STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of WENDELL DEAN PETERS, A Member of the State Bar, No. 150132.	)	Case Nos. 11-O-11361; 11-O-10839 (11-O-11766; 11-O-12691; 11-O-14512) (Cons.)-LMA DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

Introduction[1]

In this contested disciplinary proceeding, respondent Wendell Dean Peters (Respondent) is charged with fifteen counts of misconduct, alleged in two consolidated notices of disciplinary charges. The alleged misconduct includes practicing law while not entitled (three counts), moral turpitude–practicing law while suspended (three counts), failing to obey a court order (two counts), moral turpitude–misrepresentation (two counts), failing to communicate significant developments, failing to refund unearned fees, failing to account, collecting an illegal fee, and failing to comply with conditions of disciplinary probation.

This court finds, by clear and convincing evidence, that Respondent is culpable on thirteen of the fifteen counts. In view of his serious misconduct, as well as the evidence in aggravation and mitigation, the court recommends that Respondent be disbarred.

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[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a notice of disciplinary charges against Respondent, in case No. 11-O-11361, on March 25, 2011 (NDC #1). On June 13, 2011, Respondent filed a response to NDC #1.

On September 15, 2011, OCTC filed a second notice of disciplinary charges against Respondent in case Nos. 11-O-10839 (11-O-11766; 11-O-12691; 11-O-14512) (NDC #2). On October 14, 2011, Respondent filed a response to NDC #2.[2]

On November 14, 2011, this court issued an order consolidating and abating the proceedings. This matter remained abated – for the most part – over the next six years.[3]

On February 20, 2018, this matter was unabated and trial dates were set. The parties filed a Stipulation as to Facts on May 8, 2018. A two-day hearing was held before this court on May 8 and June 7, 2018. Deputy Trial Counsel Peter Klivans represented OCTC. Robert Young represented Respondent. This matter was submitted for decision on June 7, 2018.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 4, 1990, and has been a member of the State Bar of California at all times since that date.

Case No. 11-O-11361 – The Disciplinary Probation Matter

Facts

By order filed July 22, 2010, in *In re Wendell Dean Peters* on Discipline, case No. S183013 (State Bar Court case Nos. 06-O-15339 (07-O-10805; 07-O-11639; 07-O-12708; 07-O-13843; 08-O-10119), the California Supreme Court suspended Respondent from the

[2] Respondent later filed an amended response to NDC #2 on May 11, 2012.

[3] This matter was unabated on two occasions but was returned to abated status shortly thereafter.

practice of law for one year, execution of that period of suspension was stayed, and he was placed on probation for five years including a 90-day period of actual suspension. The Supreme Court order also required Respondent to comply with the conditions of probation contained in the stipulation approved by the Hearing Department of the State Bar Court in its order filed on December 1, 2009, and as modified on February 11, 2010. Further, the Supreme Court order required Respondent to comply with rule 9.20 of the California Rules of Court 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 order.

Notice of the Supreme Court order was properly served upon Respondent at the address he maintained with the State Bar in accordance with Business and Professions Code section 6002.1, subdivision (a) and California Rules of Court, rule 9.18(b). The Supreme Court order became effective on August 21, 2010.

Pursuant to this order, Respondent was required to comply with the following relevant terms and conditions of probation, among others:

> Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.
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> Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund (CSF) has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Steven Gilger	$2,500	September 12, 2006
Barbara Sherman	$2,500	July 8, 2006
Norell Porter	$2,500	November 17, 2006
James Durell	$3,500	September 2006

Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payments) in order to complete the payment of restitution, including interest, in full.

Payee	Minimum Payment	Payment Frequency
Steven Gilger	$25.00	First day of the month
Barbara Sherman	$25.00	First day of the month
Norell Porter	$25.00	First day of the month
James Durell	$25.00	First day of the month

Respondent experienced difficulty complying with the terms and conditions of his disciplinary probation right from the onset. His first quarterly report was due on October 10, 2010. On October 8, 2010, Respondent emailed his quarterly report to the Office of Probation but did not submit a copy of that quarterly report containing an original signature to the Office of Probation until November 10, 2010.

