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STATE BAR COURT  
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LOS ANGELES

**PUBLIC MATTER**

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: 14-O-00143-DFM
	)	
<b>Shameem Hasan</b>	)	<b>DECISION</b>
	)	
<b>Member No. 223281</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

**INTRODUCTION**

Respondent **Shameem Hasan** (Respondent) is charged here with five (5) counts of misconduct in a single client matter. The counts include allegations that Respondent willfully violated (1) rule 3-110(A) of the Rules of Professional Conduct<sup>1</sup> (failure to perform with competence); (2) Business and Professions Code<sup>2</sup> section 6068, subdivision (m) (failure to respond to client inquiries); rule 3-700(D)(1) (failure to release file); (4) rule 3-700(D)(2) (failure to refund unearned fees); and (5) rule 4-100(B)(4) (failure to pay client funds promptly). The State Bar had the burden of proving the above charges by clear and convincing evidence. The court finds culpability and recommends discipline as set forth below.

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<sup>1</sup> Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

<sup>2</sup> Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

## PERTINENT PROCEDURAL HISTORY

The Notice of Disciplinary Charges (NDC) was filed in this matter by the State Bar of California on September 8, 2014.

On October 2, 2014, Respondent filed a request for admission to the State Bar's Alternative Discipline Program (ADP).

On October 15, 2014, Respondent filed his response to the NDC, generally denying all alleged facts and culpability in the NDC. On that same day, an initial status conference was held in the matter. At that time the case was given a trial date of January 27, 2015, with a two-day trial estimate. At the same time, the matter was referred to Judge Pat McElroy as an ADP program judge to consider Respondent's request to be admitted to the ADP.,

On December 3, 2014, Judge McElroy transferred this matter to Judge Yvette Roland to serve as ADP program judge.

On January 15, 2015, Judge Roland vacated the existing pretrial and trial dates and reassigned the case to herself as program judge for all further ADP proceedings.

On November 5, 2015, after Respondent declined to file the proffered ADP contract, Judge Roland returned the matter to the undersigned for adjudication.

On November 23, 2015, a status conference was held in the matter, at which time the case was given a new trial date of January 21, 2016, with a one-day trial estimate. That date was later changed to January 20, 2016, due to the unavailability of Respondent's counsel on January 21, 2016.

On January 19, 2016, the day prior to the scheduled trial, Respondent filed a motion to be allowed to continue with the Alternative Discipline Program, rather than immediately commence trial. At a telephonic status conference held later that same day, that motion was referred by the undersigned to Judge Roland for consideration. A hearing of the motion was then conducted by

Judge Roland on the morning of January 20, 2016. At that the conclusion of that hearing, the motion was denied by the court.

Trial was then commenced with the undersigned on January 20, 2016, and completed on January 22, 2016. The State Bar was represented at trial by Deputy Trial Counsel Hugh Radigan. Respondent was represented by Edward O. Lear of Century Law Group LLP.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The following findings of fact are based on Respondent's response to the NDC, the stipulation of undisputed facts previously filed by the parties, Respondent's stipulation to culpability to various counts at the conclusion of the trial, and the documentary and testimonial evidence admitted at trial.

#### **Jurisdiction**

Respondent was admitted to the practice of law in California on December 12, 2002, and has been a member of the State Bar at all relevant times.

#### **Case No. 14-O-00143**

Prior to 2013, Respondent was a partner with his twin brother, Shahed Hasan (the brother), in a law firm called "Hasan Law Firm." Respondent's practice emphasized immigration matters; the brother's practice focused on civil litigation and real estate.

In 2010, Melame Oduguwa (Ms. Oduguwa), a citizen of the United States, married Kazeem Oduguwa, a resident and citizen of Nigeria. Wanting her husband to be allowed to immigrate to the United States so that she and he could live together, she employed Respondent prior to 2013 to represent her in filing the required I-130 immigration petition on their behalf. Unfortunately, in response to this initial petition filed by Respondent on Ms. Oduguwa's behalf, the government concluded that she had failed to provide sufficient information to convince it that her marriage to Oduguwa was bona fide.

In late 2012, Respondent took a job to work fulltime at another law firm, leaving his brother behind to operate the Hasan Law Firm. As of January 1, 2013, Respondent began working fulltime at the other law firm.

During the time that Respondent was “phasing out” his practice at the Hasan Law Firm, he was contacted by Ms. Oduguwa about the possibility of his filing another I-130 petition on her behalf. Her communications with Respondent made clear that she wanted and intended Respondent to handle her petition personally, given his prior involvement on her behalf.<sup>3</sup> Rather than inform Ms. Oduguwa that he was now working fulltime at another law firm and was phasing out his involvement with the Hasan Law Firm, Respondent agreed in February 2013 that he would represent Ms. Oduguwa in her renewed effort to have her husband be allowed to live with her in the United States. As a result, on February 22, 2013, Ms. Oduguwa employed Respondent to represent her in filing a I-130 petition on her behalf. She agreed to pay Respondent \$1,000 in advanced fees and \$738 in advanced costs for the preparation and filing of this petition. In an email sent by Ms. Oduguwa to Respondent on February 22, 2013, after informing Respondent that she had sent him an initial payment of \$1,000, she went on to make clear her desire that she was relying on him to serve as her attorney on the matter:

Mr. Shemeem, I pray that this time you will really fight for us. Do everything in your power to get my husband to me. I will do everything I can in my power to get that man home to me. **I need you as my lawyer to be there for us.**

(Ex. 6, p. 6; emphasis added.)

