PUBLIC MATTER

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THE STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of **STEVEN G. HANSON,** **Member No. 146418,** A Member of the State Bar.	**Case Nos. 01-O-04659-PEM; 01-O-05257; 02-O-10348; 02-O-13676** **DECISION**

I. Introduction

In this default matter, respondent **STEVEN G. HANSON** is charged with professional misconduct in four client matters. The court finds, by clear and convincing evidence, that respondent failed to avoid the acquisition of interests adverse to his clients, failed to perform services competently, failed to deposit client funds in a trust account, failed to notify a client of receipt of client funds, failed to render accountings of client funds, failed to release a client file, committed acts of moral turpitude, failed to communicate, and failed to return unearned fees.

In view of the respondent's misconduct and the evidence in aggravation and mitigation, the court recommends, among other things, that respondent be suspended from the practice of law for three years, that execution of suspension be stayed, and that respondent be actually suspended from the practice of law for two years and until he proves rehabilitation and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205.)

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II. Pertinent Procedural History

This proceeding was initiated by the filing of a Notice of Disciplinary Charges (NDC) by the Office of Chief Trial Counsel of the State Bar of California (State Bar) on October 27, 2004.

Thereafter, respondent sporadically participated in these proceedings.

The respondent filed his "Response to Notice of Disciplinary Charges Without Waiver" (Response) on February 10, 2005.

On March 25, 2005, the court issued its "Order On State Bar's Motion to Strike Respondent's Answer" in which it ordered, in part, that respondent file with the court and serve on the State Bar a first amended response.

Respondent did not appear at the April 8, 2005 settlement conference, nor did he contact the court or submit a settlement conference statement. But, he did file an "Answer to Complaint" on April 8, 2005.

Both respondent and the Deputy Trial Counsel for the State Bar (DTC) appeared telephonically at a May 9, 2005 status conference. The court issued a Status Conference Order filed on May 9, 2005, in which a trial was set for August 23-26, 2005. The court also ordered that the parties personally attend the pretrial conference set for August 8, 2005.

On August 8, 2005, respondent did not appear for the pre-trial conference.

Respondent also twice failed to appear for his deposition. On motion of the State Bar, the court filed its "Order Granting Terminating Sanctions; Entering Default; Enrolling Inactive; and Further Orders" on August 8, 2005. Respondent's answer to the NDC was stricken, respondent's default was entered, and respondent was enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007(e).[1]

The State Bar's Brief on Culpability and Discipline was filed on August 15, 2005.

The matter was taken under submission without a hearing on August 29, 2005.

On October 3, 2005, respondent filed a motion to set aside the entry of his default and to terminate his inactive enrollment. On October 20, 2005, the court denied the request to set aside the

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[1]References to section are to the Business and Professions Code, unless otherwise noted.

default, but granted the request to terminate his inactive enrollment.

Accordingly, this matter proceeded by default.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on June 13, 1990, and has since been a member of the State Bar of California.

B. The Nelson Matter (Case No. 01-O-05257)

In or about September 1998, Kimberly Nelson (Nelson) hired respondent to represent her in a medical malpractice action.

On or about September 23, 1998, respondent filed an ex parte application with the Siskiyou County Superior Court, seeking to amend Nelson's previously filed complaint and seeking reconsideration of an order granting a demurrer. On or about September 28, 1998, the court set a hearing on the matter for October 19, 1998, and required that all moving documents and amended pleadings be mailed no later than October 2, 1998.

On or about October 2, 1998, respondent and Nelson entered into a written fee agreement whereby Nelson paid respondent $1,000 in cash as a non-refundable deposit and gave respondent a silver flute to hold in trust as further deposit towards legal fees and costs. At no time, however, did respondent advise Nelson in writing that she may seek the advice of an independent lawyer of her choice regarding respondent's possessory and security interest in the flute, nor did respondent provide Nelson with a reasonable opportunity to seek such advice.

On or about October 5, 1998, the parties were scheduled to attend a status conference. Respondent failed to appear at the status conference. At no time did respondent reset the status conference. Thereafter, the court ordered respondent to review the Siskiyou County Uniform Rules regarding appearances at status and case management conferences, and warned respondent that it would consider ordering sanctions for future non-compliance.

On or about October 14, 1998, respondent filed Nelson's affidavit detailing the basis for her motion for reconsideration. Respondent, however, failed to obtain Nelson's signature on the affidavit prior to its filing. Thereafter, the court denied Nelson's motion for reconsideration.

Between October 1998 and January 1999, respondent offered to appeal the court's denial of Nelson's motion for reconsideration for an additional $2,000 in fees. Nelson accepted respondent's offer to represent her on appeal. She delivered a piano, then valued at between $2,000 and $3,000, as security for paying $2,000 in cash at a later date to respondent.

