

APR 06 2004

PUBLIC MATTER

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)
)
TIMOTHY P. MASON,)
)
Member No. 192622,)
)
A Member of the State Bar.)

**Case Nos. 99-O-13532-JMR; 01-O-04666;
01-O-04668; 02-O-12897;
02-O-14407; 02-O-14795;
02-O-15521; 03-O-00380 (Cons.)**

**DECISION AND
ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT**

I. Introduction

In this disciplinary proceeding, **Respondent TIMOTHY P. MASON** is charged with professional misconduct in seven client matters, including (1) limiting liability to a client, (2) sharing legal fees with non-lawyers, (3) failure to perform competently, (4) failure to maintain client funds, (5) aiding another in the unauthorized practice of law, (6) failure to refund unearned fees, (7) failure to communicate with clients, (8) committing multiple acts of moral turpitude, (9) improper withdrawal from employment, and (10) failure to render an accounting.

This court finds, by clear and convincing evidence, that Respondent is culpable of the charged acts of misconduct, except for one count. In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that Respondent be disbarred.

II. Pertinent Procedural History

A. Four Notices of Disciplinary Charges

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed four separate Notices of Disciplinary Charges (NDC) as follows:



- 1 1. September 18, 2002: 99-O-13532 and 01-O-04666;
- 2 2. December 18, 2002: 01-O-04668;
- 3 3. February 20, 2003: 02-O-12897; 02-O-14407; 02-O-14795; 02-O-15521; and
- 4 4. February 27, 2003: 03-O-00380.

5 Respondent filed responses to the four NDCs. The matters were consolidated on April 28,
6 2003.

7 **B. Dismissals and Amendment**

8 On September 26, 2003, the court granted the State Bar's request to dismiss without
9 prejudice the following:

- 10 1. 99-O-13532: counts 1 through 6;
- 11 2. 01-O-04666: count 15; and
- 12 3. 01-O-04668: all counts (1-5).

13 The court also granted State Bar's request to amend count 7 in case No. 99-O-13532.

14 In its November 21, 2003 brief, the State Bar has requested that count 13 in case No. 01-O-
15 04666 be dismissed. For good cause shown, the court hereby grants the request and count 13 is
16 dismissed without prejudice.

17 **C. Stipulation to Culpability**

18 The parties stipulated to some of the facts and charges, memorialized in a Partial Stipulation
19 as to Undisputed Facts and Evidence filed September 29, 2003. The stipulated culpability findings
20 are as follows:

- 21 1. 99-O-13532: counts 7, 10, 11, and 14; and
- 22 2. 02-O-12897: count 2.

23 **D. Trial**

24 A five-day trial was held on September 30, October 1-3, and November 12, 2003. The State
25 Bar was represented in this proceeding by Deputy Trial Counsel Terrie Goldade. Attorney R. Gerald
26 Markle represented Respondent.

27 Following receipt of closing briefs from the parties, the court took this proceeding under
28 submission on January 8, 2004.

1 settlement funds. To resolve the issue, on January 12, 2000, Respondent prepared and Romero
2 signed a Release of Liability (release), which stated in part, "By signing this document I
3 acknowledge that I absolve the Law Offices of Timothy P. Mason from any liability or any other type
4 of action I could bring."

5 Respondent did not inform Romero in writing that he could seek the advice of an
6 independent lawyer of his choice before signing the release.

7 ***Findings of Facts Re Savage***

8 Respondent stipulated that between September and December 1998 he had paid John and
9 Linda Savage for their services in about eight client matters. At trial Respondent testified that John
10 provided certain investigative services from June 1998 through May 1999 and was compensated with
11 half of the attorney fees after settlement. Respondent claimed that he knew sharing fees with non-
12 lawyers was unethical but that "other attorneys did it." He viewed it "more as a speeding ticket than
13 manslaughter." Respondent estimated that he shared legal fees with Linda and John Savage in about
14 20 cases.

15 Respondent stipulated to issuing the following checks:

16	Date	Check No. (CTA)	Memo on Check	Amount Paid to Respondent	Amount Paid to Linda/John Savage
18	9/1/98	132	Atty Fees - Jackson	\$583.33	
19	9/4/98	133	Jackson		\$583.33
20	9/23/98	137	J. Henry	\$317.12	
21	9/23/98	138	Paralegal fees for J. Henry		\$317.12
22	10/20/98	151	Attorney fees - Sandoval	\$291.66	
22	10/20/98	153	Paralegal fees - Sandoval		\$291.67
23	10/20/98	155	Medical Payment for Sandoval		\$ 72.92
24	10/20/98	156	Sandoval	\$ 72.91	
25	10/22/98	159	Smith		\$425.41
25	10/22/98	161	Attorney fees - Smith	\$425.41	
26	10/26/98	164	Pinkney settlement		\$520.82
27	10/26/98	165	Pinkney settlement	\$520.82	
28	10/30/98	167	Paralegal services - Romero		\$1500.00

1	11/6/98	174	Lou Ella Pinkney		\$833.33
2	11/11/98	180	Romero settlement	\$1500.00	
3	11/25/98	191	Sandoval - paralegal fees		\$ 218.75
4	11/25/98	192	Sandoval - attorney fees	\$ 218.75	
5	12/7/98	194	Settlement F. Reaves	\$1776.65	
6	12/18/98	206	Settlement Reaves - motorcycle		\$ 159.75
7	12/21/98	207	Frank Reaves motorcycle		\$ 319.56
8	12/23/98	208	Frank Reaves - paralegal services		\$1726.65
9	TOTAL			\$5,706.65	\$6,969.31

9 On October 23, 1998, Respondent deposited or caused to be deposited into Respondent's
10 CTA a settlement check for Lauren Smith for \$2,042.

11 On December 9, 1998, Respondent deposited into his CTA a settlement check on behalf of
12 Frank Reaves.

13 On January 7, 2000, Susan Seiler, Complaint Analyst with the State Bar, wrote Respondent
14 asking him to respond in writing regarding the Romero matter. The State Bar also asked Respondent
15 about John Savage since the client believed that John Savage was an attorney in Respondent's office
16 but the State Bar was unable to confirm that John Savage was entitled to practice law in California.

17 In his reply letter dated January 12, 2000, Respondent stated, "On Mr. Romero's instructions,
18 we issued the payment to John Savage. Mr. Savage is the husband of my secretary Linda Savage,
19 and is in no way an employee of this office." Respondent did not disclose that John worked as an
20 investigator for him from June 1998 through at least May 1999 and that he would pay John half of
21 the attorney fees after settlement.

22 ***Conclusions of Law***

23 Pursuant to the State Bar's request, the court has dismissed counts 1-6 without prejudice in
24 the Romero matter. And Respondent has stipulated to culpability in count 7.

25 ***a. Count 7: Limiting Liability to Client (Rules Prof. Conduct, Rule 3-400(B))¹***

26 Rule 3-400(B) provides that an attorney shall not settle a claim or potential claim for his
27

28 ¹References to rule(s) are to the current Rules of Professional Conduct.

1 liability to the client for professional malpractice, unless the client is informed in writing that the
2 client may seek the advice of an independent lawyer of the client's choice regarding the settlement
3 and is given a reasonable opportunity to seek that advice.

4 Respondent stipulated to violating rule 3-400(B). The court agrees. By obtaining Romero's
5 signature on the release without informing Romero in writing that he could seek the advice of an
6 independent lawyer of his choice, Respondent wilfully violated rule 3-400(B) in count 7.

7 ***b. Count 8: Sharing Legal Fees with a Non-lawyer (Rule 1-320(A))***

8 Rule 1-320(A) prohibits an attorney from directly or indirectly sharing legal fees with a
9 person who is not a lawyer with certain exceptions.

10 At trial, Respondent admitted that he knew he was sharing attorney fees with non-lawyers
11 and that it was unethical, but he did it anyway because he viewed it as getting a "speeding ticket"
12 rather than a "manslaughter." Based on the evidence regarding the business arrangement and that
13 the Savages are not attorneys, Respondent and the Savages agreed to share evenly all legal fees
14 recovered in personal injury cases and did share in at least 20 cases. Therefore, the court finds that
15 Respondent shared legal fees with nonlawyers, Linda and John Savage, in a sum of at least \$6,969
16 in wilful violation of rule 1-320(A).

