PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **CRAIG M. HUNT** A Member of the State Bar.	**02-O-14794; 04-N-11190** **OPINION ON REVIEW AND ORDER**

BY THE COURT[1]

The State Bar seeks review in this consolidated matter, alleging error in the hearing judge's recommended discipline for respondent, Craig M. Hunt, of a two-year suspension and four years' probation on condition of actual suspension of three years and until rehabilitation is established pursuant to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii).[2] The State Bar requests disbarment as the appropriate discipline.

Respondent was found culpable of five counts of engaging in the unauthorized practice of law (UPL), two counts of misconduct involving acts of moral turpitude, violating his probation by submitting a perjurious probation report, failing to file a timely declaration under California Rules of Court, rule 9.20(c),[3] and filing a perjurious declaration under rule 9.20.

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[1]Before Watai, Acting P. J., Epstein, J., and Stovitz, J., Retired Presiding Judge and Judge Pro Tem of the State Bar Court appointed by the State Bar Board of Governors under rule 14 of the Rules of Procedure of the State Bar, sitting by designation of the Presiding Judge.

[2]Unless noted otherwise, all references here to "standard" or "standards" are to the Standards for Attorney Sanctions for Professional Misconduct.

[3]Unless noted otherwise, all references herein to rule 9.20 are to the California Rules of Court (formerly rule 955).

Many of the facts were stipulated to on May 24, 2005, prior to trial, and we adopt those stipulated facts as well as the hearing judge's findings of fact. Upon our independent review of the record (*In re Morse* (1995) 11 Cal.4th 184, 207), we also adopt most of the hearing judge's culpability determinations, but find additional culpability for conduct involving moral turpitude.

As we shall discuss, the hearing judge's finding that respondent wilfully violated rule 9.20, which we uphold and adopt, is sufficient grounds alone for disbarment. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186-1188; *Powers v. State Bar* (1988) 44 Cal.3d 337, 341-342.) However, the rule 9.20 violations are exacerbated by respondent's prior disciplinary history, as well as by serious additional misconduct, all of which strongly suggest that respondent is either unwilling or unable to obey Supreme Court orders and therefore is not a suitable candidate for further disciplinary probation. Consequently, we are compelled to conclude that disbarment is the only appropriate discipline in order to ensure protection of the public and the courts and preservation of the integrity of the profession.

Factual and Procedural Background

We briefly summarize the key factual determinations.

Respondent was admitted to practice law in 1971. In January 1992, he was privately reproved for violations of former rule 5-101 (now rule 3-300) of the Rules of Professional Conduct for entering into a business transaction with a client, failing to advise the client to seek independent counsel, and failing to obtain written consent from the client. In 2002, respondent was again disciplined for violating rule 3-300. This time, the Supreme Court ordered on July 25, 2002, that he be actually suspended for 90 days and until restitution was paid to his client, William Freschi. The 90-day suspension became effective on August 24, 2002, and was to continue until restitution was made. Respondent also was ordered to comply with rule 9.20(a) and (c).

On November 15, 2002, respondent sent a check to Freschi for the amount owing for his restitution, and requested confirmation of receipt of the funds. He sent a copy of that check and

request for confirmation by fax to the State Bar Office of Probation. Because of his payment, respondent erroneously assumed that his suspension would terminate at the end of the 90 days, which was November 25, 2002. In fact, his suspension did not terminate until December 2, 2002, when the Office of Probation received the signed acknowledgment from Freschi confirming his receipt of full restitution.

During his period of suspension, respondent appeared in five proceedings, filing various pleadings, including motions and supporting declarations, an amended complaint in one case, and a stipulation and proposed order in another.[4] Respondent also filed a request for a continuance and a notice of ex parte motion and motion for continuance of a hearing date, with supporting pleadings, in *Latteri v. Latteri*, and he appeared at a status conference in the *Ota* case and approved a document as to form, signing it as "Counsel for Plaintiff." Moreover, in the various documents and pleadings filed in these cases, respondent repeatedly identified himself as "Law Offices of Craig M. Hunt, Counsel for [the various parties]" or "Attorney for [the various parties]." While suspended, respondent also attested in two requests for extensions of time to file appellate briefs that good cause existed for the relief he sought because he was a "sole practitioner" with competing professional and family demands. In each of the proofs of service for the above-described pleadings and documents, respondent attested under penalty of perjury that he was "not a party to the within entitled case." Moreover, in none of these proceedings or