At no time did respondent enter into a written agreement with Nelson with regard to representing her on appeal. Nor did respondent fully disclose in writing the terms of the transaction regarding the piano. At no time did respondent advise Nelson in writing that she may seek the advice of an independent lawyer of her choice regrading respondent's proposed possessory and security interest in Nelson's piano. At no time did respondent give Nelson a reasonable opportunity to seek such advice from an independent attorney. At no time did Nelson consent in writing to respondent's possessory and security interest in her piano.

On or about February 2, 1999, Nelson paid respondent $150 for court reporter transcripts. On or about March 15, 1999, the court reporter returned $87 to respondent on Nelson's behalf for overpayment regarding the transcripts. At no time did respondent deposit the $150 payment or the $87 refund into a client trust account. At no time did respondent inform Nelson that he had received a refund of $87 from the court reporter.

Count 1: Rule 3-300 of the Rules of Professional Conduct [2]- Avoiding Interests Adverse to a Client

Rule 3-300 provides that an attorney shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction or acquisition and its terms are fair and reasonable to the client, and are fully disclosed to the client in writing; and the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and the client thereafter consents in wiring to the transaction or acquisition.

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[2]References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

Respondent wilfully violated rule 3-300 by failing to comply with its prophylactic terms. Respondent acquired an ownership, possessory, security or other pecuniary interest adverse to Nelson by receiving her flute as partial payment for legal fees and costs, and receiving her piano as security for paying $2,000 cash at a later date. By failing to advise Nelson in writing that she may consult with independent counsel regarding respondent's possessory and security interest in the silver flute, by failing to give Nelson a reasonable opportunity to seek such legal advice, by failing to disclose to Nelson in writing the terms regarding respondent's acquisition of the piano, by failing to advise Nelson in writing that she may consult with independent counsel regarding respondent's possessory and security interest in the piano, by failing to give Nelson a reasonable opportunity to seek advice from independent counsel regarding respondent's acquisition of the piano, and by failing to obtain Nelson's written consent to the terms of the acquisition of the piano, respondent clearly and convincingly improperly acquired ownership, possessory, security or other pecuniary interests adverse to his client in wilful violation of rule 3-300.

Count 2: Rule 3-110(A) - Failure to Perform Competently

Rule 3-110(A) provides that a member must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By failing to attend the October 5, 1998 status conference regarding the ex parte application to amend Nelson's previously filed complaint and to request reconsideration of an order granting a demurrer, by failing to reschedule said status conference, and by failing to obtain his client's signature on her affidavit detailing the basis for the request for reconsideration of the court order, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 3: Rule 4-100(A) - Failure to Deposit Client Funds in Trust Account

Rule 4-100(A) provides that all funds received for the benefit of clients, including advances for costs and expenses must be deposited in a client trust account. Respondent had a fiduciary duty to hold in trust all funds received for his client, including costs. By failing to deposit in a client trust account the $150 advanced by Nelson for the cost of obtaining court reporter transcripts, and by then failing to deposit in a client trust account the $87 refund from the court reporter for overpayment

regarding the transcripts, respondent clearly and convincingly violated rule 4-100(A).

Count 4: Rule 4-100(B)(1) - Failure to Notify Client of Receipt of Client Funds

Rule 4-100(B)(1) provides that an attorney must promptly notify a client of receipt of a client's funds. By failing to inform Nelson, that he had received an $87 refund from the court reporter, respondent failed to promptly notify a client of the receipt of client funds in wilful violation of rule 4-100(B)(1).

C. The Dunmore Matter (Case No. 01-O-04659)

On or about September 20, 2000, Steven Dunmore (Dunmore) retained respondent, for a flat fee of $10,000 plus unspecified costs, to represent Dunmore in an adversarial matter against the Internal Revenue Service (IRS). In that matter, Dunmore alleged entitlement to approximately $190,000 in tax refunds.

Prior to respondent's employment, Dunmore had represented himself in pro per. On or about July 19, 2000, while Dunmore was representing himself, the bankruptcy court set trial for October 18, 2000, and issued a written order directing the manner in which parties were to prepare for trial. The order required that proposed findings of fact and conclusions be filed seven days before trial and that exhibits be exchanged seven days before trial. The order gave notice that failure to comply might subject a party to default, dismissal, or other sanctions.

On or about October 2, 2000, the IRS and respondent held a meeting wherein respondent advised that he would file pre-trial motions of an unspecified nature. On or about October 10, 2000, the IRS left a telephone message with respondent's office assistant to determine how and where Dunmore would produce trial exhibits as required by the court's July 19, 2000 order. Respondent failed to respond to the IRS' message left with his office assistant.

Thereafter, respondent failed to comply with the court's July 19, 2000 order directing the manner in which parties were to prepare for trial.

On or about October 18, 2000, respondent appeared for trial. At that time, respondent argued for the first time that the bankruptcy court lacked jurisdiction to hear Dunmore's claims.