Respondent also immediately violated the restitution conditions attached to his disciplinary probation. Respondent's first restitution payments, which were due to be paid on

September 1, 2010, were paid late, on October 7, 2010.[4] Respondent's subsequent restitution payments, due on October 1, November 1, and December 1, 2010, were not paid at all.[5]

Conclusions of Law

Count One – § 6068, Subd. (k) [Failure to Comply with Probation]

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation. By willfully failing to: (1) timely pay his restitution payments due on September 1, 2010; and (2) pay his October 1, November 1, and December 1, 2010 restitution payments, Respondent failed to comply with conditions attached to his disciplinary probation, in willful violation of section 6068, subdivision (k).[6]

Case No. 11-O-10839[7] – The Young and Hughes Matters

Facts

As noted above, Respondent's disciplinary suspension in case No. S183013 became effective on August 21, 2010. His 90-day period of actual suspension concluded on November 19, 2010; however, Respondent remained suspended because his disciplinary costs were not paid pursuant to former rule 284, Rules of Procedure of the State Bar of California. (Exhibit 1, p. 7.)

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[4] Respondent failed to provide proof to the Office of Probation that the October 7, 2010 payments were received by the payees. It remains unclear whether the payees actually received those payments; however, for the purposes of this decision, the court gives Respondent the benefit of the doubt that the belated September 1, 2010 payments were received by the payees on or about October 7, 2010.

[5] There is no indication in the record that Respondent has made any restitution payments since October 7, 2010.

[6] OCTC also alleged that Respondent violated section 6068, subdivision (k), by failing to timely submit his October 10, 2010 quarterly report to the Office of Probation. However, it is unclear from the record whether Respondent's conduct relating to his October 10, 2010 quarterly report actually constituted a violation of his probation.

[7] NDC #2 consists of four case numbers and involves fourteen counts. For organizational purposes, the court has arranged these matters by case number.

As a result, Respondent's license to practice law in the State of California has been suspended from August 21, 2010, to the present day.

The Young Matter

On December 13, 2010, while Respondent was suspended from the practice of law, he personally appeared in court on behalf of defendant Caroline Young in *People v. Caroline Young*, Placer County Superior Court, case No. 41-213909 (*People v. Young*). Respondent, on behalf of Ms. Young, entered a plea of not guilty to a traffic matter and entered a time waiver. Respondent did not object to a trial date of February 3, 2011.

Thereafter, Respondent was reported to the State Bar by the Placer County Superior Court regarding his appearance in *People v. Young*. On or about April 6, 2011, Respondent wrote a letter to the Placer County Superior Court regarding his December appearance in *People v. Young*. (Exhibit 18, pp. 3-5.) In that letter, Respondent stated that he mistakenly believed he was no longer suspended when he made his December 2010 appearance in *People v. Young*. Respondent acknowledged that he was wrong and that his suspension has an "indefinite date." In this same letter, Respondent's letterhead stated "Law Office of Wendell D. Peters" and he signed the letter: "Wendell D. Peters [¶] Attorney at Law (SBN 150132)."

The Hughes Matter

On December 22, 2010, while Respondent was suspended from the practice of law, he personally appeared in court on behalf of defendant Michael Dudley Hughes in *People v. Michael Dudley Hughes*, Placer County Superior Court, case No. 41-175562. During the hearing, the judge inquired about the status of Respondent's disciplinary suspension. Respondent told the judge that his suspension ended in November. (Exhibit 20 [December 22, 2010 DVD beginning at 11:05:50].) The court set a further hearing for January 27, 2011.

Conclusions of Law

Count One – Section 6068, Subd. (a) [Unauthorized Practice of Law]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. Section 6125 provides that no person shall practice law in California unless the person is an active member of the State Bar. Section 6126 states that any person advertising or holding himself or herself out as practicing or entitled to practice law or otherwise practicing law who is not an active member of the State Bar, or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so, is guilty of a misdemeanor. By appearing in court and representing defendants Young and Hughes while suspended from the practice of law, Respondent held himself out as entitled to practice law and actually practiced law while he was not an active member of the State Bar of California. Accordingly, Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count Two – § 6106 [Moral Turpitude]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In Count Two, OCTC charges that by appearing in court and representing defendants Young and Hughes while suspended from the practice of law, when Respondent *knew* he was not an active member of the State Bar, he willfully violated section 6106 by committing an act involving moral turpitude, dishonesty, or corruption.

