g., GE stock) into the trust or obtaining possession of the assets.

On October 12, 2011, respondent spoke with Gautreau and told him that the settlement agreement could not yet be enforced because an order approving the settlement had not been entered. On October 21, 2011, Gautreau filed a motion, under Code of Civil Procedure section 664.6, seeking entry of judgment against the Kazliners pursuant to the terms of the settlement agreement. Gautreau properly served that motion on the Kazliners by mailing a copy to

respondent at his law office address listed on the pleadings he filed in the superior court matter and by mailing a copy to respondent at his law office address that is set forth in section 11 of the settlement agreement as the address for providing notice to the Kazliners. The address for respondent's law office on the pleading respondent filed in the superior court matter and the address for respondent's law office that is set forth in section 11 of the settlement agreement is an address on 6th Street in Santa Monica, California. Sometime in October 2011, respondent moved his law office from the address on 6th Street in Santa Monica to an address in Beverly Hills, California. Other than purportedly submitting a mail forwarding order to the United States Postal Service and purportedly asking the office manager at his former law office address on 6th Street in Santa Monica to advise him of any mail being delivered there, respondent did not take any steps to notify Gautreau or the superior court of the fact that he had moved his law office from Santa Monica to Beverly Hills.

In mid-January 2012, respondent moved his law office from the address in Beverly Hills to an address on Ventura Boulevard in Woodland Hills, California. Respondent admits that he failed to promptly update his law office address on the State Bar's membership records within 30 days after both moves.

In his declaration in support of the motion for judgment against the Kazliners, Gautreau sets forth in detail the numerous times he inquired of respondent about a formal order approving the settlement agreement, and respondent's inadequate responses and failures to respond. Gautreau attached to his declaration copies of his September 26 and October 13, 2011, emails to respondent notifying respondent of his intent to file a motion for entry of judgment against the Kazliners and seeking to recover attorney's fees and costs for preparing and filing the motion from the Kazliners. In his October 31, 2011, email to respondent, Gautreau generously proposed ways to resolve the dispute with the superior court's involvement (e.g., he proposed having the

Kazliners execute escrow instructions authorizing Heusen to be paid when Bernard Kazliner's house was sold). Not only did respondent fail to respond to Gautreau's emails, but respondent also failed to inform the Kazliners about them even though they both were significant developments in the Kazliners' matter.

A hearing on the motion for entry of judgment against the Kazliners was set for November 23, 2011, but the record does not clearly establish whether that hearing was actually held. Nor does the record clearly establish whether the superior court even ruled on that motion. The record does, however, clearly establish that, on December 22, 2011, Gautreau served a copy of a proposed formal order approving the settlement agreement on respondent by mailing a copy to him at his law office address on 6th Street in Santa Monica and that the superior court signed and filed that order on December 29, 2011.

Respondent admits that he failed to tell the Kazliners that Heusen had filed a motion for entry of judgment against them or that the superior court had signed a formal order approving the settlement agreement. Respondent claims that he did not tell the Kazliners of these significant developments because he was unaware of them. Respondent claims that he never received the service copies of the motion for entry of judgment against the Kazliners or of the formal order approving the settlement agreement. Respondent further claims that first time he learned of the motion for judgment and the formal order approving the settlement agreement was when OCTC asked him about them during its investigation of the Kazliners' bar complaint against him. The court rejects these claims for want of credibility.

In October 2011, the Kazliners listed Bernard Kazliner's house for sale. Shortly thereafter, they sold the house. On November 22, 2011, while the sale of the house was still in escrow, Gautreau submitted a demand for payment to the escrow agent for \$108,346.45 (\$100,000 due Heusen under the settlement agreement plus, apparently, an extra \$8,346.45 in

claimed attorney's fees). When escrow closed in November 2011, the escrow agent paid Heusen \$108,346.45 out of proceeds the Kazliners received from the sale of Bernard Kazliner's house. The Kazliners had no idea why the demand was for more than \$100,000. They sent respondent emails on the issue on November 22 and November 30, 2011, but respondent failed to respond.<sup>8</sup>

From January 2012 through June 2012, the Kazliners sent respondent numerous text messages and emails inquiring about the status of the court orders, how to obtain access to all of Bernard Kazliner's various accounts, and whether they had a valid predatory lending claim against Bank of America. Respondent received these communications, but either did not respond to them for weeks at a time or provided non-substantive responses that did not address his clients' concerns or made something up to placate them.

