PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JAMAUL DMITRI CANNON,** **Member No. 229047,** A Member of the State Bar.	**Case Nos.: 14-O-00863,** 14-O-04538, 15-O-10433, 15-O-10808-DFM **DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER**

INTRODUCTION

Respondent **Jamaul Dmitri Cannon** (Respondent) is charged here with 17 counts of misconduct in four separate matters. Respondent has stipulated to culpability for four of the counts in one of those matters but disputes all remaining charges. In view of Respondent's misconduct, including his misrepresentations to both the State Bar and this court during the pendency of this disciplinary proceeding, the court recommends, inter alia, that he be disbarred from the practice of law.

PERTINENT PROCEDURAL HISTORY

The instant proceeding results from the consolidation of two separate proceedings filed against Respondent. The Notice of Disciplinary Charges (NDC) in the first proceeding (case Nos. 15-O-10433 and 15-O-10808) was filed by the State Bar on December 22, 2015. On February 10, 2016, Respondent filed a verified response to the NDC, denying any culpability in either matter. On that same day, this court issued an order abating the proceeding at the request of the parties due to the anticipated filing of new charges against Respondent in the near future

At the same time an in-person status conference on March 2, 2016, was also scheduled, with the expectation of then consolidating the anticipated new case and scheduling a new trial date for all matters. All parties were ordered to attend.

The NDC in the second proceeding (case Nos. 14-O-00863 and 14-O-04538) was filed on February 17, 2016. On March 2, 2016, the first case was called for the scheduled in-person status conference. Counsel for the State Bar was present; Respondent was not. As a result, the court recessed the conference until March 7, 2016.

On March 7, 2016, the reconvened status conference was held in both matters. Both sides were present. Because Respondent had not yet filed a response in the second matter, the two cases were not consolidated at that time. Nonetheless, the two still-separate proceedings were ordered to commence trial on June 14, 2016, with an overall five-day trial estimate.

On March 21, 2016, Respondent filed a verified response to the second NDC, denying any culpability in either matter. As will be discussed more fully below, factual representations made by Respondent in this verified response have proved to be knowingly false.

On April 1, 2016, after Respondent had filed his response to the second NDC, the two cases were ordered consolidated for all purposes.

On April 15, 2016, the State Bar filed a motion to continue the scheduled trial due to the anticipated unavailability of one of the complaining witnesses. No opposition to the motion was filed by Respondent. On May 4, 2016, this court continued the scheduled trial to June 24, 2016.

On June 10, 2016, the parties filed a joint stipulation of undisputed facts in which Respondent admitted many of the facts underlying the various charges against him. He did not, however, at that time admit culpability in any of the matters.

Trial was commenced on June 24, 2016, and completed on July 1, 2016. At the commencement of the trial, Respondent conceded culpability for counts 1 through 4 (but not 5)

of case No. 14-O-00863 (the Peachtree Funding matter), but continued to deny culpability in all other matters. The State Bar was represented at trial by Senior Trial Counsel Kimberly Anderson. Respondent acted as counsel for himself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the stipulation of undisputed facts filed by the parties, on Respondent's responses to the two notices of disciplinary charges, and on the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 8, 2003, and has been a member of the State Bar at all relevant times.

Case No. 14-O-00863 (Peachtree Funding Matter)

In early 2013, Respondent was in need of money. Because of his poor credit history, he was unable to borrow money from traditional sources. To obtain money, Respondent came up with a scheme to obtain loans, so-called "settlement advances," from several companies offering cash advances to attorneys who were scheduled to receive contingency fees resulting from personal injury settlements. Although Respondent's law practice was devoted primarily to family law matters, he had recently acted for a very short time as counsel for two plaintiffs, Paul Gyimah and Christin Curry, in a personal injury case (the *Gyimah/Curry* civil case).[1] Respondent intended to take advantage of his knowledge and prior involvement in that case to apply for settlement advances. The fact that Respondent was aware that the *Gyimah/Curry* civil case had not settled, that he was no longer counsel in the case, and that he had never had a contingency fee arrangement for his work on the matter did not dissuade him from pursuing settlement advances from a number of different companies.

[1] On October 2, 2012, Respondent substituted into the case. He substituted out of the case on October 26, 2012. (Ex. 26, p. 1.)

On or about February 15, 2013, Respondent submitted an application to Alliance Legal Solutions for a $40,000 cash settlement advance, based on his false representation that he had just settled the *Gyimah/Curry* civil case on behalf of client Curry for $320,000. (Ex. 11, pp. 4, 6.) In support of that misrepresentation, he provided Alliance with a purportedly finalized 10-page settlement agreement, ostensibly signed by all interested parties, including plaintiff Curry; the defendant; defendant's counsel, Stephen Moore; a representative of the defendant's insurance company; and himself. (*Id.* at pp. 6-15.) All of these signatures, except for Respondent's, were falsified and fraudulent. In addition, Respondent provided Alliance with a fabricated contingency fee agreement with Curry, which purportedly entitled Respondent's office to 33.3% of any settlement, plus costs. (Ex. 32, pp. 9-12.)[2]

In reliance on Respondent's misrepresentations, Alliance advanced $30,000 to Respondent on February 21, 2013. It then sought to secure its interest in the settlement by filing a UCC notice of assignment.

At roughly the same time that Respondent was receiving financing from Alliance, he was also seeking to obtain a settlement advance from Lawyers Funding Group, LLC, with an application dated February 20, 2013, and executed by Respondent before a notary on February 21, 2013. (Ex. 22, pp. 40-41.) He initially provided Lawyers Funding with a purported settlement agreement on behalf of Curry of the *Gyimah/Curry* civil case in which the opposing

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[2] Respondent's actual retainer agreement with Gyimah and Curry, provided by Respondent to the State Bar on May 8, 2014, contained no such contingency fee provision, but instead provided that Respondent's office would be compensated solely on an hourly rate basis. (Ex. 26, pp. 1, 6-9.) Providing strong evidence that the purported contingency agreement was fabricated by Respondent in February 2013 as part of his scheme to seek settlement advances is the fact that the first and last pages of the purported contingency fee agreement are dated October 1, 2012 (as is the actual retainer agreement entered into by Curry and Gyimah), while each of the middle two pages of the agreement (in which the actual fee agreement was altered to become a contingency fee arrangement) are dated "February 8, 2013." The dates on those two middle pages were presumably updated by the computer, unbeknownst to Respondent, at the time of his modifications to those pages.

side agreed to pay Curry $240,000 in the form of eight equal payments of $30,000 over the next two years. This settlement agreement had purportedly been executed by all of the interested individuals, including Curry, defense attorney Moore, and Respondent, in late January 2013. Once again, this settlement agreement and all of the signatures on it, other than Respondent's, were false and fraudulent.

Lawyers Funding Group, LLC, did not end up loaning money to Respondent. At some point during the application process, Respondent provided it with a different version of the alleged Curry settlement for which Respondent was seeking a cash advance. This second version of the settlement was significantly different than the first agreement that Respondent had previously provided to Lawyers Funding. While the second version contained purported signatures of all of the same individuals, the dates of those signatures were now stated to have been in March 2013, rather than in January. More significantly, the settlement was no longer a structured settlement, but instead required a single payment of $225,000, due on or before May 1, 2013. Alarmed by the differences in the two agreements, Lawyers Funding rejected Respondent's request for a cash advance.

Lawyers Funding then notified Alliance Funding of Respondent's loan request, the conflicting settlement agreements, and Lawyers Funding's rejection of the application. Unfortunately, when Alliance received this information from Lawyers Funding, it had already advanced the $30,000 to Respondent. It then contacted Respondent in mid-March, 2013, who responded by writing a letter, dated March 20, 2013, agreeing to return the $30,000 "on or before May 15, 2013 or as such time as CLG [Cannon Law Group] receives settlement funding on a related action of *Gyimah v. Scott,* LASC Case No. BC460626." (Ex. 13, p. 4.) With this letter, Respondent sent a check for $1,000 "as good faith for the foregoing agreement." Since then Respondent has returned no additional money to Alliance.

In April 2013, a representative of Alliance contacted Respondent to determine the status of the settlement funding Respondent had promised in his prior letter. In response, Respondent provided the following fabricated explanation for why no additional payments were to be forthcoming in the foreseeable future:

> Defendant's insurance company never remitted payment as a result of Defendant's purported "bad faith" and "failure to disclose" in his policy. Shortly after the Settlement Agreement was signed, the insurance company's counsel refused to submit payment and threatened to commence a related case against the insured for his purported failure to disclose multiple DUIs in his car insurance application. The court has set an OSC as to whether to accept and enforce the previous settlement agreement for July 8, 2013. If the insurance company is ultimately successful and manages to extricate itself from coverage for Defendant, I will be prosecuting a case against a "judgment proof" Defendant. Regardless, I will not be collecting a single payment until at minimum July of this year and any payments I make towards my advance will have to come from my own operating surpluses.