It has not been established by clear and convincing evidence that Respondent actually knew that he was still suspended in December 2010. His period of actual suspension terminated in November 2010, and the evidence presented at trial, including his representations to the court

in *People v. Hughes* and his April 6, 2011 letter in *People v. Young*, support Respondent's testimony that he mistakenly believed his suspension would terminate at the end of his 90-day actual suspension. Accordingly, Count Two has not been established by clear and convincing evidence and is dismissed with prejudice.[8]

Case No. 11-O-11766 – The Schwab Matter

Facts

As noted above, the July 22, 2010 Supreme Court order required Respondent to comply with rule 9.20 of the California Rules of Court[9] and to perform the acts specified in subdivisions (a) and (c) within 30 and 40 calendar days, respectively, after the effective date of the order.

Pursuant to the Supreme Court's order, Respondent, on September 29, 2010, filed a rule 9.20 compliance declaration (rule 9.20 declaration) which he signed under penalty of perjury. (Exhibit 2.) In that declaration, Respondent declared as follows:

> I have notified all clients and co-counsel, in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my consequent disqualification to act as an attorney after the effective date of the order of suspension/disbarment, and in those cases where I had no co-counsel, I urged the clients to seek legal advice elsewhere, calling attention to any urgency in seeking another attorney.
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> As of the date upon which the order to comply with rule 9.20 was filed, I had no papers or property to which clients were entitled.
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> As of the date upon which the order to comply with rule 9.20 was filed, I had earned all fees paid to me.
>
> I notified all opposing counsel or adverse parties not represented by counsel in matters that were pending on the date upon which the order to comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my disqualification to act as an attorney after the effective date of my suspension, disbarment, or the Supreme Court's acceptance of my resignation, and filed a

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[8] While it could be argued that Respondent was grossly negligent in believing he was no longer suspended in December 2010, this theory of culpability was not established by clear and convincing evidence, nor was it alleged in the notice of disciplinary charges.

[9] All subsequent references to "rule 9.20" refer to this source.

copy of my notice to opposing counsel/adverse parties with the court, agency or tribunal before which litigation was pending for inclusion in its files.

In or about August 2010, Respondent began representing Martin Clark Schwab in *People v. Martin Clark Schwab*, Placer County Superior Court, case No. 62-089560 (*People v. Schwab*). (See Exhibit 21, pp. 52-53.) Responded did not send Mr. Schwab notification of Respondent's suspension effective August 21, 2010, and did not deliver the client file to Mr. Schwab. Respondent also did not serve notice of his suspension on opposing counsel or otherwise notify the *People v. Schwab* court.

At the time that Respondent made the statements in his rule 9.20 declaration, Respondent knew he had failed to notify the court, opposing counsel, and Mr. Schwab of his ineligibility to practice law, effective August 21, 2010.

Thereafter, on December 10, 2010, while Respondent was suspended from the practice of law, he personally appeared in court on behalf of Mr. Schwab at a hearing on a motion to suppress in *People v. Schwab*.

On January 25, 2011, an early settlement conference was held in the matter of *People v. Schwab*. Mr. Schwab appeared in court and was informed by Respondent's associate, Robert Young, that Mr. Young was appearing for Respondent in *People v. Schwab*. Respondent had not informed Mr. Schwab that Mr. Young would be appearing on Mr. Schwab's behalf on January 25, 2011, or otherwise.

Conclusions of Law

Count Three – Section 6103 [Failure to Obey a Court Order]

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. Respondent willfully violated section 6103 by failing to comply

with the Supreme Court's July 22, 2010 order to comply with rule 9.20 by failing to notify the court, his client, and opposing counsel in *People v. Schwab* of his suspension, as required by rule 9.20(a). Respondent also willfully violated section 6103 by failing to comply with the Supreme Court's July 22, 2010 order to comply with rule 9.20 by failing to deliver the client file to Mr. Schwab or notify Mr. Schwab of a suitable time and place where the client file could be obtained, as required by rule 9.20(a)(2).