On February 26, 2013, Respondent, using his still-valid Hasan Law Firm email address and account, sent an email to Ms. Oduguwa, confirming receipt of her initial \$1,000 payment for

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<sup>3</sup> See, e.g., Oduguwa’s email of November 20, 2012: “Plz I am begging u to plz help me n Kazeem. I need something to be done. **U are my lawyer** I did what u ask and wanted. Now u need to do what u do best to get me and my husband kazeem together...**I need u to be my lawyer** that is what I paid u for.” (Ex. 6, p. 2; emphasis added.)

his preparation of the I-130 petition. Although Respondent never intended to prepare the new I-130 petition himself, but instead intended to have his less-experienced brother prepare and file it, he never disclosed that fact to Ms. Oduguwa. Instead, in his February 26, 2013 email, he affirmatively misrepresented to her that he would be handling her case and that his brother Shahed only “may be assisting me with the preparation of this case.” The email was “signed” by Respondent as “Shameem Hasan, Attorney at Law, Hasan Law Firm.” (Ex. 6, pp. 6-7.)

Ms. Oduguwa paid the remaining balance of \$738 in three installments, the last of which was mailed to Respondent on or about July 19, 2013, but not cashed by Respondent until approximately August 26, 2013. When Ms. Oduguwa sent the last of the monies owed by her for the work to be performed on the I-130 petition, she included a hand-written letter to Respondent, in which she requested to know the status of the petition, including whether it had been filed or not. In this letter, she also complained that she had not heard from Respondent or his brother for five months and specifically stated: “If you don’t want to be my lawyer let me know. Then you can repay me back my \$1738.00.” (Ex. 7, p. 1.) Respondent neither provided Ms. Oduguwa with the status report she requested nor returned the \$1738 she had previously paid, despite his ongoing intent not to act as her attorney. Instead, he merely cashed her final check for the services he had agreed to provide.

Despite Respondent’s assurances in February that he was immediately going to begin working on Ms. Oduguwa’s I-130 petition, Respondent never did any work on the matter. His explanation at trial for his lack of work on the case was to state that his brother “had taken over the case” and “that was the end of my involvement.” However, while he intended that the petition would be prepared by his brother, Respondent failed to communicate that fact to the brother, who testified credibly at trial that he never understood that he was taking over the file and, instead, understood that Respondent was continuing to communicate with the client.

Respondent also never followed up with the brother to see what progress the brother was making in preparing and filing the petition, despite Respondent's awareness that the brother was not an expert in immigration matters. Worse, although Ms. Oduguwa was continuing to make installment payments on the desired I-130 petition until late August, Respondent apparently also did not advise his brother of that fact, causing the brother to conclude incorrectly by March or April 2013 that she had lost interest in going forward with the petition. As a result, little or no work was ever done by anyone on the requested petition. The parties have stipulated, and this court finds, that Respondent failed to perform any legal services on behalf of Oduguwa after March 26, 2013.

On March 20, 2013, Ms. Oduguwa emailed Respondent, asking if he had begun working on the I-130. Four days later, Ms. Oduguwa's husband also emailed Respondent to ask for an update on the preparation of the I-130. On March 26, 2013, Respondent replied to Ms. Oduguwa, falsely stating that he was preparing the I-130 and that "it should be ready soon." Again, this email was sent by Respondent using his Hassan Law Firm email address and expressly representing that he remained an attorney at that law firm.

Between May 20, 2013, and September 30, 2013, Ms. Oduguwa called Respondent on at least 20 occasions, all documented with her telephone bills. Although she routinely left messages for Respondent to provide her a status report regarding her case, he never returned any of her calls or sought in any other way to communicate with her until early 2014, after he had been contacted by the State Bar regarding the complaint she had filed with the State Bar.

During the trial of this matter, Respondent testified that he was never made aware of any of Ms. Oduguwa's attempts to reach him and that his brother had never talked with him about the case. ("I was never told that she was asking for me.") This testimony was false and lacked candor. Instead, as Respondent's brother testified credibly during the trial of this matter,

Respondent was repeatedly informed by the brother of Ms. Oduguwa's calls. In response to such information, Respondent would routinely tell his brother that he (Respondent) intended to contact Ms. Oduguwa and he would subsequently report back to the brother that he had talked with her.<sup>4</sup> Since both Ms. Oduguwa and Respondent agree that they never communicated with one another during this period, these reports by Respondent to his brother were absolutely false and also had the effect of causing the brother not to work on the file. As explained by the brother in a letter to the State Bar, dated July 25, 2014, the brother viewed himself as "assisting" Respondent with Ms. Oduguwa's matter and when "she had called our office, she had specifically asked for Shameem [Respondent]. Therefore, at that point, I held off on further work on the case, until receiving further instructions from Shameem." (Ex. 11.) Respondent acknowledged at trial that he never gave his brother any such further instructions.