17 ***c. Count 9: Moral Turpitude (Bus. & Prof. Code, § 6106)²***

18 Respondent is charged with violating section 6106, which provides that the member's
19 commission of an act involving moral turpitude, dishonesty or corruption constitutes ground for
20 suspension or disbarment.

21 Although John may not have been Respondent's employee as of the date Respondent replied
22 to the State Bar on January 12, 2000, Respondent did not state that John had worked for him for
23 more than a year as an investigator or that as of January 12, 2000, John was no longer an employee.
24 Given the context of the investigation and the complaint, Respondent's statement to the State Bar
25 that "Mr. Savage .. is in no way an employee of this office" was misleading. While "[a]n attorney
26

27 ²References to section are to the Business and Professions Code section, unless otherwise
28 noted.

1 has no obligation to produce incriminating evidence on his own initiative..., he has an obligation to
2 respond to the State Bar's inquiries in a manner which is 'consistent with [the] truth' (see Bus. &
3 Prof. Code, § 6068, subd. (d))." (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 708-709.)

4 Thus, Respondent's statement in his January 2000 letter was not consistent with the truth.
5 By making such a misleading statement to the State Bar, Respondent committed an act involving
6 dishonesty in wilful violation of section 6106 in count 9.

7 **2. The Selman Matter (Case No. 01-O-04666)**

8 ***Findings of Facts***

9 On July 26, 2000, Okey Selman (Selman) employed Respondent's office to represent his
10 nephew Sasha Enzmann (Enzmann) to obtain an H-1B Visa for Enzmann. Selman visited
11 Respondent's office and met with Faiq A. Bokhari. He signed a retainer agreement with the Law
12 Offices of Mason & Bokhari and was given a business card that read, in part:

13 "Law Offices of Mason & Bokhari
14 Faiq A. Bokhari
Immigration Specialist"

15 Selman was also given two checklists (H-1B and L-1 visas) on stationery with the letterhead "Law
16 Offices of Mason & Bokhari." Bokhari gave Selman legal information about the H-1B Visa
17 application process and detailed what information and documents would be needed from Selman to
18 facilitate the process. At that meeting, Selman paid \$2,550 to Bokhari – \$1,750 for legal services
19 by his personal check No. 2762 made payable to Law Offices of Mason & Bokhari and \$800 for an
20 educational evaluation by his personal check No. 2763 made payable to Faiq Bokhari.

21 On March 8, 2001, Selman again visited the office, met with Bokhari, and paid an additional
22 \$1,750 by his personal check No. 2948 made payable to Faiq Bokhari. At this meeting, Selman was
23 advised that he needed another letter from his nephew's employer showing his nephew's work
24 history for the educational evaluation. Selman testified that Bokhari never informed him that he was
25 not an attorney.

26 On June 28, 2001, Selman made an appointment to meet with Respondent. At this meeting,
27 Respondent informed Selman that Bokhari was no longer employed by Respondent and that all
28 money paid by Selman to this point had been taken by Bokhari. Selman pointed out that one of the

1 checks for \$1,750 had been deposited into Respondent's office account. Respondent said that he
2 would acknowledge receipt of that \$1,750, but that Bokhari had stolen the other \$2,550. Respondent
3 invited Selman to sign another retainer agreement with the Law Offices of Timothy P. Mason, which
4 Selman did, and which applied \$1,750 of the funds Selman had previously paid. Selman had paid
5 a total of \$4,300 in attorney fees.

6 On June 29, 2001, Respondent filed a complaint against Bokhari with the police, alleging that
7 Bokhari had falsified documents by claiming to be his law partner and impersonated a lawyer to
8 obtain money. Respondent admitted that he considered Bokhari to be his law partner in the Tijuana
9 office but not in the Riverside office. Respondent knew or should have known that Bokhari had
10 added "Bokhari" to the letterhead and other business documentation. Bokhari is not and has never
11 been an attorney licensed to practice in California.

12 After Selman signed the second retainer agreement with Respondent, Respondent still failed
13 to perform any services. To date, Enzmann never obtained an H-1B Visa.

14 Respondent did not deposit the \$800 check for costs – educational evaluation – into
15 Respondent's CTA. Instead, it was deposited into an account with the account No. 1220006614,
16 which is not Respondent's CTA.

17 On March 6, 2002, Selman wrote to Respondent terminating his services and demanding a
18 full refund of the \$4,300 paid to Respondent's office and an accounting of all services performed by
19 Respondent's office.

20 While Respondent has not refunded any funds paid to his office by Selman, he agrees that
21 such refund is in order.

22 Furthermore, as of March 2003, Respondent had a website listing Bokhari as his law partner
23 in the "Law Offices of Mason & Bokhari" and boasting their credentials. Respondent claimed that
24 he did not know that the website was still up.

25 ***Conclusions of Law***

26 Pursuant to the State Bar's request, the court has dismissed counts 13 and 15 without
27 prejudice in the Selman matter. Respondent has stipulated to culpability in counts 10, 11 and 14.

28 ///

1 **a. Count 10: Failure to Perform Competently (Rule 3-110(A))**

2 Respondent stipulated to a wilful violation of rule 3-110(A), which provides that an attorney
3 shall not intentionally, recklessly or repeatedly fail to perform legal services in a competent manner.

4 By failing to competently perform any services in the Enzmann matter, Respondent wilfully
5 violated of rule 3-110(A).

6 **b. Count 11: Failure to Maintain Client Funds in Trust Account (Rule 4-100(A))**

7 Respondent stipulated to a wilful violation of rule 4-100(A), which provides that all funds
8 received for the benefit of clients shall be deposited in a client trust account.

9 By failing to deposit funds received for the benefit of Enzmann, including advances for costs
10 and expenses, into Respondent's CTA, Respondent wilfully violated rule 4-100(A).

11 **c. Count 12: Aiding Another in the Unauthorized Practice of Law (Rule 1-300(A))**

12 Rule 1-300(A) prohibits an attorney from aiding any person or entity in the unauthorized
13 practice of law.

14 Respondent's assertion that Bokhari was allowed to use "Law Offices of Mason & Bokhari"
15 in the Tijuana office but not in the Riverside office does not excuse his wilful violation in aiding
16 Bokhari's unauthorized practice of law. Bokhari is not a California attorney or entitled to practice
17 law in California. By stating "Law Offices of Mason & Bokhari" on his stationery, business cards,
18 retainer agreement and website, and by allowing Bokhari to give legal advice to Respondent's
19 clients, Respondent aided Bokhari in the unauthorized practice of law in wilful violation of rule 1-
20 300(A).

21 **d. Count 13: Forming a Partnership with a Non-lawyer (Rule 1-310)**

22 Count 13 is dismissed without prejudice pursuant to the State Bar's request in its November
23 21, 2003 brief.

24 **e. Count 14: Failure to Return Unearned Fees (Rule 3-700(D)(2))**

25 Respondent stipulated to a wilful violation of rule 3-700(D)(2), which requires an attorney
26 whose employment has terminated to refund promptly any part of a fee paid in advance that has not
27 been earned.

28 By failing to refund unearned fees of \$4,300 to Selman, Respondent has wilfully failed to

1 refund any part of a fee paid in advance that was not earned in wilful violation of rule 3-700(D)(2).

2 **C. Second Notice of Disciplinary Charges**

3 **The Ordonez Matter (Case No. 01-O-04668)**

4 Pursuant to the State Bar's request, this case has been dismissed without prejudice on
5 September 26, 2003.

6 **D. Third Notice of Disciplinary Charges**

7 **1. The Cabello-Perez Matter (Case No. 02-O-12897)**

8 ***Findings of Facts***

9 On February 13, 2001, Jorge Cabello-Perez (Cabello-Perez) met with Respondent to discuss
10 his immigration options and employed Respondent to represent him in an appeal before the Board
11 of Immigration Appeals (BIA) and on an application for labor certification. At that meeting,
12 Cabello-Perez paid Respondent \$1,000 in advanced legal fees toward the total legal fees of \$6,000.
13 On March 16, 2001, Cabello-Perez paid Respondent an additional \$500 in advanced legal fees and
14 informed Respondent that he should bill Cabello-Perez's employer because the employer would pay
15 the remainder of the legal fees for Cabello-Perez. But Respondent did not bill Cabello-Perez's
16 employer for the remainder of the legal fees.