Count Four – § 6106 [Moral Turpitude – Misrepresentation]

Respondent stated under penalty of perjury on his rule 9.20 declaration that he had notified all clients, courts, and opposing counsel of his suspension and had no papers or property to which clients were entitled. At the time Respondent made that statement, he knew he had not notified Mr. Schwab, opposing counsel, or the *People v. Schwab* court of his suspension. Respondent also knew he had papers or property to which Mr. Schwab was entitled, i.e., Mr. Schwab's client file. By knowingly making false and misleading statements in his rule 9.20 declaration under penalty of perjury, Respondent committed acts involving moral turpitude and dishonestly, in willful violation of section 6106.

Count Five – Section 6068, subd. (m) [Failure to Communicate]

Section 6068, subdivision (m), provides, in part, that an attorney has a duty to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. Respondent willfully violated section 6068, subdivision (m), by failing to inform Mr. Schwab that Respondent was suspended from the practice of law effective August 21, 2010, and that Mr. Young would be appearing for Respondent at the early settlement conference on January 25, 2011.

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Count Six – Section 6068, Subd. (a) [Unauthorized Practice of Law]

By appearing in court on December 10, 2010, and representing Mr. Schwab while he was suspended from the practice of law, Respondent held himself out as entitled to practice law and actually practiced law while he was not an active member of the State Bar of California. Accordingly, Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count Seven – § 6106 [Moral Turpitude]

Similar to Count Two, Count Seven has not been established by clear and convincing evidence. Specifically, it has not been demonstrated that Respondent knew he was still suspended when he appeared on behalf of Mr. Schwab in December 2010.[10] Accordingly, Count Seven is dismissed with prejudice.

Case No. 11-O-12691 – The Kaiser Matter

Facts

On January 26, 2010, Patricia Kaiser retained Respondent to represent her in a pending marital dissolution action entitled *Patricia Kaiser v. Joseph Kaiser*, Placer County Superior Court, case No. SDR 1250 (*Kaiser v. Kaiser*). In or about that same time period, Ms. Kaiser paid Respondent $7,000 as advanced fees for his services.

On March 16, 2010, Respondent appeared in court on behalf of Ms. Kaiser and requested permission to file an amended petition for dissolution. On March 31, 2010, Ms. Kaiser paid Respondent an additional $3,000 as advanced fees for his services, for a total of $10,000 as advanced fees.

On April 14, 2010, Respondent filed an amended petition for dissolution of marriage and an income and expense declaration in *Kaiser v. Kaiser*. On April 29, 2010, Respondent

[10] It also has not been alleged or established by clear and convincing evidence that Respondent was grossly negligent in believing he was no longer suspended in December 2010.

personally appeared at a hearing in *Kaiser v. Kaiser*. The hearing was continued to June 21, 2010.

On May 25, 2010, Ms. Kaiser paid Respondent an additional $2,000 as advanced fees for his services, for a total of $12,000 as advanced fees. On June 21, 2010, Respondent failed to appear at the hearing in *Kaiser v. Kaiser*. A further hearing was set for September 17, 2010.

Respondent did not notify the *Kaiser v. Kaiser* court of his suspension from the practice of law effective August 21, 2010. On August 25, 2010, Respondent sent an email to Ms. Kaiser and informed her of his 90-day suspension from the practice of law. Respondent, however, did not notify Ms. Kaiser of his suspension by certified or registered mail, return receipt requested, as required by rule 9.20(b).

On September 10, 2010, Ms. Kaiser and Respondent executed a substitution of attorney for *Kaiser v. Kaiser*. The substitution of attorney was not filed with the court. On September 14, 2010, Respondent faxed a letter to his opposing counsel in *Kaiser v. Kaiser*, Gerri Bray, informing Mr. Bray of Respondent's 90-day suspension from the practice of law.[11] Respondent, however, did not notify Mr. Bray of his suspension by certified or registered mail, return receipt requested, as required by rule 9.20(b).

On December 22, 2010, Ms. Kaiser sent a letter to Respondent terminating his services and requesting a refund. The next day, Respondent sent Ms. Kaiser an email acknowledging her letter terminating his representation and informing her that a final billing was being prepared.

On January 4, 2011, Respondent sent Ms. Kaiser an email advising her of the Mandatory Settlement Conference and Trial Confirming Conference on January 4, 2011, in *Kaiser v. Kaiser*. Respondent, who was suspended, offered to prepare a brief settlement statement for Ms. Kaiser.