In addition to trying to reach Respondent by telephone, Ms. Oduguwa also sought to connect with him by email. In an email sent by her to his email address at the Hasan Law Firm, Ms. Oduguwa again asked Respondent to provide her with a status report, either by calling her or by sending her an email:

"I need to know what is going on. I need a status on were [sic] me n kazeen is at. Did u send in our I-130 n if so whn was it sent. Its been 6 months since I have heard from u. I'm going crazy. Honstely I cant sleep I cant consentrate. So im asking u please conntect me.

(Ex. 6, p. 13.)

Respondent also did not respond to this email. At trial, he sought to justify his lack of response by stating that he had not seen the email because he was no longer checking his email account at the Hasan Law Firm. He also testified that he was not using that email account any

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<sup>4</sup> Also lacking candor was Respondent's testimony that he stopped listening to voicemail messages left on his phone at the Hasan Law Firm. While this testimony, if true, would reflect a highly irresponsible disregard by Respondent of his clients and his professional obligations, it was directly contradicted and credibly impeached by the brother's testimony.

longer, testimony belied by his use of the account in May 2014 in his communications to and from the State Bar.

In November 2013, after Respondent failed to respond to the correspondence sent to him by Ms. Oduguwa, she filed a complaint with the State Bar, complaining that she had not heard from him for more than seven months, despite numerous requests for a status report. In subsequent communications by her with the State Bar, she also indicated that she wanted both a refund of the money she had advanced to him and a return of all of her files. (Ex. 8, p. 9.) The parties have stipulated, and this court finds, that Ms. Oduguwa sent Respondent a copy of her State Bar complaint, in which she stated that she wanted a return of her client file and a refund.

In February or March 2014, the State Bar sent a letter to Respondent, asking him to respond to the complaints lodged against him by Ms. Oduguwa. Respondent did not immediately respond to this letter. At trial, he testified that he had not received this letter because it had been sent to the old office address of the Hasan Law Firm, which office location had been changed in 2013 without the State Bar or Ms. Oduguwa being notified of that fact.<sup>5</sup> While Respondent's testimony that he had failed to notify the State Bar of his current office address was corroborated by State Bar records, his testimony that he had not received the State Bar's letter was credibly impeached by Respondent's brother, who testified that the law firm had received the letter and he had given it to Respondent.

Although Respondent denied receiving the first letter sent by the State Bar, he acknowledged at trial receiving the "second" letter sent in March 2014. Thereafter, on April 26,

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<sup>5</sup> It was not until February 2014 that Respondent notified the State Bar of the need to change his official membership address. The new address provided by Respondent was the new address of the Hasan Law Firm. (Ex. 2.) In response to questions asked of him at trial by his own attorney, Respondent testified that his official membership address is still incorrect, because it gives the Hasan Law Firm address, with which Respondent claims he is no longer associated.

2014, after at least one additional inquiry had been sent by the State Bar to Respondent,<sup>6</sup> Respondent provided a written response to it regarding Ms. Oduguwa's complaint. In this response, Respondent falsely sought to attribute a portion of the delay in preparing the I-130 petition to Ms. Oduguwa:

After Mrs. Oduguwa retained my services to file an I-130, she had chosen to hold off proceeding due to strategic reasons as well as due to her opting to pay the fees in installments. At the time when she had chosen to proceed, I became unexpectedly busy in the provision of private legal services, and my time was dominated by certain projects.

(Ex. 9.)

This was a complete misrepresentation by Respondent to the State Bar. The written communications by Ms. Oduguwa to Respondent are explicit in urging Respondent to act immediately to prepare and file the I-130, emphasizing her desire to have her husband with her as soon as possible. In Respondent's last communication with her, he assured her that he was preparing the I-130 and that "it should be ready soon." All of Ms. Oduguwa's subsequent communications also emphasized her desire to have the petition filed as soon as possible, and neither Respondent nor his brother had any communication with her in which she expressed any different desire. Given Respondent's awareness that he had not communicated with Ms. Oduguwa after his March 26, 2013 correspondence, his representation to the State Bar - that she subsequently decided to "hold off proceeding due to strategic reasons" and later reversed that decision with a subsequent decision "to proceed" with the petition - is a complete fabrication. The same conclusion applies to his representation that, when Ms. Oduguwa subsequently decided to proceed with her petition, his lack of prompt action at that time on her behalf was because he had become unexpectedly busy on other matters.

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<sup>6</sup> The letters references letters dated March 26, 2014 and April 14, 2014.