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[4]The five proceedings were: 1) an appeal in the California Court of Appeal entitled *Delta V-A Ltd. v. Clean Power Tech,* filed on behalf of Delta V-A Ltd., Delta V-B Ltd. and Altawind Corp, the general partner of the two limited partnerships; 2) an appeal in the California Court of Appeal entitled *Delta V-A Ltd. v. State of California*, filed on behalf of Delta V-A Ltd., Delta V-B Ltd. and Altawind Corp. and David G. Fladelien, a partner in Delta V-B; 3) a civil suit in Marin County Superior Court entitled *Sadaharu Ota v. Macerich CM Village Limited* (*Ota* case), filed on behalf his client, Ota; 4) *CMH Finanz AG v. Mills Goodloe*, filed in Los Angeles Superior Court on behalf of his client CMH Finanz AG; and 5) *Latteri v. Latteri*, a child support proceeding filed in Contra Costa Superior Court on behalf of Ron Latteri. Respondent was a limited partner in Delta V-A Ltd. and Delta V-B Ltd. and owned all of the stock in Altawind Corp. and CMH Finanz AG, a Swiss company.

pleadings did respondent advise the court or opposing counsel during the relevant time periods that he was suspended from the practice of law.

Apart from these incidents, respondent failed to timely file a declaration of compliance with rule 9.20, and when he did file his untimely declaration, it contained material inaccuracies. Respondent also failed to file three quarterly probation reports between October 2004 and April 2005.[5] In the quarterly reports respondent did submit, he stated under penalty of perjury that he was in full compliance with the law. In one quarterly report submitted on October 8, 2002, he affirmed, under penalty of perjury, that he had not practiced law at any time during the past quarter. In another quarterly report, filed on February 11, 2003, he affirmed that he had not practiced law during the preceding calendar quarter, except that he had appeared in pro. per. in two matters. Respondent did not notify his clients or co-counsel of his suspension as required by the Supreme Court order, nor did he take any other steps required by rule 9.20(a), such as returning unearned fees and delivering to his clients their papers and property. Nevertheless, he filed an affidavit of compliance pursuant to rule 9.20(c) – a week late – attesting falsely that he did not represent any clients in pending matters and therefore had no clients or opposing counsel to notify. To the contrary, respondent had five pending matters during the relevant time period, all with opposing counsel.

After the Court of Appeal was advised by opposing counsel that respondent had filed pleadings in the two *Delta V-A Ltd.* appeals while he was suspended, respondent was ordered to show cause why he should not be sanctioned for his failure to comply with California Rules of Court, rule 955, the predecessor to rule 9.20. On February 6, 2003, the court found respondent in contempt and he was ordered to pay $1,000. Accordingly, he paid $500 in each matter.

On October 26, 2004, the State Bar filed two Notices of Disciplinary Charges (NDCs). In case number 02-O-14794, the NDC alleged 13 counts of misconduct, including, inter alia, five

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[5]The court did not consider the failure to file these quarterly reports as a probation violation because it was not alleged in the Notice of Disciplinary Charges.

counts of UPL, five counts of moral turpitude arising from the UPL, submitting perjurious reports to the State Bar, and failing to report judicial sanctions. The second NDC, filed in case number 04-N-11190, charged respondent with willful failure to obey the Supreme Court's July 2002 disciplinary order requiring compliance with rule 9.20, as well as acts of moral turpitude due to respondent's misrepresentations in his rule 9.20 declaration. The proceedings were consolidated on May 26, 2005.

After a three-day trial, the hearing judge issued her decision on September 26, 2005, finding respondent culpable of all five counts of UPL. But she concluded that moral turpitude was involved in only two of the five instances of UPL because she determined that respondent honestly, though unreasonably, believed he was entitled to appear in pro. per. in two cases on behalf of the various entities in which he had an ownership interest and that, with respect to a third case, he honestly believed his suspension had terminated. The hearing judge further found respondent was not culpable of failing to report judicial sanctions because the two sanctions were each below the reportable amount of $1,000. She also found respondent culpable of violating his probation, committing acts of moral turpitude in submitting perjurious probation and rule 9.20 reports, and failing to timely file his rule 9.20 declaration.