(Ex. 32, p. 19.)

The $1,000 paid by Respondent to Alliance on March 20, 2013, came from Respondent's client trust account at Chase Bank, which by then held a $15,000 settlement advance that Respondent had just received from another company, Peachtree Funding (Peachtree Funding). His application to this company was based on a purported $212,000 settlement that Respondent falsely claimed he had secured on behalf of Paul Gyimah in the *Gyimah/Curry* civil case. In support of his application, Respondent provided to Peachtree Funding a settlement agreement that had purportedly been executed in early March 2013 by all of the interested individuals, including Gyimah, defense attorney Moore, and Respondent. (Ex. 8.) Once again, this settlement agreement and all of the signatures on it, other than Respondent's, were false and fraudulent.

During the loan application process, a Peachtree Funding representative sent an email to Respondent on March 13, 2013, inquiring about the earlier UCC filing by Alliance Funding. In

response, Respondent emailed Peachtree Funding the following explanation: "There is preexisting litigation financing for a separate client, Christin Curry. I am currently repaying said financing as agreed. Last installment is due in June of this year." (Ex. 7, pp. 1-2.) In this email, Respondent also falsely represented that he, as Gyimah's attorney, was entitled to receive 34.5% of the $212,000 settlement (or $73,140).[3]

On March 14, 2013, Respondent signed in front of a notary an Assignment of Attorney Fees, by which he became entitled to receive from Peachtree Funding a settlement advance of $15,000 ($15,750 less $750 in document fees. As part of this agreement, Respondent, inter alia, made the following representations, all knowingly false:

> WHEREAS, Seller is entitled to certain legal fees due on account of representing the Plaintiff in connection with a matter entitled Paul Gyimah, et al. v. Donald William Scott, et al., pending in the Superior Court of California Los Angeles bearing Index # BC460626 (the "Litigation"); and
>
> WHEREAS, Settlement in the Litigation has been reached in favor of the Plaintiff, for the sum of $212,000.60, (the "Settlement Amount"); and
>
> WHEREAS, on account of the legal services rendered and costs incurred by Sellers in the Litigation, Sellers are entitled to legal fees in the minimum amount of $73,140.00 in regard thereto (the "Fee");

(Ex. 9, p. 1.)

At the same time that Respondent executed the above Assignment of Attorneys Fees, he also executed a Method of Payment Form, in which he directed Peachtree Funding to pay the $15,000 to him by depositing it directly into his client trust account (CTA) at Chase Bank. In this form he provided Peachtree Funding with both the routing information for the transfer of funds and the account number of his CTA (xxxxx7898). (Ex. 23, pp. 1, 14.)

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[3] This representation was untrue for numerous reasons, all known to Respondent at the time, including: (1) there was no such settlement; (2) Respondent was no longer counsel in the case and had not been since October 2012; and (3) as previously noted, Respondent's fee agreement with Gyimah was solely for an hourly fee, rather than a contingency fee.

On March 15, 2013, after receiving the notarized documents, Peachtree Funding deposited $15,000 into Respondent's CTA at Chase Bank, precisely as Respondent had directed it to do during the prior day. (Ex. 10, p. 7.)

The fabricated Giymah settlement document, submitted by Respondent to Peachtree Funding, stated that the $212,000 settlement was to be paid on or before May 8, 2013. As a requirement of the Assignment of Attorneys Fees, Respondent was obligated to notify Peachtree Funding of his receipt of the settlement funds. When no such notification was received by Peachtree Funding for months after the May 8, 2013 date, it began contacting Respondent to get an update regarding the settlement. Respondent ignored these inquiries. (Ex. 14.)

In January 2014, wanting to know the status of the settlement agreement, Michael Rodden (Rodden) of Peachtree Funding contacted Stephen Moore (Moore), the defense attorney in the personal injury case. Moore is an attorney at the law firm of Ford, Walker, Haggerty & Behar, LLP, and his purported signature appeared on the settlement agreement Respondent had provided to Peachtree Funding. In response to Rodden's inquiry, Moore informed Rodden that there had never been any such settlement, that the case was still ongoing, and that any settlement agreement received by Peachtree Funding was completely fabricated.

Concerned that someone had forged his signature on a fabricated settlement agreement in an ongoing case in which he was counsel of record, Moore contacted Respondent on January 22, 2014. During their conversation, Respondent denied having any involvement in or knowledge of the Peachtree Funding loan, including denying that he had ever spoken with Rodden. On January 23, 2014, Moore talked with Rodden, who disputed this denial. Moore then initiated the following extended exchange of email correspondence with Respondent and Rodden on January 23, 2014, during which Respondent continued his campaign of denial and deception:

9:22 a.m. Moore to Respondent:

I spoke to Mr. Rodden this morning. You told me yesterday you hadn't spoken to Mr. Rodden, however I spoke to him this morning and apparently not only had you spoken to him but your office provided the release bearing my forged signature. You told me you knew nothing of this release or purported settlement but your office allegedly provided the "Confidential Settlement Agreement and Release". I want an explanation from you immediately regarding my signature or I will contact the State Bar today. Thank you.

9:33 a.m. Respondent to Moore:

I never supplied anything to them, nor have I spoken to this Michael but what I can tell you is that I have my IT guy looking at my web mail infrastructure. He has a hunch that someone hacked into my system last year right before we moved offices. He noticed "dummied" versions of settlement agreements from other cases and I'm curious to see if the language in what you got mirrors it.

If you could forward to me I'd greatly appreciate it. I'm also going to call Michael in the office but in a nutshell, my guys suspicion is that when we moved and had to take a lot of firewall stuff down temporarily someone could've hacked in and tried to use my documents to find cases still open to try to get lenders to pay them purportedly under my firms name.

If you forward me a copy I'll compare because trust, I've had nothing to do with Gyimah and Curry since I subbed out a year and a half ago

9:34 a.m. Respondent to Moore:

And please feel free to contact either Plaintiff to verify that I've had no contact with them since they sued me in small claims court.

9:55 a.m. Moore to Respondent:

It doesn't appear that Mr. Gyimah had anything to do with the release, at least from the standpoint that the Gyimah signature on the release doesn't match ones in my file. Mr. Rodden is confirming the funding, i.e. who the check was made out to or it was direct deposited. That should she[d] some light on the matter.

9:59 a.m. Moore to Rodden:

Can you confirm how the settlement was funded so I can let bar know and let Mr. Cannon know. Thank you.

10:02 a.m. Respondent to Moore:

> Well I can prove that all of my banking personal and business is with Wells Fargo so if wasn't deposited to a WF account it's fraud.

10:36 a.m. Moore to Rodden:

> Attached are some pleadings from my file bearing Cannon and Gyimah's signature. I am no handwriting expert so I will let you draw your own conclusion. Seems strange that he still hasn't addressed the original issue I raised to him in that he lied to me about talking to you. Something smells fishy

10:37 a.m. Moore to Respondent:

> Sounds reasonable. You still haven't addressed the fact that you told me you had never spoken to Mr. Rodden but had a message to call him. Is Mr. Rodden mistaken about speaking to you?

10:25 a.m. [sic][4] Respondent to Moore:

> I said I had a message to call him a few weeks ago and totally disregarded it because I heard peach tree lending and assumed it was a solicitor. So yes if he says I spoke to him that's not true

10:29 a.m. Moore to Respondent:

> I obviously wasn't part of the phone call so I will have to defer to Mr. Rodden on that. A handwriting expert might be helpful as well.

12:02 p.m. Rodden to Respondent and Moore:

> We had a conversation on January 9 regarding this matter. Unless there is another party at your office who identifies himself as "Jamaul Cannon", and to whom callers are transferred when asking to speak to you, then we surely spoke. Is there someone at the office number in your signature who impersonates you and discusses cases on your behalf?
>
> You should already have a copy of the settlement agreement you provided at the time of funding and a copy of the executed assignment agreement, because I emailed them to you at this address on December 18. As has

[4] The copies of these various emails, admitted into evidence during the trial of this matter, were generated by the computers of different individuals involved in the communications. Hence, there are slight discrepancies between the times printed on various copies of these emails. A review of the content of the emails, however, makes clear that the sequence in which they are listed above is the correct order. The printed times have been noted by the court for each of the emails to reflect the relative rapidity of the communications.

been typical since we funded, you failed to make any response to our request for update.