In Respondent's letter to the State Bar on April 26, 2014, he acknowledged being aware of Ms. Oduguwa's demand for a refund of the funds she had previously advanced to him and indicated an intent to immediately refund those funds to her. Despite this assurance by Respondent to the State Bar, Respondent did not do refund the \$1,738 to Ms. Oduguwa until May 16, 2014, and then only after further demands for the refund were made on him by both Ms. Oduguwa and the assigned State Bar investigator.

Finally, while Ms. Oduguwa also requested a return of all of her files, a request repeatedly communicated to Respondent by the State Bar, at the time of the trial of this matter Respondent had still not returned any of her files to her. Instead, he testified that he quit looking for them once the NDC was filed by the State Bar again him.

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

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

In this count, the State Bar alleges that Respondent's failure to take any steps of legal value in either preparing or filing the I-130 petition requested by Ms. Oduguwa constituted a willful violation by him of this rule. This court agrees. Respondent agreed to represent Ms. Oduguwa in the filing of an I-130 petition on her behalf at a time when he had no intention of doing so personally, but instead intended merely to delegate the matter to his brother, an attorney less competent and experienced in immigration matters. Respondent did not disclose that intent to the client or to his brother; he did not get either's consent to the arrangement; he took no steps to see that the I-130 petition was prepared; he made no effort to supervise the work of his brother, to whom he had “delegated” the work; he failed to follow-up on requests by his brother to communicate with the client; he misrepresented to the client both his involvement in and the status of the petition's preparation; and he misrepresented to his brother that he was continuing

to communicate with the client when she had contacted the law firm regarding the status of the requested petition. The cumulative effect of this complete disregard by Respondent of his client was that no petition was ever prepared and filed, despite the client having paid both the legal fee for its preparation and the filing fee for its filing. Such conduct is a clear violation of the duties owed by Respondent to his client under rule 3-110(A). (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action toward goal client retained him to accomplish]).)

Respondent's contention that the petition could not be prepared because Ms. Oduguwa had failed to provide requested documents provides no defense to his actions and lacks any merit. In the first instance, this contention is based on the testimony of Respondent's brother and was not credible. The brother initially testified that he had communicated only twice with Ms. Oduguwa, first by email and then by phone. He described both of these communications as being in February 2013 and solely for the purpose of informing her that he would be assisting Respondent in the preparation of the petition. Later in his testimony, in conflict with his earlier testimony, the brother testified that the forms for the petition had been prepared and that additional documents were needed from her, but that she had stopped communicating with the firm. He said that he had called her and also suggested that he had sent her an email regarding the need for additional information. No such email was provided by either Respondent or the brother to the court. Nor did either Respondent or the brother produce the firm's file on the Oduguwa matter in this proceeding, despite the fact that Ms. Oduguwa has been asking for it since 2014 and one of the counts of the NDC is Respondent's failure to provide that file to her. At trial, the brother could not recall what documents were needed. In contrast to this sketchy evidence offered by Respondent, both the phone records of Ms. Oduguwa and the brother's own testimony make clear that there was never a time when Ms. Oduguwa had stopped

communicating with the firm. Instead, she was continually seeking to get a status report regarding her petition – always unsuccessfully. The brother’s testimony also makes clear that he was aware of her repeated calls to the office. If the brother had been asking for additional information, one would expect that he would have been responding to her calls and, more importantly, initiating his own calls (and other communications). The written complaints of Ms. Oduguwa to Respondent in July and September make clear that there had been no communications between her and either Respondent or his brother regarding her petition at any time after March 2013. Her written correspondence also makes clear that she was standing ready to provide any documents or other information that might be needed to prepare and file the petition.

Finally, even if the brother’s testimony about the need for documents were to be believed, it would not relieve Respondent of culpability for his complete indifference to his duties to act on his client’s behalf, because the brother also testified that he had asked Respondent to contact Ms. Oduguwa to obtain the needed information. It is undisputed that Respondent never did so, resulting in the brother not doing any further work on the file.

To reiterate, this court finds that Respondent’s actions – and lack of actions – in the Oduguwa matter represented a willful violation of his duties under rule 3-110(A).

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

Section 6068, subdivision (m), of the Business and Professions Code obligates an attorney to “respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.” In this count, the State Bar alleges that Respondent breached his duties under this statute by failing to respond to Ms. Oduguwa’s many requests for a status report.

Until closing argument in this matter, Respondent denied any culpability for failing to respond to Ms. Oduguwa's many phone calls and inquiries by claiming that he was completely unaware of those inquiries. His testimony during trial was emphatic on that point and emphasized that he was no longer working at the firm, reading the emails sent to his email address at the old firm, or listening to voicemail messages left for him at his phone number at that firm. That testimony was completely discredited by the testimony of Respondent's own brother, called by Respondent as a witness at trial on Respondent's own behalf. As a result, at the commencement of closing argument, Respondent's counsel informed the court that Respondent was conceding culpability for this count.