As noted *ante*, the hearing judge recommended that respondent be actually suspended for three years and until he establishes his rehabilitation pursuant to standard 1.4(c)(ii). The State Bar appeals, challenging the hearing judge's failure to find respondent culpable of three of the moral turpitude charges. However, the primary focus of the State Bar's appeal is the hearing judge's disciplinary recommendation, which it asserts is insufficient. Respondent did not appear at oral argument, although he was timely notified of the time and date of the proceedings in the review department.

Culpability

As to the rule 9.20 charge, the hearing judge found that respondent was culpable not only of failing to file his rule 9.20(c) affidavit on a timely basis but, more importantly, of making perjurious statements in that affidavit. We adopt the hearing judge's culpability findings as they

are well supported by the record. Respondent filed his 9.20 affidavit a week late and that untimely affidavit misrepresented that he had no opposing counsel to notify in pending matters because he had no clients, even though the record shows that there were opposing counsel in five pending matters at the time.

Although a less serious view might be taken of a mere one-week delay in filing a rule 9.20 affidavit, when respondent's rule 9.20 failures are viewed in toto, we can only conclude that they were unquestionably serious and willful. Rule 9.20 provides a "critical prophylactic function" designed to ensure that clients, courts and opposing counsel know not only of an attorney's suspension or disbarment from practice but of the attorney's whereabouts. (*Lydon v. State Bar, supra,* 45 Cal.3d at p. 1187; *In the Matter of Snyder* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 593, 599, disapproved on other grounds in *In the Matter of Lais* (Review Dept. 1998), 3 Cal. State Bar Ct. Rptr. 907, 916, fn. 6.) It is also designed to aid in the effective administration of justice by requiring the return of a client's papers and property, including unearned fees, thus allowing the client to seek other counsel. (See rule 9.20(a)(2).) Respondent plainly compromised these principles, calling into question his commitment to rehabilitation.

The five counts of UPL and his acts of moral turpitude comprise the gravamen of respondent's additional misconduct. The evidence amply supports the hearing judge's findings of UPL in all five of the proceedings described in footnote 4, *ante,* in violation of sections 6125, 6126 and 6068, subdivision (a). It is well-settled that the practice of law includes not only appearances in a court but also the giving of " ' "legal advice and counsel and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be [pending] in a court." ' [Citations.]" (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 542; see also *Arm v. State Bar* (1990) 50 Cal.3d 763, 773-774, 778 [preparation of stipulation and cover letter for mandatory settlement conference while under suspension may constitute unauthorized practice of law].)

Without question, such actions were taken by respondent in each of the five proceedings at issue here. However, respondent asserts that he was entitled to appear in pro. per. while on

suspension because he was "the 100% owner of the economic interests of the entities in question" and as such, should be considered "the alter ego of the entities." His argument is unavailing in several respects. First of all, in the two *Delta V-A Ltd.* matters, he was not the sole owner of all of the client entities, which negates his claim of "alter ego." Moreover, he also represented an individual, David Fladelien, in the *Delta V-A Ltd. v. State of California* case.

Even in the *CMH Finanz AG* case, where respondent owned 100 percent of his corporate client, he is culpable of UPL because he held himself out to the court and opposing counsel as the attorney of record. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666 ["unauthorized practice of law includes the mere holding out by a layman that he is . . . entitled to practice law"].) Respondent did not identify himself as appearing in pro. per. in his pleadings and correspondence; rather, he identified himself as "Law Offices of Craig M. Hunt, Counsel for [the various parties]" or "Attorney for [the various parties]." Indeed, in all of his proofs of service, respondent attested under penalty of perjury that he was the attorney of record and *not* a party to the action. Thus, on this record, we find clear and convincing evidence that respondent held himself out as entitled to practice. (*Bluestein v. State Bar* (1974) 13 Cal.3d 162, 175, fn. 13 [use of term "Of Counsel" on letterhead to describe an unlicensed person constitutes UPL]; *In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 896, 903 [use of term "of counsel" on letterhead and on business cards by unlicensed person constitutes UPL].)