17 On February 26, 2001, Respondent filed a Form G-28: Notice of Entry of Appearance as
18 Attorney or Representative before the BIA on behalf of Cabello-Perez. Respondent also filed a
19 Notice of Appeal with the BIA, which Respondent indicated that he would file a separate written
20 brief in addition to the form.

21 On February 27, 2001, the BIA served Respondent with a filing receipt for appeal.

22 On May 17, 2001, the BIA served Respondent with a Notice of Briefing Schedule, requiring
23 Respondent to file the appeal brief by June 18, 2001. Respondent did not file the brief by the due
24 date or at any time; he also did not inform his client about the due date or that he had not filed the
25 brief.

26 In October 2001, Cabello-Perez contacted Respondent to inquire about the status of his case.
27 Respondent informed him that they were exercising proactive measures to bring this matter to a swift
28 resolution.

1 In November 2001, Respondent prepared and filed a labor certification application on
2 Cabello-Perez's behalf. On December 11, 2001, the Immigration and Naturalization Service (INS)
3 returned the application because of a "Wrong c (22) code."

4 To date, Respondent has not refunded any funds paid to his office by Cabello-Perez.

5 Thereafter, Cabello-Perez telephoned Respondent on many occasions but Respondent did not
6 return his calls. Cabello-Perez started to think that something was wrong.

7 In March 2002, Cabello-Perez employed another attorney, Raul Gomez, to assist him in his
8 appeal with the BIA. Attorney Gomez contacted the INS to ascertain the case status and was
9 informed that the appeal had been dismissed by the BIA on November 7, 2001, for failure to file the
10 required brief.

11 In his April 2002 letter to Respondent, attorney Gomez requested a written response
12 regarding the appeal matter. Because of Respondent's failure to file the appeal and Cabello-Perez's
13 appeal was dismissed, the client was then subject to deportation.

14 Cabello-Perez testified that when he approached Respondent to find out why Respondent
15 failed to file the brief and why he failed to respond to attorney Gomez's letter, Respondent blamed
16 his employee for the failure. Respondent further told Cabello-Perez that he would correct his
17 mistake if Cabello-Perez would not file a complaint against him with the State Bar.³

18 ***Conclusions of Law***

19 ***a. Count 1: Failure to Perform Competently (Rule 3-110(A))***

20 By failing to file the appeal brief by June 2001 or at any other time, Respondent recklessly
21 failed to perform services competently in wilful violation of rule 3-110(A).

22 ***b. Count 2: Failure to Communicate (Section 6068(m))***

23 Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly
24

25 ³Section 6090.5 prohibits an attorney to seek agreement that the professional misconduct
26 not be reported to the State Bar. Since Respondent was not charged with violating section
27 6090.5, evidence of uncharged misconduct may be used in a contested proceeding for purposes
28 of establishing evidence of aggravating circumstances. (*In the Matter of Boyne* (Review Dept.
1993) 2 Cal. State Bar Ct. Rptr. 389.) Therefore, Respondent's advice to Cabello-Perez would be
considered as evidence in aggravation.

1 to reasonable status inquiries of clients with regard to which the attorney has agreed to provide legal
2 services. Although Respondent stipulated to culpability in count 2, Respondent claims that he did
3 inform Cabello-Perez that the due date for the brief had been missed and that the appeal was
4 dismissed. But the criteria is whether he had *promptly* informed his client of significant case status.
5 Here, Cabello-Perez did not find out about the dismissal until some four months after the appeal was
6 dismissed from his new attorney Gomez.

7 Thus, by not timely informing Cabello-Perez of the due date for filing the brief in his matter,
8 that the brief was never filed, or that his appeal had been dismissed, Respondent failed to keep a
9 client reasonably informed of significant developments in a matter in which Respondent had agreed
10 to provide legal services in wilful violation of section 6068, subdivision (m).

11 ***c. Count 3: Improper Withdrawal from Employment (Rule 3-700(A)(2))***

12 Rule 3-700(A)(2) provides that an attorney shall not withdraw from employment until he has
13 taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.
14 Respondent, in effect, withdrew from Cabello-Perez's case since he never filed the brief or followed
15 up with the labor certification application after it was returned by the INS. As a result of his failure
16 to file the brief, the appeal was dismissed. Thus, Respondent had wilfully violated rule 3-700(A)(2)
17 by withdrawing from employment without taking any steps to avoid foreseeable prejudice to the
18 rights of Cabello-Perez.

19 ***d. Count 4: Failure to Return Unearned Fees (Rule 3-700(D)(2))***

20 Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly
21 any part of a fee paid in advance that has not been earned. Since Respondent failed to perform any
22 legal services that are of any benefit to Cabello-Perez and his employment had terminated,
23 Respondent wilfully violated rule 3-700(D)(2) by failing to return any unearned portion of the \$1,500
24 fees paid by Cabello-Perez.

25 ***e. Count 5: Moral Turpitude (Section 6106)***

26 Respondent misrepresented to Cabello-Perez in October 2001 that he was taking proactive
27 measures in his case when in fact, the appeal was dismissed shortly thereafter in November.
28 Therefore, Respondent's misstatement of the case status to his client was an act of dishonesty in

1 wilful violation of section 6106.

2 **2. The Gonzalez Matter (Case No. 02-O-14407)**

3 On April 28, 1999, Manuel Gonzalez (Gonzalez) met with Respondent to discuss his options
4 in legalizing his status in the United States. Respondent informed Gonzalez that because he had
5 been in the United States since 1984, he could seek to legalize his status based upon his continued
6 residency in the United States for over 10 years. But Respondent never explained to Gonzalez how
7 he was going to obtain legal residency for Gonzalez. Gonzalez agreed to employ Respondent and
8 agreed to pay Respondent a total of \$2,750 plus costs.

9 Gonzalez and Respondent signed a Fixed Fee Agreement; Respondent agreed to represent
10 Gonzalez's interest regarding "10-Year Plan Under INA 240A." At that meeting, pursuant to the
11 fee agreement, Gonzalez paid \$1,500 to Respondent, with the remainder to be paid on a monthly
12 basis. Gonzalez also submitted documentation regarding his residency in the United States.

13 Pursuant to the fee agreement, on May 29, 1999, Gonzales paid Respondent an additional
14 \$250. On July 3, 1999, Gonzalez paid Respondent an additional \$250. On July 30, 1999, Gonzalez
15 paid Respondent an additional \$250. On August 30, 1999, Gonzalez paid Respondent an additional
16 \$500. On June 18, 2001, Gonzalez paid Respondent an additional \$285. On April 17, 2002,
17 Gonzalez paid Respondent an additional \$80. Gonzalez had paid Respondent a total of \$3,115.

18 Respondent asked Gonzalez to sign certain documents but never explained to him the
19 purpose of those documents. One of which was an application for asylum. Respondent never told
20 him about filing an asylum application.

21 On April 10, 2001, Respondent filed Gonzalez's Application for Asylum (Form I-589) with
22 the INS under Gonzalez's name in pro. per. Although he represented Gonzalez at the time,
23 Respondent did not inform the INS or file Form EOIR-28⁴ (Notice of Entry of Appearance as
24 Attorney or Representative) before the Immigration Court. Gonzalez is a Mexican national and was
25
26
27

28 ⁴EOIR: Executive Office for Immigration Review.

1 likely not eligible for asylum with the INS as a way of legalizing his status.⁵ Respondent did not
2 indicate on what grounds the asylum was based or attach any supporting documentation.

3 On May 24, 2001, the INS denied Gonzalez's asylum application, charged that Gonzalez was
4 subject to removal from the United States, and ordered him to appear before an immigration judge
5 of the United States Department of Justice for removal proceedings (deportation) on July 11, 2001.

6 On July 11, 2001, Respondent filed the INS Form EOIR-28, informing the Immigration Court
7 that he represented Gonzalez. Respondent sent another attorney, Gabriel Cisneros, to appear at
8 Gonzalez's hearing on July 11, 2001, and this attorney was personally served with notice of the next
9 hearing to be held on September 9, 2002, and notice that the INS Form EOIR-42B Application for
10 Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents
11 (application) was due by September 14, 2001.