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[11] Although Respondent was suspended from the practice of law, his letterhead on the September 14, 2010 letter included the signature block "Wendell D. Peters, Attorney At Law."

On January 4, 2011, Ms. Kaiser sent Respondent a letter and requested the return of her legal documents within 10 days from the date of her letter. Respondent, however, did not provide Ms. Kaiser with her client file or any type of an accounting. Respondent also did not refund any unearned fees to her.

On January 6, 2011, Ms. Kaiser filed a dismissal of the marital dissolution proceeding.

At the time that Respondent filed his rule 9.20 declaration, he knew he had not notified Ms. Kaiser or Mr. Bray of his suspension by certified or registered mail, return receipt requested. In addition, Respondent knew he had not notified the *Kaiser v. Kaiser* court of his suspension.

Conclusions of Law

Count Eight – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Respondent was retained to represent Kaiser in her marital dissolution matter. Respondent was paid $12,000, but only performed limited services, including making a few court appearances and filing an amended petition for dissolution of marriage and an income and expense declaration. Respondent was no longer able to represent Ms. Kaiser when his disciplinary suspension took effect. Despite his promise to prepare a "final billing" for Ms. Kaiser, Respondent did not provide her with an accounting and did not refund any portion of the $12,000 in advanced fees she paid him. By failing to refund any part of Kaiser's $12,000 in advanced fees, despite providing only limited services to Kaiser that abruptly came to an end upon the onset of his disciplinary suspension, Respondent willfully violated rule 3-700(D)(2).[12]

[12] While Respondent did not earn the entire $12,000 fee, it is clear that he performed some work on Kaiser's behalf. Accordingly, the court lacks sufficient evidence to make an accurate recommendation of restitution.

Count Nine – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide Ms. Kaiser with an accounting for the $12,000 in advanced fees he received from her, Respondent failed to render appropriate accounts to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3).

Count Ten – Section 6103 [Failure to Obey a Court Order]

Respondent willfully violated section 6103 by failing to comply with the Supreme Court's July 22, 2010 order to comply with rule 9.20 by: (1) failing to notify the *Kaiser v. Kaiser* court of his suspension, as required by rule 9.20(a)(4); (2) failing to notify Ms. Kaiser or opposing counsel in *Kaiser v. Kaiser* of his suspension by registered or certified mail, return receipt requested, as required by rule 9.20(a); (3) failing to deliver the client file to Ms. Kaiser or notify her of a suitable time and place where the client file could be obtained, as required by rule 9.20(a)(2); and (4) failing to refund any part of fees paid by Kaiser that had not been earned, as required by rule 9.20(a)(3).

Count Eleven – § 6106 [Moral Turpitude – Misrepresentation]

Respondent stated under penalty of perjury on his rule 9.20 declaration that he had notified – by registered or certified mail, return receipt requested – all clients, courts, and opposing counsel of his suspension and had no papers or property to which clients were entitled. At the time Respondent made that statement, he knew that: (1) he had not notified the court in *Kaiser v. Kaiser* of his suspension; (2) he had not notified Ms. Kaiser or opposing counsel in *Kaiser v. Kaiser* of his suspension by registered or certified mail, return receipt requested; and (3) he still possessed Kaiser's client file. By knowingly making false and misleading statements

under penalty of perjury in his rule 9.20 declaration, Respondent committed acts involving moral turpitude and dishonestly, in willful violation of section 6106.

Case No. 11-O-14512 – The Peterson & Hudson Matters

Facts

By January 27, 2011, Respondent was aware of the fact that he was not authorized to practice law following the expiration of his 90-day period of actual suspension. This fact is evidenced by an email Respondent sent to State Bar Office of Probation Deputy Maricruz Farfan on January 27, 2011. In that email, Respondent acknowledged his noncompliance with some of the terms of his probation and went on to state the following:

> I have further compounded the problem by making the mistake that my actual suspension was done in ninty [sic] days and as such made a few appearances as working would be a good remedy. The appearance's [sic] were on old cases that I felt obligated to finish. Of course now I have been advised that the suspension was never lifted and all hell has broken lose [sic]. One client who has mental health issue [sic] went on a tirade about deceit and deception and of course the Presiding Judge must report. Given the extent of the damage and the rumor mile [sic], rebuilding my practice seems doubtful. Again I realize this is irrelevant, of little interest and I created it. I expect nothing, and I must take corrective action, meet my terms and conditions and concentrate finding [sic] some kind of employment. (Exhibit 14, p. 1.)