On or about October 20, 2000, the bankruptcy court issued its decision, finding that: (a) the court held jurisdiction over all of Dunmore's claims; (b) Dunmore failed to comply with the July 19,

2000 order; and (c) overall, Dunmore failed to prosecute. The court then dismissed Dunmore's action with prejudice.

On or about February 18, 2001, Dunmore requested a refund of all unearned advanced fees. At no time did respondent render an appropriate accounting to Dunmore regarding the $10,000 that came into respondent's possession as advance legal fees.

Count 5: Rule 3-110(A) - Failure to Perform Competently

By failing to comply with the court's July 19, 2000 trial order and by failing to prosecute Dunmore's claims, respondent intentionally recklessly, and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 6: Rule 4-100(B)((3) - Failure to Render Accounts

Rule 400(B)(3) provides that an attorney must maintain complete records of all client funds, and render appropriate accounts to the client regarding them. In February 2001, Dunmore requested a refund of all unearned advance fees from respondent. Respondent was obligated to provide an accounting of the $10,000 advance legal fees which he had received from Dunmore. His failure to do so was a clear and wilful violation of rule 4-100(B)(3).

D. The Sammito Matter (Case No. 02-O-10348)

On or about November 10, 1998, Ginger Sammito-Prohaska (Sammito) retained respondent to represent her and her husband in a civil action against their neighbors (Defendants). Respondent agreed to represent Sammito for an initial payment of $1,500 as a non-refundable deposit and $420 as an advance against anticipated costs and fees.

During the November 10, 1998 meeting with respondent, Sammito paid respondent $1,920 in advance legal fees. At that same meeting Sammito advised respondent that she was extremely distressed that 247 harassing telephone calls were made to her home and place of work by Defendants, who also routinely shot at Sammito's house. Respondent agreed to file a temporary restraining order (TRO) against Defendants.

On or about December 10, 1998, Sammito paid respondent an additional $1,000 in advance legal fees.

On or about January 5, 1999, Sammito contacted respondent by telephone, informing him

that the harassment had not stopped. In addition, during the January 5, 1999 telephone conversation, Sammito inquired into the status of the TRO. In response, respondent advised her that he had not yet prepared it, but would complete and file it that week.

On or about August 18, 1999, Sammito gave respondent $100 to pay for transcripts from a small claims case that might establish a pattern of Defendants' harassment.

On or about September 8, 1999, Sammito met with respondent's office manager, Stephanie Hanson, and handed her a letter requesting that she (Sammito) be informed of the status of the TRO. Respondent received the letter.

On or about September 10, 1999, respondent telephoned Sammito and advised her that he had taken care of the TRO. Thereafter, on or about September 29, 1999, respondent filed an ex parte application for the TRO.

On or about February 10, 2000, Defendants served respondent with a demand to disclose experts. The exchange of experts was due no later than March 6, 2000.

On or about April 6, 2000, 31 days after the last day to exchange expert lists, respondent served Sammito's response to the demand to disclose experts. At no time did respondent obtain leave to serve Sammito's expert list 31 days late. On or about April 19, 2000, Defendants filed motions in limine to preclude the presentation of expert witness testimony from Sammito's treating physician, medical professionals and real estate experts during the jury trial with regard to the harassment action. On or about January 16, 2001, the court granted Defendants' motions in limine.

On or about January 18, 2001, Sammito and her husband met respondent for trial. At that meeting respondent revealed to Sammito that the court would not allow her to put on medical evidence and expert testimony. Respondent informed Sammito that the court reached its decision for no reason other than that the court does whatever it wants. In fact, the court ruled that no medical evidence or expert testimony could be presented because respondent had failed to exchange expert lists in a timely manner and failed to participate in discovery.

In addition, at the January 18, 2001 meeting, Sammito presented a check to respondent for $150 payable to the California Department of Forestry for a witness subpoena in the TRO matter.

On or about January 19, 2001, the jury awarded Sammito $1,000 in non-economic damages

and $0 in economic damages.

On or about August 22, 2001, respondent filed a memorandum of costs for $4,575.23 in Sammito's action. On or about September 5, 2001, Defendants filed a memorandum of costs, requesting $6,479.46 from Sammito. On October 15, 2001, the court ordered the parties to file points and authorities, setting forth their respective positions on whether the court had authority to enter a ruling compelling the parties to bear their own costs.

On or about October 26, 2001, Defendants filed their points and authorities. Respondent failed to file Sammito's points and authorities. On or about November 2, 2001, respondent did file an opposition to Defendants' memorandum of costs. On or about November 8, 2001, Defendants filed an objection to Sammito's opposition.

The court held a hearing regarding the costs issue on November 19, 2001. Respondent failed to appear at the November 19, 2001 hearing. On or about December 4, 2001, the court granted Defendants' motion to strike Sammito's memorandum of costs in its entirety. The court further ordered Sammito to pay Defendants' costs.