12 Respondent failed to file the application on behalf of Gonzalez by September 14, 2001. On
13 September 28, 2001, Respondent received a notice from the Immigration Court that unless the
14 application was filed by October 10, 2001, all relief would be deemed waived.

15 Respondent failed to file the application by October 10, 2001. On October 16, 2001,
16 Respondent filed a motion for extension of time to file the application and a completed application.
17 The court granted the motion and received the application for filing on October 17, 2001.

18 On July 3, 2002, Respondent filed a Motion to Withdraw as Attorney of Record, stating:

19 A conflict of interest has arisen between this office and [Gonzalez]...
20 I have requested documents necessary to establish [Gonzalez's]
21 claims of exceptional and extremely unusual hardship to his United
22 States Citizen children, but [Gonzalez] has been unable or unwilling
23 to provide me with the requested documentation. Without these
24 documents, I cannot in good conscience continue to represent
25 [Gonzalez] before this honorable court.

26
27
28

⁵Attorney John Nelson, an expert in immigration law, testified that Mexican nationals are not generally eligible for asylum because they come to the United States for financial reasons, not because of persecution in their country. Unless they have an iron clad case for political asylum, it is best not to file such an application because they would then be in a removal proceeding. Moreover, the asylum application should be filed within one year of entering the country, and not 10 years later, as in several of Respondent's cases. Attorney Nelson further opines that an average immigration attorney would not file an asylum application without supporting documentation.

1. The motion was granted on July 9, 2002.

2 On July 3, 2002, Gonzalez was served with Respondent's Motion to Withdraw. On July 9,
3 2002, Gonzalez was informed by the Immigration Court that Respondent's Motion to Withdraw had
4 been granted and that Respondent no longer represented him.

5 However, Gonzalez testified in his deposition that Respondent and his office "never said
6 anything to [him]." (State Bar exhibit 104, 41:5.) In fact, Gonzalez had always complied with
7 Respondent's requests for documents and timely paid the attorney fees. He was very surprised when
8 he received the motion in the mail. Because Respondent or his office never explained why
9 Respondent was withdrawing as his attorney and Gonzalez's English is limited, Gonzalez did not
10 understand the reasons until his deposition in April 2003. The court finds Gonzalez's testimony to
11 be credible.

12 Other than the fact that Respondent wanted to withdraw as Gonzalez's attorney, his reasoning
13 to withdraw was not credible and neither was his conscience. In fact, Respondent testified that he
14 could not defend this motion since Gonzalez gave him "a lot of documents."

15 To date, Respondent has not refunded any funds paid by Gonzalez.

16 **a. Count 6: Failure to Perform Competently (Rule 3-110(A))**

17 "An asylum application is frivolous ... if 'it fails to specify a statutory ground of persecution
18 or fails to support the claim with one or more facts.'" (*Carballo v. Ilchert* (N.D.Cal. April 22, 1993,
19 No. C-93-0231 MHP) 1993 U.S. Dist. Lexis 5657.) In other word, frivolousness is defined as
20 "manifestly unfounded or abusive." (8 C.F.R. § 208.7.)

21 Here, Respondent knew that Gonzalez, as a Mexican national, would not be eligible for
22 asylum and yet, he filed the application for asylum without stating any supporting facts or
23 documentation. A cursory review of the application supports a conclusion that it is frivolous.
24 Therefore, Respondent's action was an intentional and reckless failure to perform services with
25 competence in wilful violation of rule 3-110(A).

26 **b. Count 7: Failure to Communicate (Section 6068(m))**

27 Respondent argues that because Gonzalez signed the application in pro. per. before it was
28 submitted to the INS, Gonzalez knew about the asylum request. He further contends that because

1 the client was served with a motion to withdraw, he knew about Respondent's withdrawal.
2 Respondent's contentions are rejected.

3 Respondent never explained to his client that he was filing such an application or the motion
4 to withdraw until after the fact, which are significant developments.

5 By failing to inform Gonzalez that he was filing an asylum application on his behalf and that
6 he was withdrawing as attorney of record before filing the motion, Respondent failed to keep a client
7 reasonably informed of significant developments in a matter in which Respondent had agreed to
8 provide legal services in wilful violation of section 6068(m).

9 *c. Count 8: Failure to Return Unearned Fees (Rule 3-700(D)(2))*

10 Because Respondent had filed the application with no good cause, he subjected Gonzalez to
11 removal proceedings and deportation. By withdrawing from Gonzalez's matter before completing
12 the legal services for which he was hired and placing Gonzalez in a worse status than when he
13 retained Respondent, Respondent did not earn any portion of the fees advanced by Gonzalez. Since
14 Respondent failed to perform any legal services that are of any benefit to Gonzalez and his
15 employment had terminated, Respondent wilfully violated rule 3-700(D)(2) by failing to return any
16 unearned portion of the \$3,115 fees paid by Gonzalez.

17 *d. Count 9: Moral Turpitude (Section 6106)*

18 By misrepresenting to the Immigration Court that Gonzalez was uncooperative in providing
19 documents as ground for his withdrawal as attorney of record and that he could not "in good
20 conscience continue to represent [Gonzalez] before this honorable court," Respondent committed
21 an act of moral turpitude and dishonesty in wilful violation of section 6106. He had a duty to employ
22 those means only as are consistent with truth and never mislead the judge by a false statement of fact.
23 (Section 6068(d).)

24 **3. Case No. 02-O-14795 (The Camargo Matter)**

25 On February 20, 2002, Terry McDuffee (Terry), Cecilia McDuffee (Cecilia) and Pedro
26 Camargo (Camargo) had an initial meeting to seek assistance from Respondent to help Camargo to
27 stay in the United States after he received a 30 day notice to leave from the INS. Respondent assured
28 Camargo that he was "obviously eligible for an H-1B Visa" and that he would not take the case

1 unless he could obtain the visa within the 30-day deadline.

2 On February 25, the parties met again. Camargo hired Respondent and signed a retainer
3 agreement. At that meeting, Terry and Cecilia paid Respondent \$1,250 in advanced legal fees by
4 personal check toward the total legal fees of \$2,500. Camargo had also paid Respondent \$25 as a
5 consultation fee. The remainder was to be paid upon completion of the paperwork required for the
6 H-1B Visa. Terry and Cecilia also gave Respondent \$2,130 by cashier's check payable to the INS
7 for costs. Respondent then gave them the forms that had to be filled out by Camargo and the
8 YMCA, Camargo's sponsor. Camargo returned the completed forms that day to Respondent's
9 office. Camargo informed Respondent's office staff that the YMCA Director was leaving town on
10 February 27, 2002.

11 On February 26, Cecilia returned to Respondent's office to pick up the completed paperwork
12 to take to the YMCA for the Director to sign. The paperwork was not completed and Respondent
13 told Cecilia to leave.

14 On February 27, Cecilia and Camargo returned to Respondent's office to pick up the
15 completed paperwork. After proof-reading by Cecilia and Camargo and many revisions by the
16 office, Cecilia and Camargo were able to take the paperwork to the YMCA Director for his
17 signature. Cecilia and Camargo then took the paperwork back to Respondent's office. Respondent
18 told them that a cover letter to the INS would be prepared.

19 On February 28, Camargo returned to Respondent's office to pick up the cover letter to be
20 delivered to the INS with the completed paperwork. The cover letter was not ready that day.

21 On March 1, Camargo again returned to Respondent's office to pick up the cover letter for
22 the INS. Respondent informed Camargo that, in his opinion, Camargo did not qualify for an H-1B
23 Visa and Respondent would not submit the application.

24 By informing Camargo that he would not be filing the H-1B Visa Application in his matter,
25 Respondent terminated his employment with Camargo.

26 On March 8, Terry, McDuffee and Camargo wrote to Respondent, demanding an accounting
27 and a refund of the \$1,250 fees paid to him.

28 On March 11, Respondent refunded \$650 to Camargo, charging two hours of work at the rate

1 of \$300 per hour, without any explanation of how the two hours were spent. Respondent returned
2 the \$2,130 money order made payable to the INS for costs.