The evidence is clear and convincing that Ms. Oduguwa made numerous requests to Respondent, both oral and written, for a status report regarding her matter, that Respondent was aware at the time of those requests, but that he failed to ever respond to any of them. Such indifference by him to these requests represented repeated willful violations by him of his obligations under section 6068, subdivision (m). (*In the Matter of Regan* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 844, 855.)

**Count 3 – Rule 3-700(D)(1) [Failure to Release File]**

Rule 3-700(D)(1) provides: "A member whose employment has ended shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client's papers and property. 'Client papers and property' includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not [.]" In this count, the State Bar alleges that Respondent breached his duties under this statute by failing to return to Ms. Oduguwa the files she had requested, as communicated to Respondent by the State Bar.

It is undisputed that Ms. Oduguwa requested a return of all of her files and that Respondent has been aware of that request since at least the early months of 2014. Notwithstanding the fact that this request has been repeatedly communicated to him by the State Bar and is the subject of this disciplinary action by the State Bar against him, Respondent has still not returned any of Ms. Oduguwa's files to her.

Until closing argument in this matter, Respondent denied any culpability for failing to return to Ms. Oduguwa the files she had requested. His testimony during trial was that he elected to stop looking for them after disciplinary charges were filed against him. This is not a legal basis justifying Respondent's disregard of his client's right to take possession of her files and the documents in them.

At the commencement of closing argument, Respondent's counsel informed the court that Respondent was conceding culpability for this count. For all of the reasons set forth above, this court finds that Respondent's indifference to his client's request for the return of all of her files represents a willful violation by him of rule 3-700(D)(1).

**Count 4 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]**  
**Count 5 – Rule 4-100(B)(4) [Failure to Pay Client Funds Promptly]**

Rule 3-700(D)(2) provides that an attorney must “promptly refund any part of a fee paid in advance that has not been earned.” Rule 4-100(B)(4) requires prompt payment, as requested by the client, of funds, securities or other property being held by the attorney that the client is entitled to receive. In these counts, the State Bar alleges that Respondent breached his duties under these rules by failing promptly to return to Ms. Oduguwa the \$1,000 of unearned legal fees [in violation of rule 3-700(D)(2)] and the \$738 of advanced costs [in violation of rule 4-100(B)(4)], as she had requested and as was communicated to Respondent in March 2014 by the State Bar.

It is undisputed that Ms. Oduguwa requested a return of the \$1,738 she had advanced as fees and costs at the time of her complaint to the State Bar and that Respondent was aware of that request by at least the time he received the State Bar's letter of March 26, 2014. In response to that letter, he promised on April 26, 2014, to "immediately refund" her monies. Notwithstanding that promise, he did not do so until May 16, 2014, and then only did so after additional demands for a refund were made on him by Ms. Oduguwa and the State Bar.

Until closing argument in this matter, Respondent denied any culpability for failing to return to Ms. Oduguwa the advanced fees and costs she had requested. However, at the commencement of closing argument, Respondent's counsel informed the court that Respondent was conceding culpability for these counts.

For all of the reasons set forth above, this court finds that Respondent's failure to refund promptly to Ms. Oduguwa the unearned fees of \$1,000 advanced to him in 2013 represents a willful violation by him of rule 3-700(D)(2). (*In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 424 [attorney may not retain advanced fees if minimal services performed are of no value to client]; *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 332 [advanced fee not earned when paid but rather when contracted-for legal services are performed].) In addition, the court finds that that Respondent's failure to refund promptly to Ms. Oduguwa the \$738 of costs advanced to him in 2013 represents a willful violation by him of rule 4-100(B)(4). (*In the Matter of Lais* (Review Dept. 1998) 3 State Bar Ct. Rptr. 907, 923 [rule 4-100(B)(4) applies to advanced costs]; *In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 170 [two-month delay violated rule].)

### **Aggravating Circumstances**

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>7</sup> std. 1.5.) The court finds the following with respect to aggravating circumstances.

#### **Multiple Acts of Misconduct**

Respondent's multiple acts of misconduct is an aggravating factor. (Std. 1.5(b).)

#### **Lack of Insight/Indifference**

Until closing argument, Respondent denied any culpability for any misconduct in this matter. Moreover, throughout his testimony in the trial, he continued to deny that he had done anything inappropriate in how he had treated Ms. Oduguwa and ignored her interests, including her many pleas for attention.

Throughout the trial, Respondent argued that he had no responsibility for her matter because he had delegated it to his brother, a contention disputed by the brother. He sought to justify his lack of response to her voicemails and emails at the Hasan Law Firm by testifying that he was no longer accessing such messages, even though he had never advised his client that he was no longer at the firm and despite the fact that he continued to maintain those addresses as his official membership addresses and continued to use them in his communications with Ms. Oduguwa.