On March 20, 2013, at OCTC's suggestion, James Kazliner sent respondent a letter requesting an accounting of \$50,000 in advanced fees, the Kazliners' client file, and a refund of all unused fees. Subsequently, because respondent failed to obtain and provide the Kazliners with the formal superior court order approving the settlement agreement, which respondent told them they would need to obtain possession of all of Bernard Kazliner's assets that had not been transferred into the trust, the Kazliners had to retain a successor attorney to complete the transfer of all of Bernard Kazliner's assets into the Bernard Kazliner Family Living Trust. The Kazliners paid the successor attorney a total of \$1,100 in attorney's fees for his legal services.

Near the time respondent received the letter requesting an accounting from James Kazliner, respondent also received a letter from an OCTC investigator, informing him that the Kazliners had filed a bar complaint against him. Approximately one to two weeks after

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<sup>8</sup> Presumably, the \$8,346.45 was to compensate Heusen for the attorney's fees Gautreau charged him for preparing and filing the motion for entry of judgment against the Kazliners and the proposed formal order approving the settlement agreement. The record, however, does not establish what the extra \$8,346.45 was for by clear and convincing evidence. Nor does the record clearly establish that Heusen was actually entitled to demand and collect the extra \$8,346.45 from the Kazliners.

receiving the letter from the investigator, respondent delivered an accounting and the Kazliners' client file, not to his former clients, but to his attorney in this disciplinary proceeding.

On June 6, 2013, after receiving an extension time from the OCTC investigator, respondent's attorney forwarded respondent's accounting and the Kazliners' client file to the OCTC investigator, who thereafter forwarded them to the Kazliners. Upon receipt, the Kazliners discovered and notified OCTC that respondent's accounting erroneously contained charges that were not related to their matter. Thereafter, on October 1, 2013, OCTC sent respondent a letter informing him that his June 6, 2013, accounting contained obvious errors. On November 5, 2013, respondent provided, not to his former clients, but to OCTC a corrected accounting. The Kazliners did not receive the corrected accounting until April or May 2014.

### **Conclusions of Law**

#### ***Count One -- Rule 3-110(A) (Failure to Perform Competently)***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Negligently failing to perform legal services competently "even that amounting to legal malpractice, does not establish a rule 3-110(A) violation." (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149.) The record in the present proceeding, however, does not merely establish that respondent negligently failed to perform legal services competently. When respondent's failure to prepare and submit to the superior court a proposed formal order approving the settlement agreement, and respondent's failure to complete the legal services relating to transferring all of Bernard Kazliner's assets into the Bernard Kazliner Family Living Trust are viewed collectively, along with respondent's failure to adequately communicate with the Kazliners by not promptly responding to their reasonable status inquiries and by not informing them of significant developments in their matter (*Calvert v. State Bar* (1991) 54 Cal.3d 765, 782 ["Adequate

communication with clients is an integral part of competent professional performance as an attorney”]), the record establishes, by clear and convincing evidence, that respondent repeatedly, if not recklessly, failed to perform legal services competently in willful violation of rule 3-110(A).

Respondent failed to competently perform legal services when he failed to promptly prepare and submit to the superior court a formal order approving the settlement agreement following the August 8, 2011, hearing. The court rejects respondent’s contention that he was not required to prepare and submit such a formal order. First, after a court rules on a motion at a hearing, the party prevailing on the motion is required to prepare a formal order for the court to sign even if the court does not direct that an order be prepared. (Cal. Rules of Court, rule 3.1312(a).)<sup>9</sup> Second, as noted previously, the superior court’s minute order itself reflects that respondent was directed to prepare and submit such an order. In fact, “when the trial court’s minute order expressly indicates that a written order will be filed, only the written order is the effective order. [Citation.]” (7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 54, p. 590, citing *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1170.)