3 **a. Count 10: Failure to Perform Competently (Rule 3-110(A))**

4 While Respondent and his office failed to adequately perform certain services (i.e., complete
5 certain paperwork and prepare a cover letter to the INS) during the four days of employment from
6 February 25 through March 1, 2002 before Respondent withdrew from employment on March 1,
7 there is no clear and convincing evidence that Respondent failed to competently perform services.
8 Respondent's paperwork was sloppy and untimely, but it did not rise to the level of intentional,
9 reckless or repeated failure to perform services with competence in violation of rule 3-110(A).

10 **b. Count 11: Improper Withdrawal from Employment (Rule 3-700(A)(2))**

11 Because time was of the essence and there was no change of circumstances between their
12 initial meeting on February 20 and a week later when Respondent decided that Camargo was not
13 eligible to apply for an H-1B visa, Respondent's failure to provide services constituted an effective
14 withdrawal even if Respondent's period of inaction was relatively brief. He was fully aware that the
15 matter was urgent.

16 Respondent argues that he withdrew from employment because he had determined that
17 Camargo's case was not viable. But Respondent knew or should have known whether the case was
18 valid at their initial meeting and not a week later. He had assured Camargo that he would not have
19 taken the case unless he could handle it.

20 In fact, Respondent withdrew because Camargo was persistent in wanting to obtain proper
21 legal services and had pointed out Respondent's repeated errors in the documentation. Rather than
22 meeting the challenge of providing competent services, Respondent did not want to be bothered with
23 persistent clients. He had a fiduciary obligation to Camargo to complete the services for which he
24 was obtained and Camargo had relied on that promise. Instead, Respondent abruptly ended his
25 representation without taking adequate steps to protect his client's interest. He, therefore, improperly
26 withdrew from employment without taking any steps to avoid foreseeable prejudice to the rights of
27 Camargo in wilful violation of rule 3-700(A)(2). Camargo had to immediately search for another
28 attorney.

1 **c. Count 12: Failure to Return Unearned Fees (Rule 3-700(D)(2))**

2 Respondent argues that he was entitled to charge and keep \$600 of the \$1,250 fees advanced
3 for two hours supposedly spent on the case.

4 Attorney John Nelson, an immigration law expert, testified that Respondent knew or should
5 have known immediately that Camargo as a personal trainer would not be eligible for an H-1B visa
6 because the visa is mainly offered to those with professional qualifications and a college degree. At
7 their initial meeting, Camargo had already paid Respondent a consulting fee of \$25. Thus, the
8 alleged two hours was excessive and unnecessary. Since the retainer agreement was for Respondent
9 to represent his client regarding the H-1B visa and Respondent had withdrawn from employment
10 without providing any services of benefit to Camargo, his client is entitled to a full refund of the
11 \$1,250 fees paid and not just \$650. Therefore, Respondent's failure to return the unearned advance
12 fee of \$600 was a wilful violation of rule 3-700(D)(2).

13 **d. Count 13: Failure to Render Accounting (Rule 4-100(B)(3))**

14 Rule 4-100(B)(3) provides that an attorney shall maintain records of all funds of a client in
15 his possession and render appropriate accounts to the client.

16 Despite the client's request that Respondent provide an accounting of the \$600 he had
17 charged, Respondent never sent him an accounting. Respondent's failure to do so was a clear and
18 wilful violation of rule 4-100(B)(3).

19 **4. Case No. 02-O-15521(The Mejia Matter)**

20 On August 10, 1999, Jesus Mejia (Mejia) met with Respondent to discuss his options in
21 legalizing his status in the United States. Respondent informed Mejia that since he had been in the
22 United States since 1988, he could seek to legalize his status based upon his continued residency in
23 the United States for over ten years. Mejia agreed to employ Respondent and pay Respondent a total
24 of \$3,500 plus costs.

25 Mejia and Respondent signed a Fixed Fee Agreement; Respondent agreed to represent
26 Mejia's interest regarding "10-Year Packet-INA 240A." At that meeting, pursuant to the fee
27 agreement, Mejia paid \$750 to Respondent, with the remainder to be paid on a monthly basis. Mejia
28 also submitted documentation regarding his residency in the United States that Respondent

1 requested.

2 Pursuant to the fee agreement, Mejia made 10 monthly payments of \$275 to Respondent from
3 September 1999 through June 2000. Mejia paid a total of \$3,500 to Respondent.

4 On June 12, 2000, Respondent filed Mejia's Application for Asylum with the INS under
5 Mejia's name in pro. per. Although he represented Mejia at the time, Respondent did not file Form
6 EOIR-28 (Notice of Entry of Appearance as Attorney or Representative) before the Immigration
7 Court. Mejia is a Mexican national and likely was not eligible for Asylum with the INS as a way of
8 legalizing his status.

9 On March 29, 2001, Mejia was notified by the INS that his asylum application was denied
10 and that he was to appear at a Removal Hearing in Immigration Court on April 18, 2001.

11 On April 19, 2001, Respondent filed the INS Form EOIR-28, informing the Immigration
12 Court that he represented Mejia. Respondent was personally served with notice that the removal
13 hearing was to be held on July 25, 2003, and that the INS form EOIR-42B Application was due to
14 be filed by July 17, 2001.

15 On July 25, 2001, Respondent filed the INS Form EOIR-42B on behalf of Mejia which
16 included documentation Respondent requested from Mejia to help validate his claim of ten years of
17 residency in the United States.

18 On August 5, 2002, Respondent filed with the Immigration Court and served on Mejia a
19 Motion to Withdraw Representation as Attorney, which was similar to the motion to withdraw filed
20 in the Gonzalez matter above. Respondent represented to the Immigration Court:

21 A conflict of interest has arisen between this office and [Mejia]... I
22 have requested of [Mejia] documents to establish his claims for
23 continuous physical presence, exceptional and extremely unusual
24 hardship, and good moral character. The enclosed documents are all
25 that he has provided me. Without additional documents, I cannot in
26 good conscience represent [Mejia] before this Honorable Court.

27 The motion was granted on August 12, 2002.

28 Mejia testified that Respondent never informed him that Respondent was going to request
a political asylum on his behalf or asked Mejia for documents to demonstrate extremely unusual
hardship and good moral character. Mejia further testified that he was never aware of any conflict

1 between Respondent and himself and that he had provided all requested documents to Respondent.
2 Mejia testified that he was always accessible and willing to cooperate, but Respondent never asked
3 him about any documents. He signed the asylum application only because Respondent asked him
4 to and he had trusted Respondent. Respondent also never advised Mejia to seek other counsel. Mejia
5 finally had to hire another attorney to assist him.

6 On January 1, 2003, Mejia wrote to Respondent requesting a refund of the unearned portion
7 of fees paid. To date, Respondent has not refunded any funds paid by Mejia.

8 **a. Count 14: Failure to Perform Competently (Rule 3-110(A))**

9 Respondent knew that Mejia, as a Mexican national, would not be eligible for asylum and
10 yet, he filed an asylum application without any supporting facts or documentation. As in the
11 Gonzalez matter, the application appears to be frivolous. (8 C.F.R. 208.7.) Respondent's
12 misconduct was an intentional and reckless failure to perform services with competence in wilful
13 violation of rule 3-110(A).

14 **b. Count 7: Failure to Communicate (Section 6068(m))**

15 By failing to inform Mejia that he was filing an asylum application on his behalf and that he
16 was withdrawing as attorney of record before filing the motion, Respondent failed to keep a client
17 reasonably informed of significant developments in a matter in which Respondent had agreed to
18 provide legal services in wilful violation of section 6068(m).

19 **c. Count 8: Failure to Return Unearned Fees (Rule 3-700(D)(2))**

20 Because Respondent had filed the application with no good cause, he subjected Mejia to
21 removal proceedings and deportation. By withdrawing from Mejia's matter before completing the
22 legal services for which he was hired and placing Mejia in a worse status than when he retained
23 Respondent, Respondent did not earn any portion of the fees advanced by Mejia. Since Respondent
24 failed to perform any legal services that are of any benefit to Mejia and his employment had
25 terminated, Respondent wilfully violated rule 3-700(D)(2) by failing to return any unearned portion
26 of the \$3,500 fees paid by Mejia.