Count 7: Rule 3-110(A) - Failure to Perform Competently

By waiting 10 months to file the application for the TRO, by failing to exchange an expert list in a timely manner or obtain leave to file the list after the cutoff date, by failing to file a memorandum of points and authorities regarding cost issues as ordered by the court, and by failing to appear at the November 19, 2001 hearing regarding costs, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 8: Business and Professions Code Section 6106 - Moral Turpitude

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. By informing Sammito that the court would not allow her to put on medical evidence and present expert testimony at trial because the court does whatever it wants, when respondent knew or should have known that the true basis for the court's decision was respondent's failure to exchange the expert lists in a timely manner and failure to participate in discovery, respondent misrepresented a material fact to his client, an act of moral turpitude, in wilful violation of section 6106.

E. The Blume Matter (Case No. 02-O-13676)

On or about April 11, 2001, Alex Blume (Blume) retained respondent to represent him and his wife in a civil action (state action) against their homeowners' association. Blume gave respondent a cashier's check in the amount of $5,000 payable towards attorney fees and costs. Respondent failed to issue a written fee agreement at the time he received the $5,000 from Blume.

Between April 11, 2001 and July 3, 2001, respondent advised Blume to move the state action to federal court, and file a federal RICO action in lieu of the state court action. Respondent informed Blume that he could initiate the RICO action on Blume's behalf for an additional $2,000. On or about July 3, 2001, Blume provided a cashier's check to respondent for $2,000 with regard to the RICO action. Respondent failed to issue a written fee agreement regarding the RICO action when he accepted the $2,000.

On or about July 16, 2001, after advising Blume to move the state action to federal court, respondent filed a status conference statement in the state action, demanding a jury trial. Respondent failed to provide legal services of value in the state action.

On or about October 15, 2001, respondent took possession of Blume's 2000 Jeep Wrangler, valued at $18,000. Approximately 15 days later, Blume and respondent entered into a written fee agreement to initiate the RICO action, charging Blume a rate of $50 per hour plus costs, acknowledging receipt of $2,000 towards the RICO action, and acknowledging respondent's acceptance of Blume's Jeep Wrangler. When respondent acquired an interest in the Jeep, he failed to provide Blume with full disclosure of terms of the transaction in writing that could be reasonably understood. Respondent also failed to advise Blume in writing that he may consult with independent counsel of his choice regarding respondent's interest in the Jeep, failed to give Blume a reasonable opportunity to seek advice of independent counsel, and failed to obtain Blume's consent in writing to respondent's possessory, ownership, and/or security interest in the Jeep. In addition, respondent requested an additional $2,500 as an advance fee. Blume then represented that these fees were a non-refundable deposit.

On or about December 12, 2001, pursuant to a request for dismissal filed by respondent, Blume's state court action was dismissed with prejudice.

On or about January 17, 2002, respondent filed a complaint in the RICO action in the United States District Court for the Eastern District of California. Respondent failed to give proper notice to the homeowners' association and failed to serve or file a summons regarding the RICO action complaint. Thereafter, on or about April 22, 2002, two of the defendants filed a motion to dismiss Blume's RICO action with prejudice on the basis that Blume had failed to state a claim upon which relief can be granted. On or about May 17, 2002, respondent filed an amended complaint in the RICO action. On or about July 3, 2002, four other defendants (Defendants) in the RICO action joined in a motion to dismiss with prejudice Blume's First Amended Complaint on the basis of improper service of the complaint and on the basis that the amended complaint failed to state a claim and was vague and ambiguous. At no time did respondent file a pleading responsive to the motion to dismiss.

On or about June 13, 2002, Blume requested an accounting of the hours respondent had performed on Blume's behalf. As of October 26, 2004 (the date that the DTC signed the NDC), respondent had not rendered any accounting to Blume regarding work performed and/or funds and property that came into respondent's possession during the course of his representation of Blume.

On or about July 12, 2002, respondent moved to be relieved as counsel in the RICO action, and moved to set the issue for hearing on August 14, 2002. Respondent advised Blume of the August 14, 2002 hearing date.

On or about July 16, 2002, Blume requested his file from respondent. Respondent received the request.

On or about July 15, 2002, the court ordered that the hearing on respondent's motion to withdraw be advanced to July 26, 2002. The court served respondent and defendant's counsel, but did not serve notice on Blume. Respondent failed to advise Blume that the hearing on his motion to be relieved as counsel had been advanced to July 26, 2002. Nonetheless, respondent advised the court at the July 26, 2002 hearing that Blume was aware of the hearing date. In fact, Blume did not know that the hearing had been reset; neither the court nor respondent had notified him of the change. Respondent concealed from the court that he had not advised Blume that the hearing had been reset, and concealed that Blume was not aware of the hearing date.

