

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos. 07-O-11108-DFM
)	(08-O-12368)
DRAGO CAMPA)	
)	DECISION AND ORDER OF
Member No. 170057,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default matter, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charged Respondent Drago Campa (Respondent) with ten counts of professional misconduct. The court finds, by clear and convincing evidence, that he is culpable of the alleged misconduct. Based on the present misconduct and Respondent's extensive aggravation, the court recommends that he be disbarred.

II. Pertinent Procedural History

The Notice of Disciplinary Charges (NDC) was filed on July 13, 2010, and was properly served on Respondent on that same date at his official membership records address (official address), by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1, subdivision (c).¹ Service was deemed complete as of the time of mailing.

¹ All further references to section(s) are to the Business and Professions Code, unless otherwise stated.

(*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This mailing was not subsequently returned to the State Bar as undeliverable, or for any other reason.

On July 20, 2010, a Notice of Assignment and Notice of Initial Status Conference was filed in this matter, setting an in person status conference for August 23, 2010. A copy of said notice was properly served on Respondent by first-class mail, postage fully prepaid, on July 20, 2010, addressed to Respondent at his official address. The notice was subsequently returned to the State Bar Court as undeliverable.²

Respondent participated in the August 23, 2010 status conference. Respondent was ordered to file his response to the NDC by September 7, 2010.

Respondent, however, did not file a responsive pleading to the NDC. On December 2, 2010, the State Bar filed a motion for entry of default. The motion was properly served on Respondent at his official address by certified mail, return receipt requested.³ The motion advised Respondent that the State Bar would seek his disbarment if he was found culpable of the alleged misconduct. Respondent did not file a response to the motion for entry of default.

On December 27, 2010, the court entered Respondent's default and enrolled him inactive effective three days after service of the order. That same day, the order was filed and properly served on Respondent at his official address by certified mail, return receipt requested. The order was subsequently returned to the State Bar Court as undeliverable.

The State Bar filed its brief on culpability and discipline and the court took this matter under submission on January 18, 2011.

² The returned mailing contained a forwarding address and a notation that the forwarding order had expired. The court, thereafter, sent a courtesy copy of the Notice of Assignment and Notice of Initial Status Conference to the expired forwarding address.

³ Pursuant to Evidence Code section 452, subdivision (h), the court grants the State Bar's request that the court take judicial notice of Respondent's official membership address history.

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. (Former Rules Proc. of State Bar, rule 200(d)(1)(A).)⁴

Jurisdiction

Respondent was admitted to the practice of law in California on April 8, 1994, and has been a member of the State Bar of California at all times since that date.

The Sedy Nhem Matter [Case No. 07-O-11108]

In or about May 2001, Sedy Nhem (Nhem) employed Respondent to represent him in a personal injury claim arising from an April 2001 accident. On May 16, 2001, Nhem incurred medical expenses totaling \$5,720 with Advanced Professional Imaging Medical Group (API) as a result of the accident.

In or about May 2001, Respondent executed a lien in favor of API and against any recovery Respondent obtained on behalf of Nhem. Pursuant to the lien, Respondent agreed to withhold such sums from any settlement, judgment, or verdict before disbursement of the funds to Respondent or Nhem as may be necessary to adequately protect API's interest in the sum recovered.

On March 28, 2002, Respondent filed a lawsuit in the Los Angeles County Superior Court on behalf of Nhem entitled, *Sedy Nhem v. Scher Tire, Inc., et al.*, case number VC036700.

⁴ Effective January 1, 2011, the Rules of Procedure of the State Bar of California were amended. Based on the court's determination that injustice would otherwise result, the court applied the former Rules of Procedure in this proceeding.

In or about 2003, Respondent settled Nhem's claim with the defendants for \$34,000. Defendant Scher Tire, Inc. (Scher) agreed to pay \$22,500 and defendant Darlene Nevarez (Nevarez) agreed to pay \$11,500 pursuant to the settlement.

On July 2, 2003, Respondent deposited a \$22,500 settlement draft from Scher into his client trust account at Wells Fargo Bank (CTA). On July 3, 2003, Respondent deposited an \$11,500 settlement draft from Nevarez into the CTA.

Respondent did not honor API's lien by paying the \$5,720 owing on the lien. In or about October 2006, API sold its lien interest to a collection agency, Account Management Services, Inc. (AMS). In or about October 2006, AMS contacted Nhem about API's unpaid bill.