27 **d. Count 9: Moral Turpitude (Section 6106)**

28 The court rejects Respondent's assertions that Mejia had failed to provide sufficient

1 documentation and that Respondent had properly withdrawn from representation. The court finds
2 Mejia's testimony to be credible and that he had provided all requested documents to Respondent.

3 Therefore, by misrepresenting to the Immigration Court that Mejia was uncooperative in
4 providing documents as ground for his withdrawal as attorney of record and that he could not "in
5 good conscience represent [Mejia] before this Honorable Court," Respondent committed an act of
6 moral turpitude and dishonesty in wilful violation of section 6106. He had a duty to employ those
7 means only as are consistent with truth and never mislead the judge by a false statement of fact.
8 (Section 6068(d).)

9 **E. Fourth Notice of Disciplinary Charges**

10 **1. Case No. 03-O-00380 (The Arias-Lopez Matter)**

11 On January 24, 2001, Gonzalo Arias-Lopez (Arias-Lopez) met with Respondent to discuss
12 his options in legalizing his status in the United States. Respondent informed Arias-Lopez that since
13 he had been in the United States since 1990, he could seek to legalize his status based upon his
14 continued residency in the United State for over ten years. Arias-Lopez agreed to employ
15 Respondent and agreed to pay Respondent \$5,000 plus costs. At that meeting, pursuant to the fee
16 agreement, Arias-Lopez paid \$1,000 to Respondent, with the remainder to be paid on a monthly
17 basis. Arias-Lopez also submitted documentation regarding his residency in the United States that
18 Respondent informed his was necessary for his legalization.

19 Pursuant to the fee agreement, on March 20, 2001, Arias-Lopez paid Respondent an
20 additional \$670. On August 9, 2001, Arias-Lopez paid Respondent an additional \$750. On October
21 17, 2001, Arias-Lopez paid Respondent an additional \$670. On March 8, 2002, Arias-Lopez paid
22 Respondent an additional \$650. On August 5, 2002, Arias-Lopez paid Respondent an additional
23 \$250. On September, 2002, Arias-Lopez paid Respondent an additional \$650.

24 Arias-Lopez testified that he had paid Respondent \$5,000 by 2002, and thereafter, additional
25 funds totaling \$6,300.

26 On April 4, 2001, Respondent filed Arias-Lopez's Application for Asylum with the INS
27 under Arias-Lopez's name in pro. per. Although he represented Arias-Lopez at the time, Respondent
28 did not file Form EOIR-28 (Notice of Entry of Appearance as Attorney or Representative) before

1 the Immigration Court. Arias-Lopez is a Mexican national and was likely not eligible for asylum
2 with the INS as a way of legalizing his status. Respondent had never discussed political asylum or
3 removal with Arias-Lopez. Respondent simply assured him that everything was going to work out.

4 On May 29, 2001, Arias-Lopez was notified by the INS that his asylum application was
5 denied and that he was to appear at a Removal Hearing in Immigration Court on July 13, 2001.

6 On July 13, 2001, Respondent filed the INS Form EOIR-28, informing the Immigration Court
7 that he represented Arias-Lopez. Respondent was personally served with the notice that the removal
8 hearing was to be held on March 19, 2003, and that the INS Form EOIR-42B Application was to be
9 filed before that hearing date.

10 On October 5, 2001, Respondent filed the INS Form EOIR-42B on behalf of Arias-Lopez,
11 which included documentation Respondent requested from Arias-Lopez to help validate his claim
12 of ten years of residency in the United States.

13 On August 6, 2002, Respondent filed a Motion to Withdraw Representation as Attorney with
14 the Immigration Court, which was similar to the motions to withdraw filed in the Gonzalez and
15 Mejia matters above. Respondent represented to the Immigration Court:

16 A conflict of interest has arisen between this office and [Arias-
17 Lopez]... [Arias- Lopez has] continually failed to provide requested
18 and necessary information. I cannot in good conscience continue to
represent [Arias- Lopez] under these conditions.

19 On August 8, 2002, Respondent served Arias-Lopez with his motion to withdraw. The
20 motion was granted on August 15, 2002. On August 27, 2002, Respondent sent a letter to Arias-
21 Lopez informing him that the Immigration Court had granted Respondent's motion and that
22 Respondent no longer represented him. Arias- Lopez was not aware of any additional documents
23 requested by Respondent or his office.

24 To date, Respondent has not refunded any unearned portion of the funds paid by Arias-Lopez.

25 ***a. Count 1: Failure to Perform Competently (Rule 3-110(A))***

26 Respondent knew that Arias-Lopez, as a Mexican national, would not be eligible for asylum
27 and yet, he filed an asylum application without any supporting facts or documentation. As in the
28 Gonzalez and Mejia matters, the application appears to be frivolous. (8 C.F.R. 208.7.) Respondent's

1 misconduct was an intentional and reckless failure to perform services with competence in wilful
2 violation of rule 3-110(A).

3 **b. Count 7: Failure to Communicate (Section 6068(m))**

4 By failing to inform Arias-Lopez that he was filing an asylum application on his behalf and
5 that he was withdrawing as attorney of record before filing the motion, Respondent failed to keep
6 a client reasonably informed of significant developments in a matter in which Respondent had agreed
7 to provide legal services in wilful violation of section 6068(m).

8 **c. Count 8: Failure to Return Unearned Fees (Rule 3-700(D)(2))**

9 Because Respondent had filed an unfounded application, he subjected Arias-Lopez to
10 removal proceedings. By withdrawing from Arias-Lopez's matter before completing the legal
11 services for which he was hired and placing Arias-Lopez in a worse status than when he retained
12 Respondent, Respondent did not earn any portion of the fees advanced by Arias-Lopez. Since
13 Respondent failed to perform any legal services that are of any benefit to Arias-Lopez and his
14 employment had terminated, he was required to refund the unearned fees. Therefore, Respondent
15 wilfully violated rule 3-700(D)(2) by failing to return any unearned portion of the \$6,300 fees paid
16 by Arias-Lopez.

17 **d. Count 9: Moral Turpitude (Section 6106)**

18 The court rejects Respondent's contention that because Arias-Lopez failed to bring his
19 account current and failed to provide additional documentation, he was forced to withdraw from
20 representation. In fact, Arias-Lopez had paid Respondent \$6,300, more than the agreed fee of \$5,000
21 and was not aware of any additional documents requested by Respondent or his office.

22 By misrepresenting to the Immigration Court that Arias-Lopez was uncooperative in
23 providing documents as ground for his withdrawal as attorney of record and that he could not "in
24 good conscience continue to represent [Arias- Lopez] under these conditions," Respondent
25 committed an act of moral turpitude and dishonesty in wilful violation of section 6106. He had a
26 duty to employ those means only as are consistent with truth and never mislead the judge by a false
27 statement of fact. (Section 6068(d).)

28 ///

1 **IV. Mitigating and Aggravating Circumstances**

2 **A. Mitigation**

3 Respondent bears the burden of proving mitigating circumstances by clear and convincing
4 evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std.
5 1.2(e).)⁶ There is no compelling mitigating evidence.

6 Respondent's lack of prior disciplinary record is not considered as mitigation because his
7 misconduct began in 1998, a few months after he was admitted in 1997. (Std. 1.2(e)(i).)

8 Respondent offered four character witnesses who attested to his good moral character and
9 lawyering skills. (Standard 1.2(e)(vi).) The witnesses included one client and three people whom
10 he has business dealings with – a chiropractor, a clinical psychologist and an attorney/business
11 partner. Respondent's character evidence does not amount to a showing of extraordinary
12 demonstration of good character and therefore, does not merit significant weight. (*In the Matter of*
13 *Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153 [testimony of three character witnesses
14 was not entitled to significant weight in mitigation since it was not an extraordinary demonstration
15 of good character attested to by a wide range of references].)

16 Respondent cooperated with the State Bar by entering into a partial stipulations of facts and
17 conclusions of law. (Std. 1.2(e)(v).)

18 **B. Aggravation**

19 There are several aggravating factors. (Std. 1.2(b).)

20 Respondent committed multiple acts of wrongdoing, including limiting liability to a client,
21 sharing legal fees with a non-lawyer, aiding another in the unauthorized practice of law, improper
22 withdrawal from employment, failing to perform services, failing to communicate, failing to return
23 unearned fees of more than \$19,000, failing to render an accounting, failing to maintain client funds
24 and committing acts of moral turpitude, dishonesty or corruption. (Std. 1.2(b)(ii).)