We received the agreement and other supporting documents from this very email address at the time we reviewed your request for funding, in March 2013. I've included email correspondence from the time of funding, in which you provide detailed responses to our questions regarding the results of a background/credit check.

It is extraordinarily convenient for you to state that we have never spoken and that you did not request or receive an advance from Peachtree Funding, but such statements are patently false.

Peachtree hereby demands that you immediately turn over the full value of its Property in accordance with the assignment agreement. The current value is $21,498.75. If you fail to pay this sum in a timely matter Peachtree is prepared to take any measure necessary to protect its interests.

Govern yourself accordingly.

[Rodden attached various documents to this email, including copies of his prior email to and from Respondent and the notarized Assignment of Attorneys Fees signed by Respondent. It is some of those attached materials that are discussed in the subsequent communications between the parties.]

12:15 p.m. Moore to Respondent and Rodden

Mr. Cannon,

I think we should contact the Notary Public about the executed contract. There are serious financial consequences for a notary not to follow the law as I am sure you are aware. I am assuming you deny the signature is yours on both documents. I think the State Bar should definitely get involved in this given that it is not my signature and there was allegation made I was sued for malpractice by my client in the Gyimah matter which is patently false.

12:07 [sic] p.m. Respondent to Moore and Rodden:

Re the bar that's fine. Who said you were sued and how does that relate to any of this? Re the notary, we can try to reach out. Please note though that I lost my wallet and at some point last year (I don't remember when) and I did have to get another from DMV. I can also prove that. If so, even if the notary says "I" signed, it might not mean much.

I can say this: neither the address listed for my home, nor the one listed for my business is mine. Though we did change business addresses, I've been in the same residence for three years.

1:33 p.m. Respondent to Moore and Rodden:

> All I know is this. I supposedly took some loan, right? So was anything actually mailed to my office? Can I see an application? Can I get a copy of the same supposed agreement I drafted that I requested earlier? If I had more information, it might make it easier for me to help.
>
> But all I know now is that I'm being told of what I did and who I spoke to. If someone is using me or firm for some kind of fraud, trust me I want to get to the bottom of it more than either of you.
>
> I have another call with my it guy in an hour so I should have more info then.

1:30 [sic] p.m. Moore to Respondent:

> Just so that I am clear when I report this, are you claiming that you **did not** sign the "Assignment of Attorneys Fees" with Peachtree funding? You **did not** sign the "Confidential Settlement Agreement and Release? Even if you lost your license, the notary is required to match the photo I.D. with the person signing. To do otherwise is a felony and we should probably contact the Secretary of State about Mr. Sarkissian's commission. Needless to say, I don't take someone forging my name lightly, it's identity theft and a crime. [Emphasis and underlining in original.]

On January 31, 2014, Moore filed a complaint with the State Bar regarding the purported settlement agreement in the *Gyimah/Curry* civil case. The State Bar then initiated an investigation of the matter.

On March 26, 2014, State Bar investigator Brian Rowsey (Rowsey) wrote to Respondent, advising Respondent of the allegation that he had participated in a fraudulent effort to obtain financing from Peachtree Funding and asking him to provide both a response to the allegations and copies of various documents, including records related to Respondent's CTA at Chase Bank. The letter gave Respondent a deadline of April 9, 2014, to provide this information.

On April 9, 2014, the deadline for Respondent to respond to investigator Rowsey's letter, Respondent left a voicemail message for Rowsey, asking for additional time to the end of May to respond to the State Bar's letter. In this voicemail message, Respondent indicated that the Chase

Bank account, identified by number in Rowsey's letter, did not exist and that Respondent "had a bank account with Chase that was similarly numbered, but I think I've actually been the subject of some fraud... ." (Ex. 24.)

On May 8, 2014, Respondent sent a letter to the State Bar, responding to Rowsey's March 26 letter and falsely disclaiming any involvement in the Peachtree Funding transaction. In the course of this letter, Respondent made the following attempt to conceal his involvement in the transaction:

> I EVENTUALLY DISCOVERED THAT I WAS THE VICTIM OF IDENTITY THEFT
>
> In or around December of 2012 [sic], I began receiving calls from an individual who claimed he was from "Peachtree Funding." Having no idea who this was, I avoided all calls and deleted all messages, assuming they were simply solicitations.
>
> In or around January of 2013 [sic], I began to hear from Stephen Moore, who was opposing counsel on the Gyimah matter. Moore began questioning whether I had given a "settlement agreement" to Gyimah and Curry to sign. I reminded him that I substituted out of the Curry case in October of 2012 and had subsequently been sued by them.
>
> True and correct copies of email correspondence between myself and Moore is attached hereto as Exhibit 4 wherein I point out that ... I could not have possible [sic] had money transferred to a Chase account because I've with Wells Fargo ever since converting my business to a general partnership in April of 2013.
>
> Simultaneous to Moore's harassing inquiries, I reached out to my IT contractor Maurice Black,[5] with whom I have worked with since early

[5] The State Bar argued at trial that Respondent's representations, including his testimony at trial, that he was aided by Maurice Black, or someone using that name, in submitting false applications for settlement advances and false documents to the State Bar, are knowingly false. While there is much evidence to support that conclusion, including testimony by both Respondent and his former partner that Respondent would sometimes claim to be "Maurice Black" in order to avoid process servers, the evidence is not sufficiently clear and convincing for this court to make such a finding. Nonetheless, Respondent's letter to the State Bar is knowingly inaccurate in stating that Maurice Black (1) was Respondent's "IT" consultant; (2) had conducted an investigation and reached the conclusions set forth in Respondent's letter; and (3) had assisted Respondent in contacting the Burbank Police Department about the possible identity theft issue.

2013. Specifically, I asked Black to investigate any vulnerability in my computer network and document management systems.

On January 30, 2014, Black sent me an email detailing how my prior cloud storage system had been breached (probably for at least two years). In effect, Black told me that hackers had done the following:

- Managed to apply for "legal funding" in my name by submitting electronic applications;
- Opening a Separate bank account in order to transfer money into my "IOLTA" account;
- Set up a "domain blocker" in my mail server to have any email correspondence from certain domains (almost exclusively law funding company domains) bounce to external "pop3" accounts;
- Sifted through my files to submit phony settlement agreements that were mere carbon copies of an actual legitimate agreement I used for an early personal injury client.

By March of 2013, I began banking exclusively with Wells Fargo following my move because they were in the same building as my new law office. When I banked with Chase previously, however, I banked with an individual "DBA" account. Copies of my statements from the relevant time period of February 1, 2013 to April 30, 2013 are attached hereto as Exhibit 5. By April of 2013, I had closed my Chase account ending "9582" in order to open up Wells Fargo accounts. The "[xxxxxx]7880" account is a Corporate Account that I did not set up. Because of this, Chase initially would not divulge any information regarding this account to me since I was not the accountholder. Once I involved law enforcement, however, they stated that if an officer made a request for such information, they would turn it over. I should have an answer on whether I can get these actual account statements by May 16, 2014 per my last request of law enforcement.

At Black's urging, I contacted a friend of his who worked for the Cybercrimes Unit of the Burbank Police Department. I was informed that I was the victim of a common ruse. Hackers (usually out of state) would find breaches in cloud systems (dropbox was the most notorious) and "wait it out" until a victim moved offices. Once this occurs, the hackers create phony corporate bank accounts (which is easy to do because one only has to register with the California Secretary of State and no ID is required to do so) often at a company's old address. This way, even if a funding company mails something to verify an address, if the hacker states that all correspondence should be addressed to a third party "Office Manager", the Post Office will not forward the mail because it thinks that it was not intended for the prior business owner.

Ultimately though, the police could not fully investigate because they stated they lacked jurisdiction. In the end, funding applications were not

> only submitted to Peachtree, they were submitted to at least three other funding firms that I know of including Lighthouse Legal Funding; Alliance Funding Solutions; and Capital Group Financing. To my knowledge, Peachtree is the only company that actually funded an action so I can only surmise the other companies used more rigorous due diligence to discover the scam.[6]
>
> In any event, I certainly never "settled" the Gyimah and Curry action, nor did I circulate an agreement or ask for legal funding therefrom.

(Ex. 26.)

The above recitation by Respondent of the various reasons why the State Bar should conclude that he was not involved with the Peachtree Funding fraud was full of knowingly inaccurate statements. Moreover, in support of his claims of innocence, Respondent also submitted copies of purported bank records to the State Bar. In truth, those documents had been altered by Respondent in numerous ways to conceal the true history of Respondent's bank accounts at Chase Bank, especially the fact that Respondent had, in fact, maintained in March 2013 the CTA at Chase Bank into which Peachtree Funding had deposited the $15,000 settlement advance.