Beginning in or about October 2006, Nhem left telephone messages for, and sent faxes to, Respondent regarding API's unpaid bill and requesting payment of the bill. Respondent did not respond to Nhem's inquiries regarding API's unpaid bill.

Between October 18, 2006 and March 9, 2007, AMS left numerous messages for, and faxed a letter to, Respondent, in which AMS requested the status of Nhem's claim. Respondent received the messages and the letter. On March 9, 2007, Respondent told AMS that he would pull Nhem's file and contact AMS by March 14, 2007. Respondent did not contact AMS by March 14, 2007, with the status of Nhem's case.

On March 14, April 16, and June 14, 2007, AMS left telephone messages for Respondent regarding Nhem's unpaid bill. On August 23, 2007, AMS sent a letter to Respondent regarding API's unpaid bill, which then totaled \$9,318.31 due to interest accruing on the unpaid balance. In the letter, AMS requested payment of the bill if Respondent had settled the case. Respondent received the letter.

Respondent did not disburse any funds to AMS from the settlement funds he received on behalf of Nhem. By not disbursing at least \$5,720 to AMS, Respondent converted funds belonging to AMS.

On March 15, 2007, the State Bar opened an investigation identified as case number 07-O-11108 concerning a complaint submitted against Respondent by Nhem.

On or about August 23, 2007, a State Bar investigator sent letters to Respondent regarding its investigation of Nhem's complaint at his official address. The letters were mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the United States Postal Service (USPS) in the ordinary course of business. The letters were not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letters. In the letters, the investigator requested a response to the allegations raised by Nhem's complaint by August 31, 2007. Respondent did not provide a written response to Nhem's complaint.

On or about February 25, 2009, a State Bar investigator sent a letter to Respondent regarding its investigation of Nhem's complaint at his official address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter. In the letter, the investigator requested a response to the allegations raised by Nhem's complaint by March 11, 2009. Respondent did not provide a written response to Nhem's complaint.

On or about March 25, 2009, a State Bar investigator sent a letter to Respondent regarding its investigation of Nhem's complaint at his official address. The letter was mailed in a sealed envelope by first class mail, postage prepaid, by depositing for collection by the USPS

in the ordinary course of business. The letter was not returned to the State Bar by the USPS as undeliverable or for any other reason. Respondent received the letter. In the letter, the investigator requested a response to the allegations raised by Nhem's complaint by April 8, 2009. Respondent did not provide a written response to Nhem's complaint.

Count 1: Failure to Respond to Client Inquiries (Section 6068, subdivision (m))

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 not responding to Nhem's inquiries regarding API's unpaid bill, Respondent failed to respond to a client's reasonable status inquiries, in willful violation of section 6068, subdivision (m).

Count 2: Failure to Pay Client Funds Promptly (Rules of Professional Conduct, Rule 4-100(B)(4))⁵

Rule 4-100(B)(4) requires that an attorney promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive. Rule 4-100(B)(4) also applies to an attorney's obligation to pay third parties out of funds held in trust, including the obligation to pay holders of medical liens. (*In the Matter of Sampson* (1994) 3 Cal. State Bar Ct. Rptr. 119, 127-128.)

By not disbursing \$5,720 to AMS from the settlement funds he received on behalf of Nhem, Respondent failed to promptly pay out client funds held in trust for the obligation of paying a medical lien holder, in willful violation of rule 4-100(B)(4).

⁵ All further references to rule(s) are to the current Rules of Professional Conduct of the State Bar of California, unless otherwise stated.

Count 3: Moral Turpitude—Conversion (Section 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. By converting \$5,720 belonging to AMS, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Count 4: Failure to Cooperate (Section 6068, subdivision (i))

Section 6068, subdivision (i) provides that an attorney must cooperate and participate in any disciplinary investigation or proceeding pending against the attorney. By not providing a written response to the allegations raised by Nhem's complaint, Respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

The Nelson Gaitan-Ayala Matter [Case No. 08-O-12368]

On May 31, 2007, the United States Attorney's Office filed a sealed indictment in the United States District Court in Hawaii entitled, *United States of America v. Nelson Gaitan-Ayala, et al.*, case number CR07-00268JMS. Nelson Gaitan-Ayala (Nelson), John Eduardo Ayala (John), Wilsonis Ayala, Hector Cruz (Cruz), Raychel Cabral (Cabral), and others, were charged with various narcotic-related offenses, including but not limited to conspiracy to distribute methamphetamine.