Despite actual knowledge of his suspension from the practice of law, Respondent continued to practice law and represent clients after January 27, 2011.

The Peterson Matter

Respondent represented Lizabeth Emily Peterson in *People v. Lizabeth Emily Peterson*, Sonoma County Superior Court, case No. SCR-595468 (*People v. Peterson*). Between March and May 2011, Respondent made a total of four personal appearances on behalf of Ms. Peterson in *People v. Peterson.*

On March 2, 2011, Respondent appeared with Ms. Peterson at the arraignment. He entered a not guilty plea and waived his client's speedy trial rights. A further hearing was set for April 1, 2011.

On April 1, 2011, Respondent personally appeared on behalf of Ms. Peterson and again entered a time waiver. A settlement conference was set for May 2, 2011.

On May 2, 2011, Respondent personally appeared at a settlement conference on behalf of Ms. Peterson. Respondent did not object to the jury trial setting for July 1, 2011. Respondent was also ordered to refile Ms. Peterson's motion to suppress evidence by May 6, 2011. The court set the hearing date on the motion to suppress for May 26, 2011.

On May 26, 2011, Respondent personally appeared on behalf of Ms. Peterson. The court pointed out that Respondent was not eligible to practice law. The court vacated the hearing on the motion to suppress. A jury trial was set for July 1, 2011.

The Hudson Matter

On May 2, 2011, John Wesley Hudson retained Respondent to represent him in *People v. John Wesley Hudson*, Sonoma County Superior Court, case No. SCR-601315 (*People v. Hudson*). Respondent informed Mr. Hudson his fees would be $1,500, and requested advanced fees of $500.

On May 20, 2011, Mr. Hudson paid Respondent $400 in advanced fees for his services. On June 22, 2011, Mr. Hudson paid Respondent an additional $100 in advanced fees for his services, for a total of $500 in advanced fees. Respondent was not entitled to practice law at any point during the time period he received Mr. Hudson's $500 in advanced fees. The $500 collected by Respondent therefore represented an illegal fee.

On May 31, 2011, Respondent personally appeared in court on behalf of Mr. Hudson in *People v. Hudson.*[13] A further hearing was set for June 22, 2011.

From June 22 through June 25, 2011, Mr. Hudson left numerous telephonic messages for Respondent. Respondent received these messages but did not respond.

On June 26, 2011, Respondent informed Mr. Hudson that he was unable to represent him and would refund Mr. Hudson's money. To date, however, Respondent has not refunded any portion of the $500 paid to him by Hudson.

Conclusions of Law

Count Twelve – Section 6068, Subd. (a) [Unauthorized Practice of Law]

By appearing in court and representing defendants Peterson and Hudson while suspended from the practice of law, Respondent held himself out as entitled to practice law and actually practiced law while he was not an active member of the State Bar of California. Accordingly, Respondent willfully violated sections 6125 and 6126 and thereby failed to support the laws of the State of California, in willful violation of section 6068, subdivision (a).

Count Thirteen – Rule 4-200(A) [Illegal Fee]

Rule 4-200(A) provides that an attorney must not charge, collect, or enter into an agreement for an illegal or unconscionable fee. By charging and collecting $500 for legal services in *People v. Hudson* when he was not entitled to practice law, Respondent charged and collected an illegal fee, in willful violation of rule 4-200(A).

Count Fourteen – Section 6106 [Moral Turpitude]

By representing defendants and collecting an advanced fee when he knew he was not entitled to practice law in California, Respondent intentionally held himself out as entitled to

[13] This appearance was five days after the *People v. Peterson* court pointed out that Respondent was not eligible to practice law.

practice law when he was not an active member of the State Bar, thus committing acts involving moral turpitude, dishonesty, and corruption, in willful violation of section 6106.[14]

Aggravation[15]

OCTC bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

Prior Record of Discipline (Std. 1.5(a).)