On May 15, 2014, State Bar investigator Rowsey subpoenaed records from Chase Bank for account No. xxxxx7898. When received, these records showed the deposit of the $15,000 loan proceeds from Peachtree Funding and Respondent's payment to Alliance of $1,000. (Ex. 10. p. 7.) State Bar investigator Rowsey then issued additional subpoenas for bank records of Respondent's Chase accounts Nos. 7880 and 9582. When those records were received, they revealed the alterations made to the bank records previously provided by Respondent to the State Bar.

[6] Respondent was clearly aware that Alliance had "actually funded" one of the scam applications.

Count 1 – Business and Professions Code Section 6106 [Moral Turpitude – Scheme to Defraud/Deceit]

Business and Professions Code[7] section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption. "Moral turpitude" has been defined as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*In re Fahey* (1973) 8 Cal. 3d 842, 849, citing *In re Craig* (1938) 12 Cal.2d 93, 97; *Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73; *In re Boyd* (1957) 48 Cal.2d 69, 70.) The paramount purpose of the moral turpitude standard is not to punish practitioners but to protect the public, the courts and the profession against unsuitable practitioners. "To hold that an act of a practitioner constitutes moral turpitude is to characterize him as unsuitable to practice law." (*In re Higbie* (1972) 6 Cal.3d 562, 570.)

In this count the State Bar alleges:

> In or about March 2013, Respondent submitted a falsified settlement agreement to Peachtree Funding Northeast, LLC ("Peachtree") by which he falsely represented that the civil case entitled *Paul Gyimah, et al, v. Donald William Scott, et al*, Los Angeles County Superior Court Case No. BC 460626 (since converted to Los Angeles County Superior Court Case No. 13K11792) ("the civil case") had settled for $212,000, and that he would be entitled to receive $73,140.00 in attorney fees from the case, when Respondent knew or was grossly negligent in not knowing the settlement agreement had not been executed by all parties, and that the case had not settled. Respondent submitted the falsified settlement agreement to Peachtree with the intention of obtaining a personal loan in the form of a cash advance from Peachtree in the approximate amount of $15,757, and based upon his false representations to Peachtree, Peachtree advanced Respondent approximately $15,757 on or about March 15,2013. By these acts, Respondent thereby committed acts involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

[7] Unless otherwise noted, all future references to section(s) will be to the Business and Professions Code.

In his verified response to the NDC, Respondent denied the above allegations. Further, he affirmatively misrepresented to this court under penalty of perjury:

> The Member did not directly transmit any of the aforementioned documents to Peachtree, though he believes his former partner William Watkins ("Watkins") and/or one of his agents did.

(Ex. 78, p. 2.)

Shortly before the commencement of the trial of this matter, the parties prepared a stipulation of undisputed facts that included many of the factual allegations made in this count and quoted above. This stipulation, however, did not contain any stipulation by Respondent of culpability. Then, during his opening statement at trial, Respondent admitted culpability of a willful violation of section 6106 pursuant to this count, although he premised that stipulation solely on his claim of being grossly negligent in his actions. He continued to deny any intentional misconduct.

During his testimony at trial, Respondent acknowledged that he was always aware that his former partner, William Watkins, was not involved in any way with Respondent's effort to obtain financing from Peachtree Funding; that he had applied to Peachtree Funding for the settlement advance; and that he had received $15,000 from it as a result of that application.

This court concludes that Respondent's conduct in personally making false representations and submitting falsified settlement documents to Peachtree Funding, in order to obtain a $15,000 unjustified settlement advance from it, constituted intentional and knowing acts by him of moral turpitude, in willful violation of the prohibition of section 6106.

Count 2 – Section 6106 [Moral Turpitude – Misrepresentation to State Bar]

In this count, the State Bar alleges:

> On or about May 8,2014, Respondent stated in writing to a State Bar Investigator that he never received $ 15,000 from Peachtree Funding Northeast, LLC ("Peachtree"), that he had never applied for a cash advance from Peachtree, and that he did not have a client trust account at

Chase Bank Account No. xxxxx7898, when Respondent knew or was grossly negligent in not knowing the statement(s) were false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

As previously noted, in his verified response to the NDC, Respondent denied the above allegations. Further, in response to the specific allegations of this count, Respondent first referred to and incorporated by reference his misrepresentation, quoted above, that he did not "directly transmit any of the aforementioned documents to Peachtree, though he believes his former partner William Watkins ("Watkins") and/or one of his agents did," and he then added that he "did not in fact seek an advance from Peachtree." (Ex. 78, p. 2.)

Prior to the commencement of the trial of this matter, the parties prepared a stipulation of undisputed facts that acknowledged and confirmed that Respondent had received $15,000 from Peachtree Funding, which funds had been deposited by Peachtree Funding into Respondent's client trust account at Chase Bank, Account No. xxxxx7898. This stipulation, however, did not contain any stipulation of culpability by Respondent to the allegations of this count. Then, during his opening statement at trial, Respondent admitted culpability of a willful violation of section 6106 pursuant to this count, although he premised that stipulation solely on his claim of being grossly negligent in his actions. He continued to deny any intentional misconduct.

This court concludes that Respondent's conduct in making the false representations to the State Bar listed in the allegations of Count 2, constituted intentional and knowing acts of moral turpitude by him, in willful violation of the prohibition of section 6106.

Count 3 – Section 6106 [Moral Turpitude – Presentation of False Evidence to State Bar]

In this count the State Bar alleges:

On or about May 8,2014, Respondent provided to a State Bar Investigator copies of bank records which he falsified to indicate they were associated with a Chase Bank Account No. xxxxx9582, when in fact the bank records Respondent produced were for his Chase Bank Account No. xxxxx7880,

> when Respondent knew or was grossly negligent in not knowing the bank records were false, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

In his verified response to this count in the NDC, Respondent denied the above allegations. Further, he affirmatively represented to this court under penalty of perjury:

> Member requested that Watkins, a cosignor on Member's trust account, provide copies of bank records while he worked on his response to the State Bar's investigation. Because Member did not view or cross-reference copies of the aforementioned records, he has no idea whether they were "falsified" or not; he can affirmatively state that *he* did not falsify anything.

(Ex. 78, p. 2.)

Prior to the commencement of the trial of this matter, the parties prepared a stipulation of undisputed facts. In that stipulation, Respondent acknowledged:

> On May 8, 2014, Respondent sent a letter to the State Bar. In the letter, Respondent denied receiving the funds from Peachtree and asserted that his identity had been stolen. Respondent stated that he had a police report regarding the identity theft. In support of his claims, Respondent submitted copies of bank records to the State Bar and a memorandum that he claimed from his IT consultant, Maurice Black. Respondent has never supplied a copy of the alleged police report he claims he had made to the Burbank Police Department.
>
> On May 15, 2014, State Bar Investigator Rowsey subpoenaed records for Account No. xxxxx7898, which showed the deposit of the $15,000 loan proceeds from Peachtree and the payment of $1,000 to Alliance.
>
> State Bar Investigator Rowsey issued additional subpoenas for Respondent's Account Nos. 7880 and 9582, which revealed the discrepancies between the bank records Respondent had provided to the State Bar with his May 8, 2014 letter and the actual records.

This stipulation, however, did not contain any stipulation of culpability by Respondent to the allegations of this count. Then, during his opening statement at trial, Respondent admitted culpability of a willful violation of section 6106 pursuant to this count, although he premised that

stipulation solely on his claim of being grossly negligent in his actions. He continued to deny any intentional misconduct.

During his testimony at trial, Respondent then acknowledged that he was always aware that his former partner, William Watkins, was not involved in any way with Respondent's effort to obtain financing from Peachtree Funding or in Respondent's providing of the falsified bank records to the State Bar; that his identity had not been stolen; and that "Maurice Black" was not his IT consultant, but rather an individual who had assisted Respondent in both obtaining financing by false pretenses and seeking to conceal his misconduct from the State Bar.

A comparison of the purported bank records supplied by Respondent to the State Bar with the true bank records makes clear that Respondent received $15,000 from Peachtree Funding, which was originally deposited into his client trust account numbered xxxx7898 and then transferred by Respondent to his operating account numbered xxxx9582. (Ex. 10, pp. 7-8.) In order to produce bank records that did not document those transactions, Respondent then took bank records from his Chase account numbered xxxx7880 and then sought to change the account numbers on the documents to xxxx9582 for the months in which the Peachtree Funding funds were being received and held in the actual accounts. (Compare, e.g., Ex. 26, p. 26, with Ex. 28, p. 6.) In this way, the Chase bank records being provided to the State Bar would seem to confirm that Respondent had not received any funds from Peachtree Funding and would certainly not provide evidence to the contrary.