25 Respondent's misconduct in Gonzalez, Mejia and Arias-Lopez matters are so similar that
26 they border on demonstrating a pattern of misconduct. He repeatedly failed to inform them that he

27
28

⁶All further references to standards are to this source.

1 was filing an asylum application on their behalf, filed such an application without good cause,
2 withdrew from employment and abandoned these clients without properly informing them, and
3 misrepresenting to the Immigration Court that these clients forced him to withdraw as attorney of
4 record. Although Respondent testified to a current caseload of about 600-800 cases, the court cannot
5 conclude that a pattern of misconduct exists absent additional clear and convincing evidence.

6 Respondent's former secretary, Wendy Olvera, who had worked for Respondent for about
7 two years, testified that Respondent instructed her and other employees to routinely complete asylum
8 applications for clients without any grounds. When the applications were being rejected and a
9 Nevada attorney advised them that certain people were not entitled to asylum, like people from
10 Mexico, Olvera told Respondent about her concerns. He did not change their instructions. She
11 further testified that based on what she saw in the office, Respondent was not an honest person and
12 was not to be trusted. One of the reasons Olvera left was that she had to lie to clients about what
13 Respondent was doing and she was becoming more and more frustrated.

14 Harlan Jefferson, Respondent's former office manager for about two years, testified that
15 Respondent instructed him how to handle complaining clients. If they would not leave the office,
16 he would tell them that he would call the police. He had told numerous clients who were very upset
17 and demanded to see Respondent that he would call the police. He was also instructed to inform
18 clients that Bokhari was an attorney specializing in labor certification. Jefferson also prepared
19 asylum applications.

20 Respondent's misconduct was clearly surrounded by bad faith, dishonesty, concealment, and
21 overreaching. (Std. 1.2(b)(iii).) A month after he had reassured Cabello-Perez that he was actively
22 working on his appeal, the appeal was dismissed for his failure to file the brief. Respondent
23 repeatedly convinced his clients that he would not take their cases unless he was confident that he
24 could obtain the appropriate visas on their behalf. And then he turned around and abandoned them.
25 He represented to the Immigration Court that "in good conscience" he could no longer represent his
26 clients (Gonzalez, Mejia and Arias-Lopez) because they had failed to provide him with adequate
27 documents to proceed with their cases when in fact, they had given him all that he had requested.

28 Respondent knew it was wrong to share legal fees with non-lawyers in at least 20 cases, but

1 to him, he likened the act to “a speeding ticket” rather than a “manslaughter.” He knew Bokhari was
2 not a California lawyer but he allowed Bokhari’s name to be on his stationery, business cards,
3 retainer agreement and website. Respondent filed a police report alleging that Bokhari had falsified
4 the letterhead when he knew or should have known that “Law Offices of Mason & Bokhari” was on
5 the letterhead.

6 On the website, Respondent failed to include a statement that all the services relating to
7 immigration and naturalization provided by the office shall be provided by “an active member of the
8 State Bar or by a person under the supervision of an active member of the State Bar.” (Section
9 6157.5.) Such omission is a violation of section 6157.5, an uncharged violation.

10 In Respondent’s billing statements to his clients, including Arias-Lopez, Mejia, and Cabello-
11 Perez, he would charge them “maintenance fees” without any justification and claim that their
12 accounts were overdue. For example, the July 2002 statements in the Mejia and Cabello-Perez
13 matters and the October 2002 statement in the Arias-Lopez matter read:

14 “According to our records your account is seriously past. Unless we
15 receive payment in full we will be forced to withdraw from your
case.”

16 There was no past due payment. Such billing was surrounded by overreaching.

17 Respondent’s request that Cabello-Perez withdraw his complaint against him with the State
18 Bar in exchange for Respondent’s services to correct an error was surrounded by bad faith and is in
19 violation of section 6090.5, an uncharged violation.

20 Furthermore, Respondent concealed from the Immigration Court when he filed the in pro.
21 per. asylum applications that he was actually filing them on behalf of his clients. And he failed to
22 fully inform his clients that he was submitting these asylum applications and that there were
23 potentially grave risks involved, i.e., deportation.

24 Respondent’s misconduct caused his clients substantial harm. (Std. 1.2(b)(iv).)
25 Respondent’s failure to file the appeal brief caused Cabello-Perez’s case to be dismissed.

26 Respondent’s filing of the unfounded asylum applications in the Gonzalez, Mejia and Arias-
27 Lopez matters subjected them to removal proceedings – which could have resulted in devastating
28 and irreversible harm. “Deportation is often tantamount to exile, with consequences which affect

1 family members as well as the individual himself. In the worst case, inappropriate deportation can
2 lead to incarceration, torture, or death at the hands of a prosecutorial government from which the
3 consumer sought refuge. . . . To the layman or [even the] untrained attorney, immigration forms may
4 appear to be simple biographic questionnaires; however the implications and possible pitfalls from
5 their use or misuse are abundant...[citation].” (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal.
6 State Bar Ct. Rptr. 498, 555.)

7 Moreover, Respondent’s reckless performance of services caused his clients severe financial
8 hardships with no apparent value. They had to appear at deportation hearings and hire new counsel
9 to have their cases reopened which caused substantial delay and possibly forfeiture of their rights,
10 not to mention the personal devastation and stress involved.

11 Respondent’s misconduct also caused harm to the administration of justice by wasting the
12 INS resources to address his frivolous asylum applications, removal hearings and motions to
13 withdraw as attorney of record. Finally, Respondent’s misconduct caused significant harm to the
14 public as the clients testified to their poor opinion of the legal profession after their experience with
15 Respondent.

16 Respondent demonstrated indifference toward rectification of or atonement for the
17 consequences of his misconduct. (Std. 1.2(b)(v).) He has yet to reimburse his six clients of more
18 than \$19,000 in unearned fees although he admitted that some were due. Respondent does not
19 comprehend the wrongfulness of his misconduct and maintains that filing an asylum application
20 without any ground is not fraudulent. He attributes the mishandling of cases to his office staff’s
21 incompetence. It is well settled that an attorney’s fiduciary duty owed to his clients is nondelegable.
22 “While an attorney cannot be held responsible for every event which takes place in his or her office,
23 he or she does have a duty to reasonably supervise staff, both by taking steps to guide employees and
24 by reviewing client files to determine whether staff work has been appropriate. (*In the Matter of*
25 *Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 681-682.)” (*In the Matter of Phillips*
26 (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 336.)

27 ///

28 ///

1 **V. Discussion**

2 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect
3 the public, to preserve public confidence in the profession and to maintain the highest possible
4 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v.*
5 *State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

6 This case involves egregious misconduct that spanned a period of at least five years that
7 began shortly after Respondent's admission to the bar – splitting fees with non-lawyers, aiding
8 another in the unauthorized practice of law, making false statements to the Immigration Court, and
9 recklessly failing to perform services and intentionally abandoning his clients. He took advantage
10 of unsuspecting people, especially Mexican nationals, who trusted Respondent and paid him
11 significant attorney fees despite financial hardships to handle their immigration cases.

12 The standards for Respondent's misconduct provide a broad range of sanctions ranging from
13 reproof to disbarment, depending upon the gravity of the offenses and the harm to the client.
14 (Stds. 1.6, 2.2(b), 2.3, 2.4(b), 2.6, and 2.10.) The standards, however, are only guidelines and do not
15 mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State
16 Bar Ct. Rptr. 245, 250-251.) “[E]ach case must be resolved on its own particular facts and not by
17 application of rigid standards.” (*Id.* at p. 251.)

18 Standard 2.3 provides that culpability of moral turpitude and intentional dishonesty toward
19 a court or a client shall result in actual suspension or disbarment.

20 Respondent argues that he has made some serious mistakes but that he did not frivolously
21 represent certain immigration clients and that a moderate period of actual suspension would be a
22 sufficient level of discipline. He further contends that his fee splitting with non-lawyers involved
23 only a handful of cases, that Respondent was ignorant of Bokhari's unauthorized practice of law and
24 that he never abdicated his responsibilities to others.