In June 2007, Respondent was employed by Nelson's daughter, Erika Gaitan (Gaitan), to provide legal representation for Nelson. At the time Respondent accepted the employment, he was not licensed to practice law in Hawaii. Hawaii attorney Benjamin Martin (Martin) was Respondent's co-counsel in the matter. Nelson's family paid Respondent \$80,000 as an advanced fee for the representation.

On June 15, 2007, Respondent appeared in court in the action with Martin. The court directed Respondent to file his pro hac vice application.

During a detention hearing in the action on August 13, 2007, Respondent informed the court that he had filed his application to appear pro hac vice as counsel for Nelson. After the conclusion of the hearing, the court informed Respondent that it had no record of the application allegedly filed by Respondent. The court directed Respondent to file the application by August 17, 2007, so that Nelson's sentencing hearing could go forward. Respondent did not file the application with the court until August 20, 2007. Respondent's application was denied by the court on September 5, 2007.

On August 15, 2007, Assistant United States Attorney Susan Cushman (Cushman) met with Respondent at the office of the Drug Enforcement Agency (DEA) to review evidence recovered from Nelson's home and business. During that meeting, Respondent informed Cushman that Cruz would not be pleading guilty at a hearing set for August 16, 2007. Respondent also attempted to negotiate a plea with Cushman involving Nelson, John, Cruz, and Cabral (John's fiancée). Particularly, Respondent proposed a plea bargain in which Nelson, John, Cruz, and Cabral would plead guilty if the government would agree to sentences of 60 months for Nelson and John and 48 months for Cruz and Cabral. Respondent informed Cushman that the offer expired on August 17, 2007.

On August 16, 2007, the court held a hearing regarding Cruz's motion to withdraw his plea of not guilty at 9:44 a.m. Cruz was represented by public counsel, Jeffrey Arakaki (Arakaki). During the hearing, Arakaki informed the court that Respondent was still in Hawaii and was possibly going to represent Cruz and Cushman. The court called a recess of the hearing so that Respondent could appear to answer the court's questions regarding his relationship with

Cruz. When the court recalled the matter at 10:31 a.m., Respondent appeared to answer the court's questions. He denied that he was representing Cruz in any manner. The court then asked Respondent, "Did you have business here in the courthouse today?" Respondent replied, in relevant part:

Did I have business here? I was trying to see — as a matter of fact, I was trying to get ahold of Mr. Bill Wise, his DEA agent. I actually managed to get ahold of him.

When the court asked Respondent if he was at the court to meet with a prisoner that day, Respondent replied, that he passed a message on to Cruz that another private counsel, Manuel Guerrero, was running late and would try to see him that day.

Cushman informed the court about Respondent's attempt to negotiate the plea on behalf of Nelson, Cruz, and Cabral on August 15, 2007. Cushman also questioned the veracity of Respondent's representation to the court about Respondent's contact with Wise, as Wise was on vacation and Respondent was aware of that fact. Respondent then represented to the court:

I saw Mr. Wise this morning; I spoke to him. He was supposed to have been back on the 15th, which was yesterday, which I tried to go down to see some evidence. Ms. Cushman accommodated me; another DEA agent took care of that. I spoke to Mr. Wise this morning and nothing else.

Respondent's representation to the court that he saw and spoke with Wise on August 16, 2007, was false. Respondent had not spoken with Wise at all on August 16, 2007. Respondent had not seen Wise on August 16, 2007, as Wise did not return to Hawaii from South Carolina until approximately 9:00 p.m. on August 16, 2007.

When confronted by the court about the misrepresentation, Respondent represented to the court that he had only "seen" Wise through the window, but that he did not actually speak to him on August 16, 2007, contradicting his representation to the court on August 16, 2007.

Respondent's misrepresentation to the court was material as he was intending to conceal his reason for being present at the court on August 16, 2007, i.e., to discuss a plea with Cruz.

On August 20, 2007, Cushman filed a motion to disqualify Respondent from representing Nelson pro hac vice.

On August 30, 2007, during the hearing on Cushman's motion to disqualify, Respondent made a further misrepresentation to the court about seeing Wise on August 16, 2007, stating, "I saw him at Marshal Services through the partition window."

On or about August 29, 2007, Respondent solicited Cabral about signing a declaration in support of his opposition to Cushman's motion to disqualify Respondent. At the time of the contact, Cabral was represented by attorney Barry Edwards.

On August 29, 2007, Cabral signed a declaration under penalty of perjury in which she falsely represented that she saw Respondent having a brief conversation with Wise at Marshall Services on August 16, 2007.