Respondent also failed to competently perform legal services when he failed to complete the legal services relating to transferring all of Bernard Kazliner’s assets into the Bernard Kazliner Family Living Trust, or otherwise transferring possession of Bernard Kazliner’s assets to the Kazliners. The court rejects for want of credibility respondent’s contention that he explained to the Kazliners that transferring all of the assets into the trust was a “ministerial” task that did not involve or require him to provide such services. Respondent’s contention is inconsistent with, if not rebutted by, the emails and text messages he sent to the Kazliners. Moreover, respondent repeatedly told the Kazliners that an order approving the settlement

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<sup>9</sup> The court orders that OCTC’s August 12, 2015, request for the court to take judicial notice of California Rules of Court, rule 3.1312 is GRANTED.

agreement was needed to effectuate the transfers of assets into the trust. He also sent the Kazliners text messages to the same effect.

Respondent also failed to promptly respond to numerous reasonable status inquiries from the Kazliners. Moreover, respondent failed to promptly inform the Kazliners of significant developments in their matter, in that respondent failed to inform the Kazliners that he had not and did not intend to submit a proposed formal order approving the settlement agreement, that Gautreau had filed, on Heusen behalf, a motion for entry of judgment against them, and that the superior court filed a formal order approving the settlement agreement.

To the extent that respondent contends that he is not culpable of failing to notify the Kazliners of the motion for judgment against them or of the superior court's formal order approving the settlement agreement because he did not have knowledge of them as he purportedly never received the service copies of that motion and order, the court rejects it. First, as noted previously, the court does not find respondent's claim that he did not receive the service copies of the motion and order to be credible. Second, even if the court found respondent's claim that he never received those service copies credible, respondent's lack of knowledge would not excuse respondent's failure to notify the Kazliners of the motion and order because any such lack of knowledge would have been the result of respondent's failure to comply with his duty to keep opposing counsel Gautreau and the superior court apprised of his changes of addresses. (Cf. *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 643.)

The record fails to clearly establish that respondent did not notify the Kazliners that he was not going to pursue the Bank of America predatory lending issue. As noted previously, respondent told the Kazliners that they did not have a predatory lending claim unless they could prove that Heusen received the \$250,000 loan proceeds. OCTC failed to establish that the

Kazliners could have proved that Heusen, and not Bernard Kazliner, received the \$250,000 in loan proceeds or that the Kazliners informed respondent of that they could establish that Heusen obtained the \$250,000.

***Count Two -- Rule 4-100(B)(3)(Maintain Records of Client Property/Account)***

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession, and that an attorney render appropriate accounts to the client regarding such property. The review department has held that an attorney has a duty to account to a client for any legal fees paid in advance. *In the Matter of Fonte* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757-758.) The record establishes, by clear and convincing evidence, that respondent failed to timely provide the Kazliners with an accurate account of the \$50,000 in advanced fees. Providing OCTC with an accounting does not satisfy the requirements of rule 4-100(B)(3). (*In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 103-104.)

***Counts Three and Four -- § 6068, subd. (m) (Failure to Communicate)***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. As noted previously, the court relied upon respondent's failures to promptly respond to the Kazliners' reasonable status inquiries and to keep the Kazliners reasonably informed of significant developments in their matter to find respondent culpable on count one, which charges a more serious violation (i.e., failing to perform legal services competently in violation of rule 3-110(A)); accordingly, it would be duplicative, if not improper, to again rely upon those same failures to find a willful violation of section 6068, subdivision (m). (*In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 57.) Therefore, the court orders that counts

three and four are DISMISSED with prejudice. (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 536.)

***Count Five -- Rule 3-700(D)(1)(Failure to Return Client Papers/Property)***

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. The record establishes, by clear and convincing evidence, that respondent failed to promptly release to the Kazliners all client papers and property as requested by the client in willful violation of rule 3-700(D)(1). Respondent's providing the Kazliners' client file to OCTC does not satisfy the requirements of rule 3-700(D)(1). (Cf. *In the Matter of Conner, supra*, 5 Cal. State Bar Ct. Rptr. at pp. 103-104.)

**Aggravation**

OCTC is required to prove each aggravating circumstance by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5;<sup>10</sup> *In re Morse* (1995) 11 Cal.4th 184, 206.) There are four aggravating factors.

**Multiple Acts (Std. 1.5(b).)**

Respondent's misconduct evidences multiple acts of misconduct.