When asked at trial why he had not disclosed to Ms. Oduguwa in 2013 the fact that he was the employed at another firm, Respondent answered, "Why should I? That's personal." He then added, "It was none of her business that I was working at another firm." During examination by his own attorney, Respondent's made clear his awareness that such information

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<sup>7</sup> All further references to standard(s) or std. are to this source.

would have been of potential importance to her: “You don’t tell them you’re working at another firm. That kind of things scares them.”

At other times during his testimony, Respondent even sought to blame Ms. Oduguwa for not knowing that he was not involved with her file, given that he had not been responding to her inquiries for six months.<sup>8</sup>

With regard to Respondent’s failure to promptly refund the monies advanced by Ms. Oduguwa, he testified at trial that his return of those funds, in his view, was done promptly. It was only at closing argument that the court was advised by Respondent’s counsel that culpability for Respondent’s delinquent return of her monies was not contested.

Finally, Respondent has still not returned Ms. Oduguwa’s files to her and has stopped any efforts to do so, despite the pendency of this disciplinary action.

This unfortunate lack of insight by Respondent regarding his professional obligations and prior misconduct is a significant aggravating factor. (Std. 1.5(g); *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 595; *In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 68.)

### **Intentional Misconduct, Bad Faith, Dishonesty, Misrepresentations**

Respondent accepted Ms. Oduguwa as a continuing client at a time when he was employed fulltime at another firm and had an undisclosed intent not to perform the services for which he was being hired. Despite Ms. Oduguwa’s repeated communications to him that she

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<sup>8</sup> As part of this contention, Respondent argues that Ms. Oduguwa should have contacted his brother. Oddly, this argument works against Respondent. As confirmed by Ms. Oduguwa’s phone records, she attempted to do so. The brother then referred the attempted contact to Respondent, who responded by assuring the brother that he would handle the situation and then subsequently falsely reporting back to the brother that he had talked with Ms. Oduguwa. The brother testified that, had Respondent told him that he was not talking with the client, he would have communicated himself with her and handled the file differently.

was looking to him to act personally as her attorney, he actively concealed the fact that he did not intend to do. He sent communications to her using his prior email account at the Hasan Law Firm; he disclosed only that his brother “may assist” him on the matter, rather than disclosing that he had delegated the matter to his brother and no longer viewed himself as responsible for it; he affirmatively misrepresented to Ms. Oduguwa that he was continuing to be personally involved in her matter and that her petition would be filed shortly, when he knew he was not involved and had delegated the matter to his brother; and, worse, when his brother asked him to contact Ms. Oduguwa in response to her communications to the firm, Respondent falsely assured the brother both that he would and, later, had done so.

Such actions by Respondent surrounding his other misconduct in this matter constitute bad faith, dishonesty, and misrepresentations and are aggravating factors. (Std. 1.5(d).

#### **Lack of Candor to State Bar**

When Respondent was contacted by the State Bar regarding the matter, he falsely represented to it that Ms. Oduguwa, after hiring him to file the I-130 petition, had caused the petition not be completed by first communicating a “strategic” decision by her not to go forward with the petition and then subsequently deciding that preparation of the petition should precede at a time when Respondent was “unexpectedly busy.” “Due to this,” he represented, he had then delegated the case to his brother. (Ex. 9.) That purported account by Respondent of why he had not prepared and filed the requested I-130 petition more than a year after he had been hired to do so was palpably false, both in the affirmative representations that he made to the State Bar and in what he had concealed.

Further, as noted above, Respondent’s testimony to this court at times also lacked candor.

This is also an aggravating factor . (Std. 1.5(h).)

### **Uncharged Violations**

During Respondent's testimony, he sought to explain his alleged lack of awareness of efforts by the State Bar and Ms. Oduguwa to contact him by stating that their communications had gone to an old office address for the Hasan Law Firm, which Respondent had continued to maintain as his official membership address. Indeed, he testified that his current official membership address is still not accurate.

An attorney has a statutory duty to notify the State Bar within 30 days of his or her "current office address." Respondent failed to comply with that obligation in the past and continues to ignore that responsibility. This violation, while uncharged, may appropriately be considered as an aggravating factor. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.)

### **Vulnerable Client**

Respondent's misconduct was at the expense of a highly vulnerable client. She was not learned in the law; her financial condition made it impossible, as a practical matter, for her to secure alternative representation without her advanced fees and costs being returned; and her need to have prompt attention to her situation was acute. She was married to and loved a man with whom she was not being allowed to cohabit in this country. In her correspondence with Respondent, both before and after her retention of him in February 2013, she was explicit about her needs, vulnerability and dependence on him to work diligently on her behalf. His decision to take advantage of that vulnerability and his other misconduct at the expense of such a dependent and highly vulnerable client is an aggravating factor. (Std. 1.5(n).)

### **Mitigating Circumstances**

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating factors.

### **No Prior Record of Discipline**

Respondent had practiced law in California for more than 11 years prior to the commencement of the instant misconduct. During that span, Respondent had no prior record of discipline. Respondent's lengthy tenure of discipline-free practice is entitled to significant weight in mitigation. (Std. 1.6(a); *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 ["entitled to full credit" for 10 years of discipline-free practice]; *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice is entitled to significant mitigation].)