This court concludes that Respondent's conduct in providing falsified bank records to the State Bar, records falsified in an unsuccessful attempt by Respondent to conceal Respondent's client trust account and the fact that he had obtained $15,000 from Peachtree Funding as a result of his falsified loan application, constituted an intentional and knowing act of moral turpitude by him, in willful violation of the prohibition of section 6106.

Count 4 – Section 6106 [Moral Turpitude – Presentation of False Evidence to State Bar]

In this count the State Bar alleges:

> On or about June 13, 2014, Respondent provided to a State Bar Investigator a copy of a March 29, 2013 monthly bank statement associated with a Chase Bank Account No. xxxxx7898, which he altered or caused to be altered to falsely show that the deposits and additions, and electronic withdrawals were going to and from a Chase Bank Account No. xxxxx9882, when in fact those deposits and additions, and electronic withdrawals, were going to and from a Chase Bank Account No. xxxxx9582. Respondent knew or was grossly negligent in not knowing the March 29, 2013 monthly bank statement was altered when he submitted it to the State Bar Investigator, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

In his verified response to this count in the NDC, Respondent denied the above allegations. Further, he affirmatively represented to this court under penalty of perjury:

> Member requested that Watkins, a cosignor on Member's trust account, provide copies of bank records while he worked on his response to the State Bar's investigation. Because Member did not view or cross-reference copies of the aforementioned records, he has no idea whether they were "falsified" or not; he can affirmatively state that he did not falsify anything.

During his opening statement at trial, Respondent admitted culpability of a willful violation of section 6106 pursuant to this count, although he premised that stipulation solely on his claim of being grossly negligent in his actions. He continued to deny any intentional misconduct.

During his testimony at trial, Respondent then acknowledged that he was always aware that his former partner, William Watkins, was not involved in any way with Respondent's effort to obtain financing from Peachtree Funding or in Respondent's providing of the falsified bank records to the State Bar; that his identity had not been stolen; and that "Maurice Black" was not

his IT consultant, but rather an individual who had assisted Respondent in both obtaining financing by false pretenses and seeking to conceal his misconduct from the State Bar.

This court concludes that Respondent's conduct in providing to the State Bar the falsified monthly bank statement, falsified in an unsuccessful attempt by Respondent to conceal from the State Bar Respondent's client trust account and the fact that he had obtained $15,000 from Peachtree Funding as a result of his falsified loan application, constituted an intentional and knowing act of moral turpitude by him, in willful violation of the prohibition of section 6106.

Count 5 – Rules of Professional Conduct, Rule 4-100(A) [Commingling]

Rule 4-100(A) of the California Rules of Professional Conduct[8] prohibits attorneys from depositing personal funds into client trust accounts: "No funds belonging to the member or law firm shall be deposited therein or otherwise commingled."

Respondent improperly caused $15,000 in personal funds to be deposited into his CTA by Peachtree Funding and then used those funds to pay non-client expenses. His conduct was a willful violation of the prohibition against commingling set forth in rule 4-100(A). (*In the Matter of McKiernan* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420, 426.)

Respondent contends that the depositing into his client trust account and use of those funds for non-client purposes did not constitute a violation of the prohibition against commingling because there were no client funds in the account at the time. This argument is contrary to well-settled law and has no merit. Instead, the rule against commingling "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23; see also *Arm v. State Bar* (1990) 50 Cal.3d 763, 776-777; *In the Matter of Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 876; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 625; *In the Matter of*

[8] Unless otherwise noted, all future references to rule(s) will be to the Rules of Professional Conduct.

Heiser (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 54 ["Trust accounts, open or closed, are never to be used for personal purposes . . . ."].) Respondent's actions were a willful violation of the prohibition of rule 4-100(A) against commingling.

Case No. 14-O-04538 (Bowers Matter)

On June 12, 2013, Mishel Bowers (Bowers) retained Respondent to represent her in what she thought would be an uncontested dissolution of her marriage. She selected Respondent to be her attorney because "he was the only lawyer that had a flat fee of $1,500" for handling an uncontested dissolution. The fee agreement offered by Respondent, and accepted by Bowers, provided that, if the matter required more than the filing of a petition for dissolution and the drafting of an uncontested judgment of marital dissolution, Respondent would be paid for his efforts at $300 per hour. (Ex. 35, p. 6.) On July 2, 2013, Respondent filed a petition for dissolution on behalf of Bowers.

Bowers' belief that her husband and her circumstances were amenable to an uncontested dissolution quickly proved to be unfounded. Unbeknownst to Bowers and Respondent, Bowers' estranged husband had also hired his own attorney and, represented by that attorney, had already filed his own action for dissolution on July 1, 2013. The parties then began the process of disclosing financial information, with Bowers frequently informing Respondent that she lacked the information required to provide a response. (See, e.g., Ex. 35, pp. 31, 42.)

On July 3, 2013, Bowers provided Respondent with information for her Schedule of Assets and Income and Expense Declaration, and she provided similar information and documentation to Respondent during the case when he requested it.

While the attorneys then worked out an agreement whereby the actions would be merged and Bowers' petition treated as a response to the husband's first-filed action, problems soon developed in the division of their properties, the sale of their home (with the husband's attorney

blocking any distribution by the escrow company of the proceeds of the sale), and the custody and handling of their minor child.

The couple had put their Alhambra home on the market, and a sale of it was scheduled to close escrow in December 2013. On December 18, 2013, the attorney for Bowers' husband sent a letter to the escrow company, notifying the company that there was a dispute between the estranged couple over how the proceeds of the sale should be distributed and instructing the escrow company not to distribute any of the sales proceeds to either of the two spouses "absent an express written agreement of the parties or a court order." (Ex. 35, p. 80.)

On December 23, 2014, counsel for Bowers' estranged husband notified Respondent that the husband was claiming that he had used separate property to purchase the couple's Alhambra home and that, as a result, only $86,000 of the proceeds were community property. As a result, Bowers would be entitled to no more than $43,000 of the proceeds from the property's sale. When Bowers relayed this information to Respondent she made clear that she did not agree with this division and outlined the complexity of the situation in the following email, sent on December 24, 2013:

> Hi Mr. Cannon,
> I want to give you a chronology of events. I need your legal guidance on this
> The more I think about this situation is the more upset I get.
>
> - -I purchased my home 374 W. Harriet St. Altadena for $175 in July 2000 as a single woman.
> - -I got married to Bryan in June 2003.
> - -Bryan moved into my home. He already owned the property on 3rd ave in los angeles as an investment property.
> - -we sold the Altadena home on 5/10/05 for $485,000 and I put bryan on the sale to avoid capital gains taxes. We made about $300,000 in profit.
> - -we bought our home in alhambra in may 2005. bryan inherited money from his coach at some point before we moved into the Alhambra home. I know that he used the money he inherited to pay off his property on 3rd ave. and I know he gave me $500 to go shopping from the inheritance.

- bryan did not tell me he was using the money he inherited to purchase our Alhambra home. My assumption was he was using the Altadena home sale for the down payment.

Throughout the 9 years of marriage, Bryan handled all the finances and made all of the financial decision. he was very controlling with the money, and I did not even have an atm card until the last year of marriage. All of our money was comingled throughout the entire marriage, that included filing taxes together, and paying the property insurance on his separate property.

what upsets me the most is Bryan made a calculated decision to use his inheritance money as the down payment of the Alhambra home when there was money from the house sale available, and knowing we were buying the home together. So since that is the case, where is the 300,000 from the sale of the Altadena home?

It does not seem right that I would only receive 44,000 from the sale of the alhambra home when I had a home and would have had a minimum of 150,000 if we split the profit back then.

it appears from this transaction, that bryan owned more than 50% of the Alhambra home if all I would only be entitled to is 44,000.
If you believe that there is no chance of me being able to get more money, or only a slight chance, then I do not want to waste my time or money fighting this. But I feel like I was deceived, and ripped off and it is not right. Bryan has all of the information from the sale of the Altadena home.

anything you can do would be greatly appreciated.
Thank you.
Mishel

(Ex. 35, pp. 98-100.)

On January 2, 2014, immediately after the conclusion of the holiday season, Respondent responded to Bowers' email, reporting that he had evaluated the situation and had concluded, "Bryan appears to be trying to cheat you out of $160,000 (and that's taking into account the fact he's willing to "give" you $43,000). Although the process will be a bit of a pain, this can be fixed." (Ex. 25, p. 98.)