We adopt the hearing judge's findings in counts 7 and 11 that, as a consequence of his UPL in the *Ota* and *Latteri* cases, respondent was culpable of moral turpitude in violation of section 6106 because he deceived the courts and opposing counsel that he was entitled to practice. We note that the actual intent to deceive is not necessary; a finding of gross negligence in creating a false impression is sufficient to find a violation of section 6106. (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 90-91.) Moreover, although not affecting our ultimate disciplinary recommendation, we reverse the hearing judge's dismissal of

counts 2, 5 and 9, charging moral turpitude because of respondent's misrepresentations of his status as entitled to practice.[6]

We agree with the hearing judge that respondent is culpable of additional acts of moral turpitude arising from his signing of the October 8, 2002 and February 13, 2003 quarterly probation reports under penalty of perjury, falsely attesting that he had not practiced law during his suspension.

Mitigation and Aggravation

In aggravation, the hearing judge considered respondent's prior discipline and that multiple acts of misconduct were involved. (Stds 1.2(b)(i); 1.7(b); 1.2(b)(ii).) Although she recited that respondent demonstrated "compelling" mitigation, the hearing judge's specific findings of mitigation show that a more limited amount of credit should be given to three of the four areas of mitigation: character evidence, community service and cooperation with the State Bar. As to the fourth mitigating area – family problems – the hearing judge accorded it significant weight. Even more importantly, though, the hearing judge did not strike the balance between the mitigating and aggravating factors. On our independent review, we find that only limited weight should be given to the mitigation evidence in toto, which is more consistent with the hearing judge's specific findings. Moreover, we determine the balance of factors to weigh clearly on the side of aggravation, not only because of respondent's prior record, but especially

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[6]The hearing judge dismissed these moral turpitude counts because she found that respondent had an honest, albeit mistaken, belief that he was entitled to appear in pro. per. on behalf of the various corporate and partnership entities in the two *Delta V-A Ltd.* cases and the *CMH Finanz AG* matter due to his ownership interests. However, we find respondent culpable of the three additional counts of moral turpitude as charged because he could not have honestly believed he was entitled to expressly misrepresent himself as "Law Offices of Craig M. Hunt, Counsel for [the various parties]" or "Attorney for [the various parties]" to the courts and opposing counsel. Notwithstanding respondent's "'disavowal of any dishonest intent' [citation]" " 'the means used by [respondent] to further his position were dishonest and involved moral turpitude within the meaning of . . . section 6106 . . . .' [Citation.]" (*Coppock v. State Bar* (1988) 44 Cal.3d 665, 679.)

because of the seriousness of the misconduct in this most recent proceeding, involving perjury and harm to the administration of justice.

Discipline

As we observed *ante*, wilful violations of rule 9.20 generally result in disbarment, particularly when, as here, there are aggravating circumstances and only limited mitigation. (*Bercovich v. State Bar, supra,* 50 Cal.3d at pp. 131-132; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.) Non-compliance with rule 9.20 requires strong disciplinary measures because of the "critical prophylactic function" it serves. (*Lydon v. State Bar, supra,* 45 Cal.3d at p. 1187.) Thus, when disbarment is not imposed, the State Bar Court must explicitly justify its departure from the general rule. (*In the Matter of Babero* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 322, 332.) The hearing judge did not provide such justification, and we find none in the record before us.

Our primary goals in imposing discipline are to protect the public, courts, and legal profession and to ensure that the public's confidence in the legal profession is preserved. (*Bercovich v. State Bar, supra,* 50 Cal.3d at pp. 131-133; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1307.) We conclude that the hearing judge's recommended discipline is inadequate both to carry out the policy articulated by the Supreme Court inherent in rule 9.20 and to provide the assurance that future misconduct and resulting harm to the public will not occur. For the foregoing reasons, we recommend that respondent, Craig M. Hunt, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

We also recommend that respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in paragraphs (a) and (c) within 30 and 40 days, respectively, after the effective date of the order imposing discipline in this matter.

We further recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Pursuant to the provisions of Business and Professions Code section 6007, subdivision (c)(4), respondent is ordered enrolled inactive upon personal service of this opinion or three days after service by mail, whichever is earlier.

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 Los Angeles, on June 1, 2007, I deposited a true copy of the following document(s):

OPINION ON REVIEW AND ORDER FILED JUNE 1, 2007

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 Los Angeles, California, addressed as follows:

CRAIG M. HUNT
P O BOX 471311
SAN FRANCISCO, CA 94123

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

DONALD R. STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 1, 2007**.

Rosalie Ruiz
Case Administrator
State Bar Court