### **Character Evidence**

During the trial of this matter, Respondent presented character testimony of four individuals. These witnesses included his brother; an unemployed accountant who had met Respondent in 2013, when they worked at a different law firm; a law school graduate/law clerk, who has known Respondent since 2015 through the Lawyers Assistance Program and while working together at another law firm; and an engineer, who is a long-time friend.

Although these witnesses testified about Respondent's honesty and integrity, none of them was "aware of the full extent of [his] misconduct," as required by the standard. (See also *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 305.) Further, three of them erroneously believed that Respondent had taken full responsibility for his misconduct, testimony given when Respondent was still disputing any misconduct in the matter and was still failing to return files to his former client. While the court accords Respondent some nominal mitigation credit for this evidence, it is quite limited. (*In re Aquino* (1989) 49 Cal.3d 1122, 1131 [seven witnesses and 20 letters of support not "significant" evidence of mitigation because witnesses were unfamiliar with details of misconduct]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50 [testimony of only four character witnesses afforded

diminished weight in mitigation]; see also *In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387 *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477; *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190; *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359.)

### **No Harm**

Respondent argues that he is entitled to mitigation credit because Ms. Oduguwa suffered no harm because of his misconduct. The evidence fails to substantiate any such conclusion. Ms. Oduguwa paid \$1,738 to Respondent and lost the use of most of that money for more than a year. Her correspondence makes clear how difficult it was for her to be able to accumulate those funds. The burden was on Respondent to show clear and convincing evidence that no harm resulted to her from the loss of use of those funds during that period. He did not do so.

Moreover, the reason why Ms. Oduguwa employed Respondent was her fervent desire to seek to convince the United States immigration authorities of the legitimacy of her marriage. The tone and urgency of her communications with Respondent and the fact that she had worked so hard to save the required funds to file another petition to convince the authorities that her marriage was not a sham certainly speak strongly to the actual legitimacy of her case. Respondent's indifference resulted in her being deprived for more than a year of having any chance to have her husband come to the United States to live with her; and Respondent's delays, in failing to advise her that she needed to hire a new attorney, in failing to promptly return her funds, and his ongoing failure to return her files and other documents, may have permanently deprived her of that opportunity as a practical matter.

### **Emotional Difficulties**

Extreme emotional difficulties may be considered mitigating where it is established by expert testimony that they were responsible for the attorney's misconduct. (Std. 1.6(d); *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) Respondent presented evidence that he had been depressed since 2013 or before because of marital problems. Those factors led to him seeking medical attention in late 2013, including psychiatric counseling and drug therapy.

The evidence offered by Respondent regarding the emotional difficulties he has had since 2013 did not provide clear and convincing evidence that his problems are a mitigating factor here. There was no expert testimony (as required by the standard) or other convincing evidence showing the required nexus between Respondent's emotional problems and all of his misconduct. While Respondent and his brother described his problem as forgetful but not delusional, Respondent's conduct repeatedly included affirmative misrepresentations of fictional conduct, such as Respondent's assurances to his brother that he had talked with Ms. Oduguwa.

Nor was there sufficient evidence for this court to conclude that any emotional problems suffered by Respondent in the past have now been satisfactorily resolved. (cf. Std. 1.6(d).) Respondent remains in therapy. He did not present any evidence or testimony from any of his treating doctors that his mental and emotional problems are under control and pose no risk of harm to the public in the future. Similarly, while Respondent has been participating in the Lawyers Assistance Program (LAP), he has still not yet completed his Participation Plan. While Respondent did introduce into evidence an evaluation report of a retained clinical psychologist, dated April 11, 2015, that report confirmed "current psychological symptoms" and several personal qualities that lend themselves "to poor response to psychotherapy." While the therapist

then opined that Respondent appeared to be on his way to recovery, there is no evidence from any expert that Respondent has now reached that goal.

Finally, there was ample evidence during the trial of this matter that Respondent is still significantly impaired. Much of his testimony was demonstrably untrue and shown to be such by the testimony of his brother. During his testimony near the conclusion of the presentation of evidence, Respondent sought to attribute his many prior inaccurate statements to his emotional problems. Moreover, Respondent continues to demonstrate a lack of awareness of his professional obligations, reflected in his trial testimony and his ongoing decision not to return to Ms. Oduguwa her files and other documents. To the extent that his therapist's 2015 report attributes Respondent's prior indifference and resulting misconduct to his emotional problems, there is ample reason for this court to be concerned that those emotional problems continue to pose a risk to the public.

### **DISCUSSION**

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

In determining the appropriate level of discipline, this 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.) The court then looks to the decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.) As the Review Department noted more than two decades ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be

followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *Gary v. State Bar* (1988) 44 Cal.3d 820, 828; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

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.