25 The State Bar urges disbarment, citing several supporting cases, including *In the Matter of*
26 *Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, *In the Matter of Gadda* (Review Dept.
27 2002) 4 Cal. State Bar Ct. Rptr. 416, and *In the Matter of Valinoti, supra*, 4 Cal. State Bar Ct. Rptr.
28 498.

1 The court finds these cases and *Cannon v. State Bar* (1990) 51 Cal.3d 1103 to be instructive.

2 In *Gadda*, the attorney was disbarred for his misconduct in nine immigration client matters
3 for five years, including failure to perform services, failure to return unearned fees, failure to
4 communicate with clients, and commingling. He had been previously disciplined once for the same
5 type of misconduct and apparently did not learn from his prior discipline.

6 In *Valinoti*, the attorney was suspended for five years, stayed, and placed on probation for
7 five years with an actual suspension of three years for his misconduct in nine immigration client
8 matters. Even though he had no prior record, his misconduct was excessive and repeated during a
9 period of more than two years, which included the failure to perform, client abandonments, acts of
10 moral turpitude, aiding and abetting nonattorneys in the unauthorized practice of law, failure to
11 properly manage his office, misrepresentations to the State Bar, and lack of remorse.

12 In *Cannon v. State Bar, supra*, 51 Cal.3d 1103, the Supreme Court found disbarment to be
13 appropriate for an immigration attorney's multiple instances of misconduct involving moral turpitude
14 in five matters, i.e., repeatedly refusing to return unearned fees even after clients obtained arbitration
15 awards and judgments against him, failing to perform services, issuing checks against insufficient
16 funds and failing to communicate with clients. He had been in practice only six years before his first
17 act of misconduct. Like Respondent, the attorney did not obtain a visa for his client as promised and
18 blamed his client for failure to supply necessary documents and information. Like Respondent, the
19 attorney failed to return unearned fees even though he knew he had to reimburse his clients. But
20 unlike Respondent, the attorney in *Cannon* was not fluent in Spanish and had to rely heavily on his
21 staff to take calls and process incoming mail. There was no evidence in mitigation or aggravation.
22 The Supreme Court concluded that a suspension would afford insufficient protection to the public
23 and to the profession, and that disbarment was warranted. (*Id.* at p. 1115.)

24 In *Phillips*, the attorney was disbarred for his misconduct involving five client matters and
25 two non-client matters in nearly four years. His misconduct included charging an illegal fee, failing
26 to return client file, sharing legal fees with a nonlawyer, forming a law partnership with a nonlawyer,
27 failing to perform services, failing to refund unearned fee, failing to render an accounting and
28 solicitation. Like Respondent, the attorney began to commit professional misconduct soon after he

1 was admitted to practice and the misconduct was surrounded by little evidence in mitigation, but
2 significant evidence in aggravation.

3 In recommending Respondent's discipline, the court finds Respondent's misconduct and
4 aggravating factors to be very similar to that of the attorneys in *Gadda, Valinoti, Cannon, and*
5 *Phillips*. Respondent's misconduct reflects a blatant disregard of professional responsibilities. He
6 had flagrantly breached his fiduciary duties to his clients and abused their trust as their attorney.
7 Many of his clients are Mexican nationals who are not fluent in English and they believed
8 Respondent when he told them that he could handle their immigration matters. Instead, he had
9 jeopardized their stay in the United States by offering them to the INS for removal proceedings.
10 Respondent considers this type of practice as a legitimate strategy and justifies it as a common
11 practice among immigration attorneys. However, attorney Nelson contradicted the intelligence of
12 such a practice and believes that it is detrimental rather than beneficial to these clients, posing
13 substantial risks to their deportations with serious consequences. "Asylum cases are probably the
14 most sensitive cases that the field of immigration deals with. They are like death penalty cases."
15 (*Gadda v. State Bar* (1990) 50 Cal.3d 344, 354-355.) Respondent would then unilaterally withdraw
16 as their attorney before they have had their hearing and lied to the Immigration Court that "in good
17 conscience" he could not represent clients who failed to supply him with documents.

18 Furthermore, Respondent rationalizes his fee splitting with nonlawyers as a speeding ticket,
19 albeit unethical. To him, this was again a common practice and therefore, it was justified and
20 harmless. To further aggravate his misconduct, he told the State Bar that John Savage was not an
21 employee but omitted the important aspect of his fee sharing relationship with Savage.

22 The court is particularly troubled by Respondent's lack of recognition of his wrongdoing.
23 Although he admitted to certain violations of the Rules of Professional Conduct and acknowledges
24 that he should be placed on actual suspension from the practice of law for a period of time, his lack
25 of candor and remorsefulness demonstrate the need for Respondent to rehabilitate and take the legal
26 profession more seriously, and not just a mechanism to make quick money on vulnerable clients.
27 The public would be at great risk unless Respondent was required to successfully complete a
28 reinstatement proceeding before again being allowed to practice law in this state. (See *In the Matter*

1 of *Priamos* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 824.)

2 It is settled that an attorney-client relationship is of the highest fiduciary character and always
3 requires utmost fidelity and fair dealing on the part of the attorney. (*Beery v. State Bar* (1987) 43
4 Cal.3d 802, 813.) The Supreme Court noted that “[t]he essence of a fiduciary or confidential
5 relationship is that the parties do not deal on equal terms, because the person in whom trust and
6 confidence is reposed and who accepts that trust and confidence is in a superior position to exert
7 unique influence over the dependent party.” (*Id.*)

8 The enormous harm to clients weighs heavily in assessing the appropriate level of discipline.
9 Respondent recklessly and frivolously filed asylum applications, failed to submit an appeal brief,
10 shared legal fees with nonlawyers, misled his clients and the public that his employees were lawyers,
11 abruptly abandoned his clients without cause, overcharged clients, and failed to reimburse more than
12 \$19,000 in unearned fees to clients.

13 In recommending discipline, the “paramount concern is protection of the public, the courts
14 and the integrity of the legal profession.” (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) “It is clear
15 that disbarment is not reserved just for attorneys with prior disciplinary records. [Citations.] A most
16 significant factor . . . is respondent’s complete lack of insight, recognition, or remorse for any of
17 his wrongdoing.” (*In the Matter of Wyshak* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 70, 83.)
18 An attorney’s failure to accept responsibility for actions which are wrong or to understand that
19 wrongfulness is considered an aggravating factor. (*Carter v. State Bar* (1988) 44 Cal.3d 1091, 1100-
20 1101.) There is a great likelihood that Respondent will engage in misconduct in the future.

21 Respondent “is not entitled to be recommended to the public as a person worthy of trust, and
22 accordingly not entitled to continue to practice law.” (*Resner v. State Bar* (1960) 53 Cal.2d 605,
23 615.) Therefore, based on the severity of the offenses, the serious aggravating circumstances and
24 the lack of mitigating factors, the court recommends disbarment.

25 VI. RECOMMENDED DISCIPLINE

26 This court recommends that Respondent **TIMOTHY P. MASON** be disbarred from the
27 practice of law in the State of California and that his name be stricken from the rolls of attorneys in
28 this State.

1 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
2 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
3 effective date of its order imposing discipline in this matter.

4 **VII. COSTS**

5 The court recommends that costs be awarded to the State Bar pursuant to Business and
6 Professions Code section 6086.10 and payable in accordance with Business and Professions Code
7 section 6140.7.

8 **VIII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

9 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
10 to Business and Professions Code section 6007(c)(4) and rule 220(c) of the Rules of Procedure of
11 the State Bar. The inactive enrollment shall become effective three calendar days after service of
12 this order.

13
14
15
16 Date: April 6, 2004


JOANN M. REMKE
State Bar Court Judge

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 San Francisco, on April 6, 2004, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

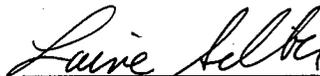
- [X] by certified mail, No. 71603901984838140002, with return receipt requested, through the United States Postal Service at San Francisco, California, addressed as follows:

ROBERT GERALD MARKLE
1114 FREMONT AVE
SOUTH PASADENA CA 91030

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

TERRIE GOLDADE, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **April 6, 2004.**



Laine Silber
Case Administrator
State Bar Court