During the course of the July 26th hearing, the court opined that proceeding with the RICO action was a "dubious proposition" and that Blume might be facing sanctions if he continued with the RICO action. The court directed respondent to advise Blume thereof. The court then proceeded to grant respondent's motion to withdraw as Blume's counsel.

On or about July 26, 2002, respondent wrote a letter informing Blume that he had been relieved as counsel. In his letter, respondent did not inform Blume of the court's opinion regarding the merits of the RICO action and that the court warned that Blume might be facing sanctions if he proceeded with the RICO action. Thereafter, Blume, who had no knowledge of the court's opinion regarding the merits of the RICO action or of the court's warning regarding possible sanctions, attempted to proceed with his RICO action.

Between July 31, 2002 and August 12, 2002, Blume moved the court to reconsider its order granting respondent's motion to withdraw as counsel. On or about August 13, 2002, respondent filed a reply to Blume's motion for reconsideration. In his response respondent represented that he had given Blume proper notice of the hearing regarding the motion to withdraw as counsel. In fact, respondent only had advised Blume of the original August 14th date; he had not advised Blume that the hearing on the motion to withdraw had been advanced to July 26th.

Throughout the course of the federal RICO action, respondent performed services of no value to Blume. Yet, respondent obtained approximately $25,000 in unearned advance fees. At no time has respondent refunded any portion of the unearned advance fees to Blume.

On October 15, 2002, the court ordered that Blume's matter be dismissed with prejudice.

On December 2, 2002, Blume again requested his file. Respondent received that request. As of the date of the signing of the NDC by the DTC, respondent had not released Blume's client file.

Count 9: Rule 3-110(A) - Failure to Perform Competently

By failing to give notice to the opposing parties regarding the RICO action, by failing to serve or file a summons in the RICO action, and by failing to file a response to Defendants' motion to dismiss the First Amended Complaint in the RICO action, respondent intentionally, recklessly, and repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A).

Counts 10 and 12 : Section 6068, Subdivision (m) -Failure to Inform Client of Significant Development

Section 6068, subdivision (m), provides that it is the duty of an attorney to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to communicate to Blume that the hearing on respondent's motion to withdraw as counsel had been advanced by the court to July 26, 2002, and by failing to communicate to Blume the court's opinion regarding the merits of the RICO action and the court's warning regarding possible sanctions if he proceeded with the RICO action, respondent failed to keep his client reasonably informed of significant developments in wilful violation of section 6068, subdivision (m).

Counts 11 and 15: Section 6106 - Moral Turpitude

Respondent committed acts of moral turpitude in wilful violation of section 6106 by misrepresenting to the court at the July 26, 2002 hearing that his client was aware that the hearing date had been advanced to July 26th, when in fact the client was not aware, and by concealing from the court that he had not informed his client that the hearing date had been reset. In respondent's August 13, 2002 reply to Blume's motion for reconsideration of the court order granting respondent's request to withdraw as counsel, respondent committed further acts of moral turpitude in wilful violation of section 6106 by misrepresenting that he had given proper notice to Blume of the July 26th hearing date when in fact he had not.

Count 13: Section 6103 - Failure to Obey a Court Order

Section 6103 requires attorneys to obey court orders, and provides that the wilful disobedience or violation of such orders constitutes cause for disbarment or suspension.

The State Bar alleges that respondent disobeyed an order of the court by failing to advise Blume that at the July 26, 2002 hearing, the court had "opined that Blume's proceeding in federal court on the RICO action was a'dubious proposition,' and that Blume may be looking at sanctions down the road if they continued with the RICO action."

The allegation in the NDC is unclear as to whether the court actually issued an order. The allegation that the respondent failed "to advise Blume [of the court's opinion] as directed by the court," is vague, and leaves doubt as to whether the court actually issued a written directive, i.e., an

order,[3] or rather was merely advising respondent to share the court's opinion and concerns with Blume. There is no clear and convincing evidence that the federal court did in fact issue an order. There can be no violation of section 6103, unless there is a court order which is violated. (See *Read v. State Bar* (1991) 53 Cal.3d 394, 406.) Thus, respondent is not culpable of violating section 6103.

Count 14: Section 6068, Subdivision (b) - Failure to Maintain the Respect Due to the Court

Section 6068, subdivision (b), provides that it is the duty of an attorney to maintain the respect due to the courts of justice and judicial officers.

The State Bar alleges that by failing to advise Blume "as directed by the court," of the court's opinion and warning, respondent failed to maintain the respect due to the court. As set forth in the conclusions of law regarding Count 13, *supra*, the phrase, "as directed by the court" is vague. It leaves doubt as to whether the court was simply making a suggestion or giving advice, or whether it was making an order. If the court was merely making a suggestion or offering advice, there is no clear and convincing evidence that respondent's failure to follow that advice rises to the level of failing to maintain respect due to the court. As discussed, *supra*, there is no clear and convincing evidence that the federal court issued an order, nor that respondent violated an order. Accordingly, respondent is not in violation of section 6068, subdivision (b).