As previously noted, Respondent has one prior record of discipline. On July 22, 2010, the Supreme Court issued order No. S183013 (State Bar Court case Nos. 06-O-15339 (07-O-10805; 07-O-11639; 07-O-12708; 07-O-13843; 08-O-10119)) suspending Respondent from the practice of law for one year, stayed, with five years' probation, including a ninety-day period of actual suspension. In this matter, Respondent stipulated to twenty-two counts of misconduct involving five clients. The stipulated misconduct included failing to perform legal services with competence (four counts); failing to respond to client inquiries (three counts); failing to inform clients of significant developments (three counts); failing to refund unearned fees (four counts); failing to maintain client funds in trust; failing to account; failing to obey a court order; improper withdrawal (three counts); commingling; and failing to maintain sufficient funds in his client trust account. In aggravation, Respondent committed multiple acts of misconduct. In mitigation, Respondent was experiencing extreme difficulties in his personal life

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[14] See *In the Matter of Johnston* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 585, 588-589 [holding oneself out as entitled to practice law is violation of Business and Professions Code section 6106, proscribing acts of moral turpitude, dishonesty, and corruption]; compare with *In the Matter of Hazelkorn* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 602 [unauthorized practice of law by suspended attorney did not involve moral turpitude where attorney reasonably believed he was entitled to practice law].)

[15] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

at the time of the misconduct, he had no prior record of discipline, and he presented evidence of his good character and pro bono activities.

Multiple Acts of Wrongdoing (Std. 1.5(b).)

Respondent's multiple acts of misconduct constitute an aggravating factor. The court assigns this factor moderate weight in aggravation.

Intentional Misconduct (Std. 1.5(d).)

The OCTC argues that Respondent's intentional misconduct should be considered in aggravation. While it has been established that Respondent intentionally practiced law in the Peterson and Hudson matters while he was suspended and intentionally submitted a misleading 9.20 declaration, the court already relied on those facts when determining that Respondent's misconduct in those matters constituted moral turpitude. Accordingly, the court does not assign additional weight in aggravation for intentional misconduct.

Significant Harm (Std. 1.5(j).)

The OCTC argued that Respondent's conduct caused significant harm to his clients and to the administration of justice. The court agrees. Respondent significantly harmed his clients by failing to make restitution payments, failing to inform his clients that he was not authorized to practice law, and failing to refund unearned and illegal fees. Respondent's repeated instances of practicing law while suspended also significantly harmed the administration of justice. (*In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 509.) Accordingly, the court assigns substantial weight in aggravation for the significant harm caused by Respondent's misconduct.

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Mitigation

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

Extreme Emotional Difficulties (Std. 1.6(d).)

Respondent testified regarding the extreme emotional difficulties he has faced and is working to overcome.[16] Extreme emotional difficulties are a mitigating circumstance if expert testimony establishes that such emotional difficulties were directly responsible for the misconduct and were not the result of illegal conduct, and it is established by clear and convincing evidence that the emotional difficulties no longer pose a risk that the attorney will engage in misconduct. (Std. 1.6(d).) Here, the only significant evidence with respect to emotional difficulties was Respondent's own testimony.

While the court is sympathetic to all that Respondent has faced, there was no expert testimony regarding his emotional difficulties and their connection to the present misconduct. (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993 [attorney not entitled to mitigation for emotional difficulties since no expert evidence existed to establish causal connection between attorney's anxiety disorder and misconduct at issue].) As such, there is insufficient evidence before this court to conclude that Respondent has fully resolved his emotional issues. Nonetheless, the court applauds his efforts to overcome the challenges he has faced and affords limited weight in mitigation to Respondent's emotional difficulties. (See *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 59-60 [although established by lay testimony, personal stress factors given some weight in mitigation])

[16] In view of Respondent's privacy considerations, the court refrains from specifically identifying his difficulties.

Community Service

Respondent testified regarding his community service work, including working on suicide prevention programs and acting as a sponsor for Alcoholics Anonymous. Respondent is also working to obtain an Associate's degree in dependency counseling. The court commends Respondent's community service work, but only assigns limited weight in mitigation because it was not established by evidence beyond Respondent's own testimony. (See *In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 840 [limited mitigation weight for community service established only by respondent's testimony].)

Candor/Cooperation (Std. 1.6(e).)