No agreement between the parties was immediately forthcoming. Instead, in March 2014, the parties agreed only to a partial distribution of the proceeds of the sale, with $40,000

being disbursed to each spouse. The balance of the funds were then wired into an account at Wells Fargo Bank, where they were still deposited at the time that Bowers filed her complaint with the State Bar on August 31, 2014. (See Ex. 35, pp. 2, 80.)

In September 2013, prior to the sale of the Alhambra house, the parties had participated in a Conciliation Court proceeding to address issues regarding legal and physical custody of their minor son. During the course of this Conciliation Court proceeding, they reached an agreement, subsequently approved by the court, whereby they agreed to share both legal and physical custody of their son, with each party essentially having physical custody of the boy for one-half of the time.

The Bowers' son presented special problems. He was diagnosed as being autistic at an early age and had a long history of behavioral problems. In the Spring of 2014, the boy's behavior caused Bowers to conclude that her son needed to be placed in a residential facility providing psychiatric evaluation and care. Her estranged husband, who shared both physical and legal custody with Bowers, notified Bowers on May 7, 2014, that he did not agree, believing instead that "with the right medicine, therapy and lots of love [their son] can be stabilized." (Ex. 35, p. 95.)

After additional problems had resulted in Bowers calling the police and having her son temporarily hospitalized in a psychiatric care facility, Bowers caused Respondent to file an ex parte application on May 29, 2014, to modify the custody agreement on an emergency basis to give her sole legal custody of her son, in order that she could have him institutionalized. In the alternative, she indicated that, if the court did not authorize her to institutionalize her son, she wanted the court to modify the prior custody agreement to give her husband sole physical custody rights over her son. In her supporting declaration, she was, of course, extremely critical of her estranged husband's approach and assessment of the situation.

When the ex parte application was filed, the matter was sent to the Conciliation Court to mediate the matter, resulting in an agreement, filed on May 29, 2014, whereby the husband assumed full physical custody of the son except for seven hours each Saturday. The parties also agreed, and were ordered, to return to the Conciliation Court on August 18, 2014, to re-assess the situation.

Throughout the many months from the filing of the two dissolution petitions in July 2013 until June 2014, the opposing attorneys had been fairly cooperative with one another in reducing the legal fees and costs of the proceeding. While each side had served discovery on the other, they had been agreeing for many months to extend the obligation of the other to provide responses to that discovery. In what was clearly a reaction by either the estranged husband or his attorney to the filing of the Bowers' ex parte application of May 29, 2014, that attitude of cooperation changed dramatically after the custody matter had been successfully mediated.

As of May 30, 2014, Respondent had not provided responses on behalf of Bowers to Form Interrogatories – Family Law (Set Number One), Requests for Admission, and Form Interrogatories-General (Set Number One). On Friday, May 30, 2014, the husband's attorney, John Sibbison III (Sibbison), sent Respondent a letter, demanding that Respondent immediately provide him with answers to these three discovery requests. Sibbison also informed Respondent that, if Sibbison had not received the requested discovery responses without objections by the following Friday, June 6, 2014, he would file a motion to compel and request monetary sanctions. In this letter, Sibbison specifically related his decision to demand discovery responses and threaten motions to compel to "the ill-advised ex parte motion yesterday (which could have been resolved without the necessity of a hearing and an appearance)." (Ex. 38, p. 1.)

On June 2, 2014, Respondent sent Sibbison a letter, indicating that he was scheduled to begin vacation on June 4 and requesting an extension of time to provide responses to the

discovery until June 20, 2014. The letter then pointed out to Sibbison the local court rule stating that it was expected that such extensions would be given "unless time is of the essence." Since the dissolution action was not even scheduled to have a trial scheduling conference for another two months, Respondent pointed out that there was no basis for Sibbison to argue that this exception to the local rule applied. Sibbison then agreed to the extension.

On June 9, 2014, Respondent faxed to Sibbison his client's responses to the Form Interrogatories-General (Set Number One), but he did not submit responses at that time to the Form Interrogatories – Family Law (Set Number One). He subsequently provided his client's verification to these responses. Even though Respondent had provided to Sibbison some responses to the Form Interrogatories-General (Set Number One), he did not provide at that time any response to interrogatory no. 17.1, which Bowers was required to answer to the extent she denied any of the requests for admissions.

On June 16, 2014, Respondent sent Bowers an e-mail requesting that she provide him with responses to the Form Interrogatories – Family Law (Set Number One) and the Requests for Admission. Respondent indicated that the responses were due on June 20, 2014. Later that same day, Bowers provided Respondent with the requested responses and signed the verifications for the discovery. These responses included her agreement to all but three of the requests for admission. The three disputed requests for admission related to the source of the funds used by her husband and her to purchase their Alhambra home. These responses were received by Sibbison on June 24, 2014.

On June 25, 2014, Sibbison sent Respondent a meet-and-confer letter, setting forth various asserted deficiencies in the discovery responses. He also complained that no "substantive" responses were provided to Form Interrogatories – Family Law nos. 1, 11 and 14, and that no response had been provided to interrogatory no. 17.1 from the Form Interrogatories-

General, which Bowers was required to answer to the extent she denied any of the requests for admissions. In his June 25, 2014 letter, Sibbison stated he would file a motion to compel further discovery responses if the deficiencies were not corrected.

On June 30, 2014, Respondent sent an email to Sibbison, stating, among other things, "The failure to send form interrogatory responses was an oversight on my part as they were completed and simply were not sent with everything else. I'm out [of the office] again tomorrow, but I will forward the outstanding responses as well as the supplemental responses to you on Wednesday."

On July 9, 2014, Respondent provided to Sibbison, by fax, Bowers' responses to Form Interrogatories-General interrogatory no. 17.1. On July 10, 2014, Sibbison sent Respondent another letter, this time complaining about the format of the response: "While I realize that the response as a whole could be construed as responsive to all subparagraphs of this interrogatory, I should not have to guess which part of her response applies to which subparagraph." (Ex. 39, p. 1.)

On July 18, 2014, Sibbison filed a Motion to Compel Further Responses to the Form Interrogatories – Family Law and the Form Interrogatories – General (Set Number One). No challenge was made to Bowers' responses to the Requests for Admissions. This motion to compel asked for sanctions of $3,660 and was scheduled for hearing on August 21, 2014.

On July 22, 2014, Respondent called Bowers. During this conversation, he stated that he was preparing for an August 21, 2014, trial setting conference; informed Bowers of the motion to compel, also calendared for August 21, 2014; and indicated that he needed her to make a $2,500 payment on her account. In turn, Bowers requested that Respondent provide her with a copy of the motion to compel.

On Thursday, July 24, 2014, Respondent emailed to Bowers the motion to compel and an updated invoice indicating that Bowers then had a $2,011 credit on her account. The last time entry included in that invoice was for work done on July 22, 2014. In this proceeding, the parties have stipulated and produced documentary evidence of significant work done by Respondent on the Bowers matter during the month of June 2014. Virtually none of that work is reflected in the July 22, 2014 invoice.

In Respondent's email of July 24, 2014, he informed Bowers that the due date for the opposition to the motion to compel was August 7, 2014. When Bowers reviewed the motion to compel she discovered that Sibbison was seeking $3,660 in sanctions. She then sent Respondent an e-mail, stating that she should not be billed for the sanctions that Sibbison was seeking because she had "submitted my financial documents to you at least four different occasions." (Ex. 40, p. 1.). In response, Respondent replied to Bowers that same day via email: "He's not seeking it from [sic] financial documents, it's related to discovery responses. And in either event, I never hold clients responsible for responses I draft. In the event the judge actually grants sanctions, its my office that would pay them." (*Ibid.*)

Over the week-end of July 26-27, 2014, and on Monday, July 28, Respondent worked on the opposition to the motion to compel. Undisclosed to Respondent at the time was Bowers' decision to retain new counsel in the case.

On July 28, 2014, while Respondent was continuing to work on the opposition to the motion to compel, Bowers hired Robert Gigliotti (Gigliotti) as her new attorney. In the afternoon on July 28, 2013, Gigliotti sent Respondent an e-mail with a substitution of attorney attached. In this email, Gigliotti also demanded that Respondent forward the unearned fees on Bowers' account.