**Overreaching (Std. 1.5(g).)**

Respondent misconduct was surrounded by overreaching. As noted previously, respondent's fee agreement with the Kazliners contained at least two improper and overreaching provision. Respondent's fee agreement improperly stated that the \$50,000 advance fee was earned upon receipt and improperly gave respondent the right to discharge invalid liens with client funds. These improper provisions establish overreaching, even if respondent never attempted to assert or rely on them to his clients' detriment. The inclusion of a clearly improper

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<sup>10</sup> All further references to standards are to this source.

provision in a fee agreement alone evidences an intent to rely on it or to otherwise secure an advantage over the client.

**Uncharged, But Proved, Misconduct (Std. 1.5(h).)**

In addition to finding respondent culpable on three counts of charged misconduct, the court also finds respondent culpable on one count of *uncharged*, but proved, misconduct for willfully violating his duty, under sections 6068, subdivision (j) and 6002.1 (i.e., to notify the State Bar's membership records office of any change in his current office address within 30 days of the change). The court considers this uncharged violation only for purposes of aggravation. (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36 [uncharged, but proved misconduct may not be used as an independent ground of discipline, but may be considered, in appropriate circumstances, for other purposes such as aggravation].)

**Significant Harm (Std. 1.5(j).)**

Respondent's failure to complete the legal services regarding the transfer of all of Bernard Kazliner's assets into the living trust significantly harmed the Kazliners because it delayed their obtaining title to and the possession, use, and benefits of Bernard Kazliner's assets, and also because they paid \$1,100 in legal fees to a successor attorney to complete the legal services. The court will, in furtherance of respondent's rehabilitation, attach a condition to respondent's reproof requiring respondent to pay restitution with interest to the Kazliners for the \$1,100 in legal fees they paid to the successor attorney. (E.g., *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 40, fn. 7, & 46.)

As noted previously, the record does not clearly establish that the found misconduct caused or required the escrow agent to pay Heusen an extra \$8,346.50 out of the proceeds from the sale of Bernard Kazliner's house. Accordingly, the court rejects OCTC's contention that respondent's misconduct caused the Kazliners harm in an additional amount of \$8,346.45. For

the same reason, the court will not attach a condition to respondent's reproof requiring respondent to pay \$8,346.45 in additional restitution.

### **Mitigation**

Respondent is required to prove each mitigating circumstance by clear and convincing evidence. (Std. 1.6; *In re Morse, supra*, 11 Cal.4th at p. 206.) Respondent is entitled to the mitigation for two factors.

### **No Prior Record (Std. 1.6(a).)**

Respondent does not have a prior record of discipline. Moreover, respondent practiced law for 38 years before he engaged in the misconduct found in this proceeding. Respondent's 38 years of misconduct-free practice is compelling mitigation.

### **Candor/Cooperation with OCTC (Std. 1.6(e).)**

Respondent's cooperation in entering into the partial stipulation of facts with OCTC is also a mitigating circumstance. (Cf. *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [*extensive mitigation* is afford to respondents who both stipulate to facts and admit culpability].)

### **Discussion**

The purpose of State Bar Court disciplinary proceedings is not to punish the attorney, but to protect the public, the courts, and the legal profession, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.) Thus, "[t]he imposition of attorney discipline does not issue from a fixed formula but from a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316.) Furthermore, even purported mandatory standards can be tempered by "considerations peculiar to the offense and the

offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-221; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for further guidance. (*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(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. The most severe sanction for the found misconduct is found in standard 2.2(b), which applies to respondent’s violation of his duty to account under rule 4-100(B)(3). Standard 2.2(b) provides: “Suspension or reproof is the presumed sanction for any other violation of Rule 4-100.”

The court finds *Van Sloten v. State Bar* (1989) 48 Cal.3d 921 instructive on the level of discipline. In that case, the attorney, who had no prior record of discipline and a little more than five years of misconduct free practice, represented a client in a marital dissolution proceeding. The attorney worked on the matter for the first five months and submitted a proposed settlement agreement to the opposing party, but, thereafter, failed to communicate with his client or to take any action on the matter. The client hired a successor attorney, who completed the dissolution.

In *Van Sloten*, the review department recommended that the attorney be placed on two years’ stayed suspension and two years’ probation on conditions, but no actual suspension. The Supreme Court, however, rejected the recommendation as excessive for the attorney’s failure to perform the requested legal services without serious consequences to the client, which was aggravated by the attorney’s lack of appreciation for the discipline process and the charges

against him. The Supreme Court placed the attorney on six months' stayed suspension and one year's probation on conditions, but no actual suspension.