The court affords Respondent significant mitigating credit for cooperating with OCTC by entering into an extensive stipulation and essentially admitting culpability on some counts. His cooperation conserved judicial resources. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [more extensive weight in mitigation for those who admit culpability and facts].)

Discussion

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts, and the legal profession; to preserve public confidence in the profession; and to maintain high professional standards for attorneys. (Std. 1.1.) The discipline analysis begins with the standards, which promote the consistent and uniform application of disciplinary measures and are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91 [Supreme Court will not reject recommendation arising from standards unless grave doubts as to propriety of recommended discipline].)

Standard 1.7(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended

sanction is to be the most severe of the different sanctions. In the present matter, the most severe sanction for Respondent's misconduct is found in standards 2.11 (moral turpitude) and 2.12(a) (disobeying a court order), both of which provide, in part, that the presumed sanction is disbarment or actual suspension.

Due to Respondent's prior record of discipline, the court also looks to standard 1.8(a) for guidance. Standard 1.8(a) provides that if an attorney has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle*, *supra*, 4 Cal. State Bar Ct. Rptr. at p. 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton*, *supra*, 36 Cal.4th at p. 92.)

OCTC argues that the appropriate level of discipline for Respondent's misconduct is disbarment. Respondent, on the other hand, maintains that his misconduct warrants a level of discipline short of disbarment. The court agrees with OCTC.

Respondent's willful failure to comply with rule 9.20 is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.)

That being said, 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.) Discipline short of disbarment has been imposed on occasion where the late filing of a compliance affidavit was the only issue and the attorney has demonstrated good faith, significant mitigation, and little or no aggravation. (See *Shapiro v. State Bar* (1990) 51 Cal.3d 251; and *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192.) Such is not the case here.

The present case demonstrates Respondent's unwillingness or inability to conform to his ethical responsibilities. In addition to intentionally filing a false rule 9.20 declaration, Respondent intentionally chose to continue practicing law while suspended, notwithstanding repeated reminders from various courts that he was not entitled to practice law. Moreover, Respondent's prior stint of disciplinary probation demonstrated no willingness or ability by Respondent to comply with the terms of his probation. In that matter, he was placed on probation for five years, but began violating the terms of his probation after only the first month – and within four months Respondent had already violated multiple terms of probation.

The court also found some guidance in *Bercovich v. State Bar*, *supra*, 50 Cal.3d 116. In *Bercovich*, the attorney was disbarred for failing to comply with former rule 955 of the California Rules of Court (now rule 9.20). In that matter, the attorney did not inform at least two clients about his suspension and failed to file a former rule 955 declaration. The Supreme Court rejected the attorney's unsubstantiated claims of emotional and physical difficulties. In recommending disbarment, Supreme Court noted that Respondent's conduct throughout the disciplinary proceedings raised serious questions as to his ability and fitness to practice law.

The present case is considerably more extreme than *Bercovich*. Rather than simply failing to file a 9.20 declaration, Respondent filed a 9.20 declaration containing multiple misrepresentations constituting moral turpitude. Also, unlike the attorney in *Bercovich*,

Respondent has been found culpable of numerous additional acts of misconduct, including, but not limited to, acts of moral turpitude relating to his continued practice of law when he knew he was suspended.

Accordingly, the court sees no compelling reason to recommend a level of discipline short of disbarment. While the court applauds Respondent's efforts to address his emotional difficulties, there is insufficient evidence before this court to conclude that he has fully resolved these issues.

Therefore, based on Respondent's extensive misconduct and aggravation, as well as the relatively limited mitigation, the court concludes that Respondent's disbarment is necessary to protect the public, the courts, and the legal community, to maintain high professional standards, and to preserve public confidence in the legal profession.

Recommendations

It is recommended that Wendell Dean Peters, State Bar Number 150132, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that Respondent be ordered to make restitution to John Wesley Hudson in the amount of $500, plus 10% interest per annum from May 20, 2011. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of 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 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter.[17]

Costs

It is recommended 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.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: July 30, 2018

LUCY ARMENDARIZ
Judge of the State Bar Court

[17] For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 July 30, 2018, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

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

ROBERT ANDREW YOUNG
PO BOX 9055
AUBURN, CA 95604 - 9055

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

Peter A. Klivans, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 30, 2018.

Vincent Au
Court Specialist
State Bar Court