Count 16: Section 6068, Subdivision (b) - Failure to Maintain the Respect Due to the Court

The State Bar incorporates by reference the allegations of count 15 into count 16. Since the misconduct underlying the section 6068, subdivision (b), charge is based on the same misconduct as the section 6106 charge which supports identical or greater discipline, the court dismisses count 16 as duplicative of count 15.

Count 17: Rule 3-700(D)(2) -Failure to Return Unearned Fees

Rule 3-700(D)(2) requires an attorney whose employment has terminated to refund promptly any part of a fee paid in advance that has not been earned. Respondent wilfully violated rule 3-700(D)(2) by failing to return any portion of the approximately $25,000 advance fees paid by Blume

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[3]Code of Civil Procedure section 1003 provides, in pertinent part, that "[e]very direction of a court or judge, made or entered in *writing*, and not included in a judgment, is denominated an order." (Emphasis added.)

when his employment was terminated on July 26, 2002, and he had not performed any service of value on behalf of Blume.

Count 18: Rule 3-300 - Avoiding Interests Adverse to a Client

By acquiring an interest in Blume's Jeep, valued at approximately $18,000, without first providing Blume with full disclosure of the terms of the transaction in writing, without advising Blume in writing that he may seek the advice of independent counsel, without affording Blume a reasonable opportunity to seek such counsel, and without obtaining Blume's written consent to the transaction, respondent clearly and convincingly acquired an ownership, possessory, security or other pecuniary interest adverse to his client in wilful violation of rule 3-300.

Count 19: Rule 4-100(B)(3) - Failure to Render Accounts

In June 2002, Blume requested that respondent provide an accounting. Respondent was obligated to provide an accounting. Respondent's failure to provide an accounting was a clear and wilful violation of rule 4-100(B)(3).

Count 20: Rule 3-700(D)(1) - Failure to Return Client File

Rule 3-700(D)(1) requires an attorney whose employment has terminated to promptly release to a client, at the client's request, all the client's papers and property. By not returning Blume's file after having been asked to do so in December 2002, subsequent to his employment being terminated, respondent wilfully violated rule 3-700(D)(1).

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[4]

B. Aggravation

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

Respondent committed multiple acts of wrongdoing in four client matters, including failing to avoid interests adverse to clients, failing to perform services competently, failing to render a

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[4]All further references to standards are to this source.

proper accounting, failing to deposit client funds in a trust account, failing to notify client of receipt of client funds, failing to communicate and keep clients informed of significant developments, failing to return unearned fees, failing to promptly return client file, and committing acts of moral turpitude. (Std. 1.2(b)(ii).) Although respondent's four client abandonments from 1998 to 2002 encompass serious misconduct, they do not amount to a pattern or practice of misconduct. (See *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074,1079-1080.) The Supreme Court has limited a finding of a pattern of misconduct to "only the most serious instances of repeated misconduct over a prolonged period of time." *(Young v. State Bar* (1990) 50 Cal.3d 1204,1217.) Thus in *Kent v. State Bar* (1987) 43 Cal.3d 729 the Supreme Court held disbarment was the appropriate penalty because the attorney's abandonment of the legal interests of his client resulted in a $330,000 malpractice judgment, he was publicly reproved on two prior occasions for similar misconduct, he was previously suspended for similar failures to perform promised legal services, and in some instances he actively deceived his clients. (See also *Slaten v. State Bar* (1988) 46 Cal.3d 48 [wilful failure to perform services for seven clients, commingled a client's funds with his own, advised a client to act in violation of the law, and had an extensive discipline record]; *Bowles v. State Bar* (1989) 48 Cal.3d 100 [wilful abandonment of clients in five separate matters, insufficient funds to cover a check drawn on a client trust account, failure to cooperate with the State Bar investigation, two prior suspensions for failure to pay State Bar fees, and a record devoid of mitigating factors].) Although respondent has engaged in serious acts of misconduct, the court can not find they amount to a pattern as defined by the Supreme Court. But, they are sufficient to support a finding that respondent engaged in multiple acts of misconduct.

The State Bar argues that respondent's acts of misconduct were surrounded by bad faith, dishonesty, concealment and overreaching. (Std. 1.2(b)(iii).) But, the acts of misconduct on which the State Bar relies are the same acts which serve as the basis for finding respondent culpable of the substantive violations with which he was charged, and thus do not constitute an additional factor that aggravates respondent's misconduct. (See, *In the Matter of Farrell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 490, 497.)