After receipt of Gigliotti's e-mail, Respondent quickly sent Bowers an email, acknowledging that he was being replaced in the case and indicating, inter alia, the following:

> I wish you'd have been more upfront as I felt better communication might've improved the situation for the both of us. If you were unhappy, you could have always reached out to me to discuss your case. Instead, I suppose you felt more comfortable hiring new counsel. While that's obviously your right, had you given me notice of your plans, I could've simply ceased working on your case, boxed up your file and sent to you.
>
> Instead, I started working on discovery, subpoenas and your response to the discovery motion when you obviously had no intention of allowing me to continue. Now it will have to be redone by new counsel and the credit you previously had pretty much evaporated. On top of that, if you have discovery sanctions levied against you, I can no longer agree to pay any such fees (as I won't even be in court to argue the case).

(Ex. 42, p. 1.)

Respondent subsequently turned his file over to Gigliotti, including his work product on the opposition to the motion to compel. In the interim, Bowers was advised by Gigliotti that "by the time [Bowers] paid for his costs to draft a response and his appearance in court it would cost [her] much more than $3;600." (Ex. 44, p. 1.) There was no evidence received by this court that Gigliotti disagreed with Respondent's opinion that Sibbison's motion could be successfully defended.

In response to Gigliotti's demand that Respondent refund any unearned fees, Respondent sent an updated invoice to Bowers, reflecting the additional work that he had done on the case. In this updated invoice, no refund was owed to Bowers by Respondent; instead she owed him a small balance.

Sibbison's motion to compel was never heard by the superior court. After attorney Gigliotti was retained by Bowers, Sibbison postponed any hearing of the motion to October 15, 2014, when the trial setting conference had also been re-scheduled to be held. (Ex. 37, p. 14.) On or before October 15, 2014, the parties agreed to settle the entire case. Bowers and her

estranged husband agreed that legal and physical custody would remain as it had been established on May 29, 2014, in response to the ex parte application filed by Respondent on Bowers' behalf. In addition, the estranged husband, notwithstanding his earlier claims (which Respondent had advised Bowers were unjustified), agreed that Bowers would receive half of the proceeds of the sale of their Alhambra home, less $2,500 to be paid by Bowers to the husband's attorney. (Ex. 37, pp. 5-14.)

Count 6 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent's handling of the discovery requests from Sibbison represented a violation by him of rule 3-110(A), which provides that an attorney "shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence."

While Respondent's handling of the discovery requests failed to comply completely with all of the technical requirements of the Discovery Act, the evidence fails to provide clear and convincing evidence that any of those deficiencies reflect an intentional, reckless or repeated failure by him to act with competence, as required for there to be a violation of rule 3-110(A). (See instead *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 149 [negligent legal representation does not necessarily establish a violation of rule 3-110(A)]; *In the Matter of Ward* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 47, 57 [mistaken failure to bring action to trial within mandatory five-year period reflected simple error and did not establish violation of rule 3-110(A)].) Respondent had provided to Sibbison all of the information pertinent to the issues of Bowers' case. Sibbison's quibbles about the purported deficiencies of the responses were silly and mean-spirited. Respondent assured Bowers at the time that he felt confident that the family law court would not be sympathetic to Sibbison's complaints, and he backed up that assessment by assuring his client that he would be personally responsible for any sanctions that might result – assuming that he was allowed to oppose it. Neither Gigliotti nor

Sibbison – or any other expert- appeared in this proceeding to testify that Respondent was either wrong in that assessment or reckless in his conduct.

During the trial of this proceeding, Respondent also opined that Sibbison's filing of the motion to compel was merely retaliation for Bowers' filing of the ex parte custody order. This court agrees with Respondent's overall assessment of the situation, an opinion that is buttressed by Sibbison's subsequent actions in failing to pursue the motion and in settling the entire case without the benefit of any further responses by Bowers to the pending discovery requests.

For all of the above reasons, this count is dismissed with prejudice.

Count 6 [sic] – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

Rule 3-700(D)(2) provides: "A member whose employment has terminated shall: ...(2) Promptly refund any part of a fee paid in advance that has not been earned.

In this count the State Bar alleges that Respondent did not earn at least $2,011 of the $7,250 that had been advanced to him by Bowers. The evidence fails to provide clear and convincing proof that any of the fees advanced by Bowers to Respondent were unearned by him at the time of his discharge.

The State Bar's allegation is based primarily on the invoice generated by Respondent on July 24, 2014, which showed a credit balance at that time of $2,011. The evidence is uncontradicted, however, that, after the preparation of that invoice, Respondent worked on the pending motion to compel prior to being discharged without advance notice on July 28, 2014. Respondent then prepared and provided to Bowers an updated invoice that showed his work and his entitlement to retain all of the advanced legal fees, and he also transmitted to Bowers' new attorney the results of his work in preparing the opposition to the motion to compel.

In addition to the above, the evidence at trial regarding the work done by Respondent prior to July 24, 2014, makes clear that there was much work done by him for which he had not previously billed but for which he would have been entitled to be paid.

For all of the above reasons, this count is dismissed with prejudice.

Count 7 – Section 6068, subd. (m) [Failure to Inform Client of Significant Development]

Section 6068, subdivision (m), of the Business and Professions Code obligates 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."

In this count the State Bar alleges that Respondent failed to inform Bowers of the various discovery requests and of her need to respond to them. The evidence fails to provide clear and convincing proof of any such violation. Instead, as set forth in the factual history above, Bowers was aware of the discovery requests prior to the deadline for her responses to be submitted, was informed of her need to provide responses, and given the deadline for those responses. As a result of Respondent's communications with Bowers about the discovery requests, she did provide draft responses to Respondent prior to the deadline for those responses to be served.

This count is dismissed with prejudice.

Count 8 - Section 6106 [Moral Turpitude – Misrepresentation to Client]

In this count the State Bar alleges that Respondent did no work on Bowers' behalf between July 24 and July 28, 2014, and, therefore, his updated invoice of August 22, 2014, was an act of moral turpitude. The evidence fails to provide clear and convincing proof of any such violation.

To the contrary, as set forth above, the evidence is uncontradicted that Respondent worked after his invoice of July 24, 2014, on the pending motion to compel prior to being

discharged without advance notice on July 28, 2014. The evidence is also uncontradicted that Respondent transmitted to Bowers' new attorney the results of his efforts.

This count is dismissed with prejudice.

Count 9 – Rule 4-200(A) [Unconscionable Fee]

Rule 4-200(A) provides, "A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee."

In this count the State Bar alleges:

> On or about August 22, 2014, Respondent charged a fee of $2,310 from Mishel Bowers ("Bowers") to perform legal services that was unconscionable for the following reasons, in willful violation of Rules of Professional Conduct, rule 4-200(A):
>
> A. The fee was unconscionable in proportion to the value of services performed;
>
> B. The fee was unconscionable with respect to the amount involved and the results obtained; and
>
> C. The fee was unconscionable in relation to the time and labor required.

The evidence fails to provide clear and convincing proof of any such violation. The amount of time spent by Respondent in working on oppositions to the various complaints in Sibbison's wide-ranging motion was clearly reasonable and the $300/hour rate at which he charged for this time was both reasonable and specified in his fee agreement with Bowers. There was no evidence that Respondent's fees in preparing the opposition to an extensive motion to compel, a motion that included a request for $3,660 in monetary sanctions, was out-of-line or higher than what would be expected. To the contrary, the only opinion on that issue received by this court during the trial of this matter was that of Bowers' replacement attorney, who, as noted above, informed Bowers at the time that the cost of opposing the motion to compel would be "much more than $3,600."

This count is dismissed with prejudice.

Case No. 15-O-10433 (Almache Matter)

In March 2012, Jhoana Almache (Almache), acting in pro per, filed a dissolution action against her husband.

On August 24, 2012, Almache hired Respondent to assist her in the dissolution case. Pursuant to a retainer agreement between the parties, Respondent charged Almache a $3,000 advance fee, and his retainer agreement indicated that his hourly rate was $350 per hour.

On August 31, 2012, Almache paid Respondent $1,500 in advanced fees; and thereafter, she made two $750 payments on October 15, 2012 and on November 9, 2012 (for a total of $3,000.)

On October 31, 2012, Almache informed Respondent that she was working on an agreement with her husband to finalize their divorce on their own. She requested that Respondent take off calendar a pending order to show cause in the action and cease working on the case. Respondent complied with Almache's request.

On May 17, 2013, Almache received a bill from Respondent's office, requesting that she pay $197.35 for an outstanding invoice from Image Quest Plus, LLC, reflecting expenses that had previously been incurred by Respondent's office on Almache's behalf. Almache resisted paying the bill, despite numerous requests by a representative of Respondent's office, claiming financial hardship.