In light of respondent's 38 years of misconduct free practice, the court concludes that the appropriate level of discipline for the found misconduct is a public reproof with conditions attached for two years.

### **Public Reproof**

The court orders that respondent **PAUL LAWRENCE STANTON**, State Bar number 108605, is **PUBLICLY REPROVED** for the misconduct found in this proceeding. (Bus. & Prof. Code, § 6078; Rules Proc. of State Bar, rule 5.127(A)&(B).) This reproof is effective upon the finality of this decision. (Rules Proc. of State Bar, rule 5.127(A); see also Rules Proc. of State Bar, rules 5.112-5.115, 5.151.)

The court further orders (1) that the probation conditions set forth below are attached to the reproof for a period of two years after the effective date of the reproof. (Cal. Rules of Court, rule 9.19(a); Rules Proc. of State Bar, rule 5.128.)

The court finds that the probation conditions set forth below will serve to protect the public and to further Paul Lawrence Stanton's interests. Paul Lawrence Stanton's failure to comply with any of the conditions attached to his reproof is punishable as a willful violation of rule 1-110 of the State Bar Rules of Professional Conduct. (Cal. Rules of Court, rule 9.19(b).)

### **Probation Conditions Attached to Reproof**

1. Paul Lawrence Stanton must comply with the provisions of the State Bar Act, the State Bar Rules of Professional Conduct, and all of the conditions attached to this reproof.
2. Within 30 days after the effective date of this reproof, Paul Lawrence Stanton must contact the State Bar's Office of Probation in Los Angeles and schedule a meeting with his assigned probation deputy to discuss the conditions attached to this reproofs. Upon the direction of the Office of Probation, Stanton must meet with his probation deputy either in-person or by telephone. Thereafter, Stanton must promptly meet with his probation deputy as directed and upon request of the Office of 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 his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Paul Lawrence Stanton must report such change in writing to the State Bar's Membership Records Office and to the State Bar's Office of Probation.
4. Paul Lawrence Stanton must submit written quarterly reports to the State Bar's Office of Probation in Los Angeles no later than each January 10, April 10, July 10, and October 10. In each report, Stanton must state, under penalty of perjury under the laws of the State of California, whether he has complied with the State Bar Act, the State Bar Rules of Professional Conduct, and all conditions attached to his reproof during the preceding calendar quarter. If the first report will cover less than 30 days, then the first report must be submitted on the next following quarter date and cover the extended period.

In addition to all quarterly reports, Stanton is to submit a final report containing the same foregoing information during the last 20 days of the two-year period after the effective date of his reproof.

5. Within one year after the effective date of this reproof, respondent must provide to the State Bar's Office of Probation in Los Angeles satisfactory proof of his attendance at a session of the State Bar Ethics School and of his passage of the test given at the end of that session.
6. Within one year after the effective date of this reproof, respondent must take and pass the Multistate Professional Responsibility Examination and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles.
7. Subject to the assertion of any applicable privilege, Paul Lawrence Stanton is to fully, promptly, and truthfully answer all inquiries of the State Bar's Office of Probation that are directed to him, whether orally or in writing, relating to whether he is complying or has complied with the conditions attached to his reproof.
8. Within two years after the effective date of this public reproof, Paul Lawrence Stanton must make restitution to James Kazliner and Martin Kazliner, jointly, in the amount of \$1,100 plus 10 percent simple interest thereon per year from January 1, 2013, until paid. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

#### Costs

Finally, the court orders that costs are awarded to the State Bar in accordance with

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Business and Professions Code section 6086.10 and that the costs are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: November 23, 2015.

  
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**W. KEARSE MCGILL**  
Judge of the State Bar Court

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 23, 2015, I deposited a true copy of the following document(s):

**DECISION & PUBLIC REPROVAL WITH CONDITIONS ATTACHED**

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**KEVIN P. GERRY  
711 N SOLEDAD ST  
SANTA BARBARA, CA 93103**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**ANN J. KIM, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 23, 2015.



Paul Barona  
Case Administrator  
State Bar Court