On August 29, 2007, Respondent filed an opposition to Cushman's motion to disqualify him. In support of his opposition, Respondent submitted Cabral's declaration to the court. Respondent knew that Cabral's declaration was false as he knew that he had not had any conversation with Wise on August 16, 2007.⁶

Respondent's action in knowingly submitting Cabral's false declaration to the court was material in that he solicited the false testimony of Cabral in order to conceal his misrepresentation to the court on August 16, 2007, and without due regard for the harm that Cabral could suffer by committing perjury and obstructing justice.

⁶ Cabral's declaration actually stated that she saw Respondent speaking to Wise on June 16, 2007. However, this was an obvious typographic error, since she also stated in the declaration that she was on her way to Cruz's hearing, which was held on August 16, 2007, not June 16, 2007.

In or about January 2008, Nelson terminated Respondent's employment.

On April 4 and 22, 2008, Nelson's subsequent attorney, Eric Seitz (Seitz), sent letters to Respondent on behalf of Nelson. In the letters, Seitz requested that Respondent release all of Nelson's papers and property, including but not limited to Nelson's passport and alien resident card, in Respondent's possession. Respondent received the letters, but did not release Nelson's papers and property.

In Seitz's April 22, 2008 letter, he also requested on behalf of Nelson that Respondent provide a full accounting for the \$80,000 paid by Nelson. Respondent did not provide the requested accounting to Seitz or Nelson.⁷

Count 5: Unauthorized Practice of Law in Another Jurisdiction (Rule 1-300(B))

Rule 1-300(B) states that a member shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction. By attempting to negotiate a plea with Cushman involving Nelson, John, Cruz, and Cabral on August 15, 2007, when he was not admitted to represent any of the defendants pro hac vice, Respondent willfully practiced law in a jurisdiction where practicing is in violation of the regulations of the profession in that jurisdiction.

Count 6: Seeking to Mislead a Judge (Section 6068, Subdivision (d))

Section 6068, subdivision (d) provides, in pertinent part, that it is the duty of an attorney to never seek to mislead a judge by an artifice or false statement of fact or law. By misrepresenting to the court that he saw and spoke with Wise on August 16, 2007, Respondent employed, for the purposes of maintaining the causes confided in him, means which were

⁷ While respondent did not provide an accounting, the record is unclear regarding what, if any, portion of \$80,000 paid by Nelson was unearned. It is also unclear if any portion of the \$80,000 has been refunded.

inconsistent with truth, and sought to mislead the judge or judicial officer by an artifice or false statement of fact, in willful violation of section 6068, subdivision (d).

Count 7: Seeking to Mislead a Judge (Section 6068, Subdivision (d))

By knowingly submitting Cabral's false declaration to the court on August 30, 2007, Respondent employed, for the purposes of maintaining the causes confided in him, means which were inconsistent with truth, and sought to mislead the judge or judicial officer by an artifice or false statement of fact, in willful violation of section 6068, subdivision (d).

Count 8: Moral Turpitude (Section 6106)

By misrepresenting to the court that he saw and spoke with Wise on August 16, 2007, and by knowingly submitting Cabral's false declaration to the court in order to conceal his misrepresentation to the court on August 16, 2007, and without due regard for the criminal penalties that Cabral could suffer by committing perjury and obstructing justice, Respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

The misconduct in Count Eight, however, is based on the same misconduct for which respondent has already been found culpable in Counts Six and Seven. The court finds Count Eight to be duplicative, and therefore assigns no additional weight to this count.

Count 9: Failure to Release File (Rule 3-700(D)(1))

Rule 3-700(D)(1) states that a member whose employment has terminated shall promptly release to the client, at the request of the client, all the client papers and property. By not releasing Nelson's papers and property, Respondent failed, after termination of employment, to promptly release all of his client's papers and property upon the request of his client, in willful violation rule 3-700(D)(1).

Count 10: Failure to Render Accounts (Rule 4-100(B)(3))

Rule 4-100(B)(3) requires that an attorney maintain complete records and render appropriate accounts of all client funds in the attorney's possession. By not providing an accounting for the \$80,000 in advanced fees paid by Nelson, despite his request, Respondent failed to render appropriate accounts to a client regarding all funds coming into Respondent's possession, in willful violation of rule 4-100(B)(3).

Aggravation

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, std. 1.2(b).)⁸

The court finds in aggravation the following:

Prior Record of Discipline

Respondent has been disciplined on two previous occasions. (Std. 1.2(b)(i).)