In the present proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.2(a), which applies to Respondent's violation of rule 4-100(B)(4) and provides: "Actual suspension of three months is the presumed sanction for commingling or failure to promptly pay out entrusted funds."<sup>9</sup>

Looking to the case law, one finds ample authority supporting a recommended discipline consistent with the above standard. In *Harris v. State Bar* (1990) 51 Cal.3d 1082, the Supreme Court imposed a 90-day actual suspension for protracted inattention to a client's case, resulting in a large financial loss to the client's estate. Aggravating factors included lack of candor to her client and lack of remorse and insight. In mitigation, the respondent there, like here, had approximately 10 years of practice with no prior discipline. Also, her illness with typhoid fever after the misconduct commenced was considered. In *Wren v. State Bar* (1983) 34 Cal.3d 81, the attorney was suspended for two years, stayed, with two years' probation and 45 days' actual suspension for failing to perform in one client matter over a two-year period and for misrepresenting the status of the case to the client. The attorney had no prior discipline in 22

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<sup>9</sup> Also applicable is standard 2.7(c), which provides for suspension or reproof, depending on the extent of the misconduct and the degree of harm to the client.

years of practice, far longer than Respondent here, and participated in the disciplinary proceeding but attempted to mislead the State Bar by giving false and misleading testimony. The misconduct of Respondent and other aggravating circumstances here are even greater than that of the respondent in *Wren*. In *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, respondent was found culpable, in one client matter, of failing to perform and communicate, improperly withdrawing from representation, and committing an act of moral turpitude, namely misrepresenting to an insurance adjuster that his client no longer wanted to pursue her claim. In aggravation, the court found multiple acts of misconduct, one prior instance of discipline, client harm, and lack of candor toward the court and the State Bar investigator. The lack of candor was described by the court as “more egregious than the misconduct found against him in this proceeding.” (*Id.* at p. 282.) It included presenting a false telephone log entry prepared for purposes of trial; presenting to the State Bar investigator a falsified stipulation purporting to resolve his client’s case; and misrepresenting to the investigator that he appeared before a WCAB judge at the time his client’s claim was settled. In mitigation, the court afforded slight weight to pro bono services rendered because his involvement was not great and was remote in time. Discipline consisted of stayed suspension for four years and until he complied with standard 1.4(c)(ii) and four years’ probation on conditions including one year’s actual suspension. While Respondent’s misconduct mirrors to an unfortunate degree the misconduct in the *Dahlz* matter, the respondent there has a prior record of discipline.

In addition to recommending a 90-day period of actual suspension, the court concludes that a lengthy period of probation is also required, with conditions requiring Respondent to successfully complete his LAP Participation Plan and promptly return to Ms. Oduguwa all of her files and other documents.

## RECOMMENDED DISCIPLINE

### Recommended Suspension/Probation

For all of the above reasons, it is recommended that **Shameem Hasan**, State Bar No. 223281, be suspended from the practice of law for two years; that execution of that suspension be stayed; and that Respondent be placed on probation for three years, with the following conditions:

1. Respondent must be actually suspended from the practice of law for the first ninety (90) days of probation.
2. He must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation.
3. Within 30 days after the effective date of discipline, he must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, he must meet with the probation deputy either in person or by telephone. During the period of probation, he must promptly meet with the probation deputy as directed and upon request.
4. Within 30 days after the effective date of discipline, Respondent must correct his official membership address and other information, if he has not already done so, and provide proof to the Office of Probation of his compliance with this requirement. Thereafter, 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, he must report such

change in writing to the Membership Records Office and the State Bar Office of Probation.

5. He must submit written quarterly reports to the Office of Probation on or before each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, he must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of his probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
6. Subject to the assertion of applicable privileges, he must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein.
7. Within one year after the effective date of the discipline herein, he must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and the State Bar's Client Trust Accounting School and passage of the tests given at the end of those sessions. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and he shall not receive MCLE credit for attending such schools. (Rules Proc. of State Bar, rule 3201.)
8. Within 30 days after the effective date of discipline, he must (a) return to Melame Oduguwa all files prepared or maintained by him or the Hasan Law Firm regarding her prior matters, including all documents provided by her to him or that firm; and (b) provide proof to the Office of Probation of his compliance with this requirement.

9. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if Respondent has complied with all conditions of probation, the stayed suspension will be satisfied and that suspension will be terminated.

**MPRE**

It is further recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

**California Rules of Court, Rule 9.20**

The court recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.<sup>10</sup>

**Costs**

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

Dated: March 3, 2016



DONALD F. MILES  
Judge of the State Bar Court

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<sup>10</sup> Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is also, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

**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 March 3, 2016, I deposited a true copy of the following document(s):

**DECISION**

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:

**EDWARD O. LEAR  
CENTURY LAW GROUP LLP  
5200 W CENTURY BLVD #345  
LOS ANGELES, CA 90045**

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

**HUGH RADIGAN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 3, 2016.



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Tammy Cleaver  
Case Administrator  
State Bar Court