Respondent significantly harmed his clients. (Std. 1.2(b)(iv).) As a result of respondent's

failure to comply with the court's pre-trial order and failure to pursue the matter, the Dunmore case was dismissed with prejudice. As a result of respondent's failure to comply with discovery and pre-trial orders, Sammito was precluded from presenting expert testimony, resulting in her being awarded $1,000 for non-economic damages, and $0 in economic damages. Sammito was found liable for costs of $6,479 following respondent's failure to file a memorandum of points and authorities regarding costs and his failure to appear at a hearing regarding the costs issue. Additionally, Sammito's memorandum of costs for $4,575.23 was ordered stricken. Following respondent's advice Blume allowed respondent to dismiss his state civil suit with prejudice. In lieu of the state action respondent filed a federal RICO action, which the federal judge termed a "dubious proposition," and which the judge thereafter dismissed with prejudice. Blume was further harmed in that as of the filing of the NDC, he had not received the $25,000 in unearned advance fees which he had requested of respondent, nor had he received the client file which he had requested.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) His continued failure to return the client file to Blume, and refund the unearned fees is an aggravating factor.

The State Bar contends that respondent's lack of candor and cooperation to the victims of his misconduct is an aggravating factor. But, no lack of candor or cooperation is alleged in the NDC. If, by lack of cooperation, the State Bar is referring to acts of misconduct such as, respondent's misrepresentations or his failure to render an accounting or to return unearned fees in response to the requests of his clients, such acts of misconduct can not constitute additional factors that aggravate respondent's misconduct. Because they are the same acts which serve as the basis for finding respondent culpable of the substantive violations with which he was charged, they are rejected as duplicative. (See *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 77.)

The State Bar also argues that "respondent's sporadic and often contemptuous participation with the State Bar and the State Bar Court, including threats of meritless Federal Rico Suits against the State Bar and the State Bar Judiciary, as well as the undersigned [DTC], during these proceedings is an aggravating circumstance." (Std. 1.2(b)(vi).) The court rejects the State Bar's argument.

Inflammatory statements by a respondent are not proper subjects for aggravation absent a showing by the State Bar by clear and convincing evidence that they are false. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 343.)

Respondent failed to meaningfully participate in this disciplinary proceeding, including failing to twice appear for his scheduled deposition. On August 8, 2005, the court issued its Order Granting Terminating Sanctions, whereby respondent's answer to the NDC was stricken and his default entered. His failure to participate in this disciplinary matter prior to the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

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

The standards for respondent's misconduct provide a broad range of sanctions from reproval to disbarment, depending upon the gravity of the offenses and the harm to the clients. (Stds. 1.6, 2.2(b), 2.3, 2.4(b), 2.6, and 2.8.) The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges disbarment, citing several supporting cases, including *Baca v. State Bar* (1990) 52 Cal.3d 294, *Snyder v. State Bar* (1976) 18 Cal.2d 286, *Grove v. State Bar* (1967) 66 Cal.2d 680, *Simmons v. State Bar* (1970) 2 Cal.3d 719, *Kapelus v. State Bar* (1987) 44 Cal.3d 179, *Farnham v. State Bar* (1988) 47 Cal.3d 429, and *Twohy v. State Bar* (1989) 48 Cal.3d 502.

In *Simmons v. State Bar* (1970) 2 Cal.3d 719 the Supreme Court recommended that the attorney, who had been suspended from the practice of law in 1956 and again in 1969, be disbarred for accepting fees from three clients, then failing to communicate with his clients or perform services on their behalf, causing defaults to be entered. Additionally, during the period of his suspension from the practice of law the attorney held himself out to opposing counsel and the courts as attorney

of record. The Supreme Court noted that the attorney's current misconduct, particularly in view of his prior record, warranted disbarment. (*Id.* at 753.)

In *Kapelus v. State Bar* (1987) 44 Cal.3d 179 the Supreme Court ordered that the attorney be disbarred based on findings in two separate matters, one involving misconduct in the representation of a client in an employment dispute by abandoning and failing to communicate with him, and by conflicts of interest arising from the attorney's personal participation and representation of multiple parties in a tax reduction plan. The fact that the attorney had been disciplined for serious misconduct on two prior occasions and was refusing to acknowledge the impropriety of the actions which were before the court caused the court to find that the risk of the attorney engaging in other misconduct if permitted to continue in practice was considerable, and that the public and the legal profession would not be sufficiently protected by a third suspension. (*Id.* at 198.)

In *Farnham v. State Bar* (1988) 47 Cal.3d 429 the Supreme Court ordered that the attorney be disbarred for misconduct (in seven client matters) including failing to perform services, misrepresenting the status of cases to clients, failing and refusing to communicate, and failing to return unearned fees. The court determined that the public and the legal profession would not be sufficiently protected if the attorney were once more suspended given the combined record of the disciplinary proceeding before the court and the attorney's prior disciplinary record. (Id. at 447.)