Effective April 6, 2006, Respondent was privately reprovved with conditions in State Bar Court Case Nos. 04-O-12439; 04-O-15782 (Cons.). In this single-client matter, Respondent failed to perform legal services with competence and willfully disobeyed a court order. In mitigation, Respondent had no prior record of discipline. No aggravating circumstances were involved.

On January 14, 2010, the California Supreme Court issued an order (S177919) suspending Respondent from the practice of law for three years, stayed, with an 18-month period actual suspension and until the State Bar Court grants a motion to terminate his suspension pursuant to rule 205 of the Former Rules of Procedure. In this default proceeding, Respondent was found culpable on thirteen counts of misconduct including failing to: (1) perform legal services with competency; (2) obey a court

⁸ All further references to standard(s) are to this source.

order; (3) report judicial sanctions to the State Bar; (4) respond to client inquiries; (5) inform clients of significant developments; (6) cooperate with a State Bar investigation; and (7) comply with the requirements of his private reproof. In aggravation, Respondent committed multiple acts of misconduct, caused significant client harm, failed to participate in the disciplinary proceedings, and had a prior record of discipline. No mitigating factors were found.

Multiple Acts

Respondent has been found culpable of numerous counts of misconduct in the present proceeding. The existence of multiple acts of misconduct is an aggravating circumstance. (Std. 1.2(b)(ii).)

Failure to Participate

Respondent's failure to participate in this disciplinary proceeding before the entry of his default is an aggravating factor. (Std. 1.2(b)(vi).) However, its weight in aggravation is limited because the conduct relied on for this aggravating factor closely equals the misconduct relied on to find Respondent culpable of violating section 6068, subdivision (i) and for the entering of his default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) No mitigating factors were shown by the evidence presented to this court.

IV. Discussion

The primary purposes of attorney discipline are to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49

Cal.3d 103, 111.) In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because “they promote the consistent and uniform application of disciplinary measures.” (*In re Silvertan* (2005) 36 Cal.4th 81, 91-92.) Nevertheless, the court is “ ‘not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender.’ [Citations.]” (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, quoting *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the courts consider relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions.

Standards 2.2(a), 2.2(b), and 2.3, among others, apply in this matter. The most severe sanction is found at standard 2.2(a) which recommends disbarment for willful misappropriation of entrusted funds unless the amount misappropriated is insignificantly small or unless the most compelling mitigating circumstances clearly predominate, in which case the minimum discipline recommended is one year actual suspension.

Due to Respondent's prior record of discipline, standard 1.7(b) is also applicable. Standard 1.7(b) provides that, if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline, the degree of discipline in the current proceeding must be disbarment unless the most compelling mitigating circumstances clearly predominate.

Based on the egregious nature of the present misconduct, Respondent's prior record of discipline, and his failure to participate in the present proceedings, the court finds no compelling reason to deviate from standards 1.7(b) and 2.2(a). Consequently, the court concurs with the State Bar's recommendation that Respondent should be disbarred.⁹

V. Recommended Discipline

Accordingly, the court recommends that Respondent Drago Campa be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.¹⁰

It is further recommended that respondent make restitution and furnish satisfactory proof thereof to the State Bar's Office of Probation, as follows:

To Account Management Services, Inc. (AMI) or Sedy Nhem (Nhem),¹¹ in the total amount of \$5,720 plus 10 percent interest per annum from July 2, 2003 (or reimburses the Client Security Fund to the extent of any payment from the fund to AMI or Sedy Nhem in accordance with Business and Professions Code section 6140.5).¹²

⁹ The State Bar also requested a \$38,000 restitution order in the "Hagan matter." This request is denied, as it erroneously refers to a matter not presently before the court.

¹⁰ Only active members of the State Bar may lawfully practice law in California. (Bus. & Prof. Code, § 6125.) It is a crime for an attorney who has been enrolled inactive (or disbarred) to practice law, to attempt to practice law, or to even hold himself or herself out as entitled to practice law. (Bus. & Prof. Code, § 6126, subd. (b).) Moreover, an attorney who has been enrolled inactive (or disbarred) may not lawfully represent others before any state agency or in any state administrative hearing even if laypersons are otherwise authorized to do so. (*Ibid.*; *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61, 66-73.)

¹¹ If AMI has been paid by Nhem, it is recommended that Respondent pay Nhem.

¹² Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d).

The court further recommends that Respondent be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹³

VI. Costs

The court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that Respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

Dated: March ____, 2011

DONALD F. MILES
Judge of the State Bar Court

¹³ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or a contempt, an attorney's failure to comply with rule 9.20 is also, *inter alia*, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)