Finally, in *Twohy v. State Bar* (1989) 48 Cal.3d 502 the attorney, who had twice previously been disciplined for misconduct, was disbarred for failure to perform services for or communicate with a client and failure to return unearned fees. The attorney was on suspension from the practice of law at the time of the latest charges of misconduct. The Supreme Court found that in light of the ineffectiveness of previously imposed discipline, disbarment was the appropriate sanction. (*Id.* at 516.)

In view of these disbarment cases, arguably respondent could be disbarred for his misdeeds. The court, however, does not find that respondent's level of misconduct to be on par with the misconduct of the attorneys in the cases cited by the State Bar. Respondent, unlike the attorneys in the cited cases, has not been previously disciplined. Nor is his misconduct as extensive as that present in *Farnham*, or is the case for rehabilitation as weak as in *Simmons*, *Kapelus*, or *Twohy*.

The court finds guidance as to the discipline which should be imposed in *Pineda v. State Bar* (1989) 49 Cal.3d 753 and *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074. In *Pineda v. State Bar* (1989) 49 Cal.3d 753, the Supreme Court actually suspended the attorney for two years and placed him on probation for five years with a five-year stayed suspension because he had accepted fees from clients, failed to perform the services for which he was retained, refused to communicate with his clients, then abandoned them and kept the fees in seven client matters over a course of about eight years. He was not disbarred in view of the mitigating factors, including his cooperation with the State Bar, his demonstrated remorse and his concurrent family problems. Unlike the attorney in *Pineda*, respondent failed to consistently participate in this disciplinary proceeding. Such sporadic behavior shows that he comprehends neither the seriousness of the charges against him nor his duty as an officer of the court to participate in disciplinary proceedings. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507-508.)

The Supreme Court in *Bledsoe* imposed a two-year actual suspension on an attorney who had abandoned four clients, failed to return unearned fees, failed to communicate with three clients, made misrepresentations to a client regarding her case status, and failed to cooperate with the State Bar. The attorney had also defaulted in the disciplinary proceeding.

In this matter respondent engaged in four instances of client abandonment in four years, failed to render accountings, failed to avoid interests adverse to his clients, failed to release a client file upon termination of employment, made multiple misrepresentations to his clients and the court, and caused serious harm to his clients, including failing to return unearned fees of $25,000 to one client. Respondent's misconduct reflects a blatant disregard of professional responsibilities. In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The court is seriously concerned about the possibility of similar misconduct recurring. Respondent has offered no indication that this will not happen again.

Respondent's client abandonment and default in this matter weigh heavily in assessing the appropriate level of discipline. Respondent has been found culpable of serious misconduct in this matter. In addition, the court is particularly troubled by the fact that respondent permitted his default to be entered in this matter. Although the State Bar's recommendation of disbarment is too

harsh and not warranted at this time, especially given that respondent has no prior record of discipline, a long period of actual suspension is justified. The seriousness of respondent's misconduct, the case law, and the nature and extent of the aggravating factors found in this matter compels this court to recommend, inter alia, that respondent be actually suspended for two years, and until he complies with standard 1.4(c)(ii), and until the State Bar Court grants a motion to terminate respondent's actual suspension. (Rules Proc. of State Bar, rule 205(a),(c).)

VI. Recommended Discipline

The court recommends that respondent **STEVEN G. HANSON** be suspended from the practice of law for three years, that said suspension be stayed and that respondent be actually suspended from the practice of law for two years and until he has shown proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii), and until he files and the State Bar Court grants a motion to terminate his actual suspension. (Rules Proc. of State Bar, rule 205(g).)

It is also recommended that respondent be ordered to comply with any probation conditions hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension, including restitution.[5] (Rules Proc. of State Bar, rule 205(g).)

It is further recommended that the respondent take and pass the Multistate Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa 52243, (telephone 319/337-1287) and provide proof of passage to the Office of Probation during the period of his actual suspension. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage.

It is further recommended that respondent be ordered to comply with rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule, within 30 and 40 days respectively, from the effective date of the Supreme Court order herein. **Wilful failure to**

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[5] A probation condition in the matter will be that respondent make restitution to Alex Blume or the Client Security Fund, if appropriate, as it has long been held that "[r]estitution is fundamental to the goal of rehabilitation." (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1094.)

comply with the provisions of rule 955 may result in revocation of probation, suspension, disbarment, denial of reinstatement, conviction of contempt, or criminal conviction.[6]

VII. Costs

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

Dated: November 9, 2005

PAT McELROY
Judge of the State Bar Court

[6]Respondent is required to file a rule 955(c) affidavit even if he has no clients to notify. *Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 San Francisco, on November 9, 2005, I deposited a true copy of the following document(s):

DECISION

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

[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

STEVEN G. HANSON
PO BOX 2740
LODI CA 95241 2740

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

MANUEL JIMINEZ, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **November 9, 2005**.

Lauretta Cramer
Case Administrator
State Bar Court