In December 2013, Almache contacted Respondent and informed him that she and her husband were unable to reach an agreement to finalize their divorce. She then asked Respondent how much it would cost her to have Respondent finalize her divorce as well as what strategy Respondent would employ to finalize the divorce without a trial. Respondent advised Almache that it would cost her $1,500 if he could finalize a settlement without further court appearances, but Almache would need to pay Respondent a $2,500 retainer refresher if it became necessary

for Respondent to make court appearances or attend a trial in order to finalize the marital dissolution matter.

On December 9, 2013, Almache paid Respondent an additional $1,500 in advanced fees with the goal of trying to finalize a settlement of the marital dissolution matter without having to prepare for or go to trial.

On March 2, 2014 (three months later), Almache sent Respondent an email requesting that Respondent provide her with a status update.

In April 2014, Almache contacted Respondent and explained that she had learned her estranged spouse had filed for bankruptcy. Respondent advised Almache that the bankruptcy filing could affect their case.

In November 2014, Almache sent an email to Respondent terminating his services. Respondent received the email.

On November 26, 2014, Almache sent Respondent an e-mail demanding a refund of the $1,500 paid in December 2013. Respondent received the email.

Later that same day Respondent responded to Almache's e-mail. In his November 26, 2014 email, Respondent admitted letting Almache's case "slip through the cracks." Respondent also blamed his failure to finalize the divorce, in part, on the failure of opposing counsel, Nadine Jett, to respond to multiple letters from him re trial setting. Respondent also informed Almache that he would "run her account" and refund any unearned fees by the end of the week.

On December 15, 2014, when Respondent had not sent Almache any refund, Almache sent Respondent an e-mail, requesting that Respondent provide her with proof of services rendered from December 2013 through November 2014, and, absent said proof, she expected a full refund. On that same day, Respondent replied to Almache by email, stating that her retainer has been exhausted. He also stated that he intended to ignore all further communications from

her and that she can take the matter up with the State Bar. Thereafter, Almache filed her State Bar complaint.

Count 1 – Rule 3-110(A) [Failure to Perform with Competence]

In this count, the State Bar alleges that Respondent violated rule 3-110(A) "by failing to perform any work on Almache's marital dissolution case between approximately December 2013 and November 2014 and by failing to take any steps to finalize the marital dissolution case." These allegations are not supported by clear and convincing evidence.

As previously noted, to prove a violation of rule 3-110(A), the State Bar must prove not just that the attorney has failed to act with competence but that he/she has failed to do so "intentionally, recklessly, or repeatedly." The evidence presented at trial fails to meet that standard.

While Respondent was admittedly less than diligent in his efforts at such pretending, this court does not find that Respondent's lack of diligence under the circumstances was intentional, repeated, or reckless. Almache was seeking to have Respondent motivate her estranged husband to settle their differences by pretending to be moving her case forward to trial. Almache, who was far less than a credible witness, had neither the funds nor the desire to have her action go to trial. Respondent testified to having tried to communicate with opposing counsel regarding settlement and seeking to file a trial setting conference request during this period of time. While that testimony was disputed, the evidence is not clear and convincing that Respondent's testimony on those issues was false.[9] Moreover, by no later than April 2014, the husband's

[9] While the opposing attorney denied receiving any communications from Respondent after December 2013 (other than a change of address form), there are indications that this attorney may herself have been less than active in her oversight of the file and may have been unaware of or simply forgotten Respondent's attempts to communicate with her in the matter. By way of example, the court's docket in the dissolution case shows only one filing by that attorney in the case after October 2012. (Ex. 48, p. 2.) That one filing by this attorney was a proposed Order After Hearing regarding child custody and support obligations, for a hearing conducted on July

finances were subject to a bankruptcy proceeding, impacting the ability of the parties to reach a settlement or to go to trial. Further, for a significant portion of this same time period, Almache, unbeknownst to Respondent, was in the process of physically reconciling with her husband. Indeed, without disclosing that fact to Respondent, she had resumed cohabiting with him during the time period in which Respondent is now being faulted for failing to finalize the dissolution. In fact, at the time of the trial of this matter, she is continuing to live with her husband and, since firing Respondent as her attorney, has done nothing to indicate any desire on her part to have the dissolution action advanced or finalized, including not even bothering to obtain her dissolution file from Respondent, despite his offers to provide it to her.

This count is dismissed with prejudice.

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

In this count, the State Bar alleges that Respondent violated rule 3-700(D)(2) by failing to promptly refund to Almache the entire $1,500 of fees that were paid to him on December 8, 2013. The stated justification for this assertion is the allegation that Respondent "failed to perform any legal services for the client, and therefore earned none of the advanced fees." The evidence fails to provide clear and convincing proof supporting these allegations.

As noted above, Respondent's work for Almache began in 2012. It is undisputed that he performed significant work for his client prior to her request that he stand down on October 31, 2012, while Almache sought to work out a settlement agreement herself with her estranged husband.

Under Respondent's fee agreement with Almache, he was entitled to be paid on an hourly basis for his work at a rate of $350/hour. In September 2012, he prepared and forwarded to his

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10, 2012. This proposed order was not presented by this attorney to the court until August 22, 2014 – more than two years later. (Ex. 48, pp. 52-58.) Finally, the court notes that where the attorney actually remembered Respondent's activities in the case, she was quite complimentary of both him and his work product.

client a bill for $2,709.60 for the work he had done up to and including September 25, 2012. Because Almache at that time had paid only $1,500 of the $3,000 retainer owed pursuant to the fee agreement, this invoice showed a balance-due of $1,209.60.

Thereafter, on October 31, 2013, Respondent submitted a follow-up invoice, showing primarily the work done from September 27, 2012, to November 1, 2012, and the invoice received for outside copying costs. This invoice showed additional charges of $1,666.35 (including the $197.35 cost item); Almache's additional payments of $1,697.35; and an outstanding balance of $1,178.60. Hence, when the additional payment of $1,500 was made by Almache in December 2013, the portion of that payment that was an advance of future fees was only $321.14, less than the cost of a single hour of Respondent's time.

The parties have stipulated, and this court finds, that Almache had discussions with Respondent in December 2013 regarding the status of the case, her desire to have Respondent take steps to scaring her estranged husband into a settlement without going to trial, and Respondent's strategies for doing so. The parties have also stipulated, and this court finds, that Almache also had discussions with Respondent in April 2014 regarding the status of her case and the bankruptcy filed by her husband and that Respondent provided her with an assessment regarding the effect of that bankruptcy. Given that Respondent is entitled to be paid for his time spent in conjunction with this undisputed work by him on the Almache file, this court cannot conclude that any portion of the funds paid by Almache remained unearned at the time that she discharged him in November 2014. This inability is buttressed by Respondent's testimony regarding his efforts to contact opposing counsel. Indeed, after Respondent was terminated by Almache, he generated a "pre-bill" indicating that she continued to owe him money, notwithstanding her payment of the $1,500 in December 2013.

Almache's claims that she was entitled to a return of the entire $1,500 are based on her denials that she ever received any of Respondent's prior invoices. That testimony, however, was directly contrary to Almache's own prior statements to the State Bar and, to the State Bar prosecutor's credit, was disclosed by the State Bar to be such.

For all of the above reasons, this count is dismissed with prejudice.

Count 3 - Section 6106 [Moral Turpitude – Misrepresentation to Client]

In this count, the State Bar alleges: "On or about November 26, 2014, Respondent stated in writing to Jhoana Almache ("Almache") that he had performed legal services on her marital dissolution case between December 8, 2013 and November 26, 2014, when Respondent knew or was grossly negligent in not knowing the statements were false in that he had not performed any legal services for Almache during that time period, and thereby committed an act involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106." These allegations are not supported by clear and convincing evidence.

In the correspondence sent by Respondent to Almache on November 26, 2014, he stated, in pertinent part, "I will say however, that while my communication could have been better, I just didn't just sit around and do NOTHING on your case." (Ex. 46, p. 2.) This statement, rather than having been shown to have been false, is shown by the parties "Partial Stipulation of Facts" to be true. As set forth in that stipulation, Respondent, on being informed by his client in April 2014 of the bankruptcy filing by her estranged husband, evaluated the legal implications of that filing on the pending dissolution action and provided his legal opinion on that issue to his client. (Stipulation, ¶ 46.) Further, Respondent testified to having tried both to communicate with opposing counsel regarding settlement and to file a trial setting conference request. While that testimony is disputed, the evidence is not clear and convincing that Respondent's testimony on those issues was false.

For all of the above reasons, this count is dismissed with prejudice.

Case No. 15-O-10808 (Wazney-Walter Matter)

On January 31, 2014, Jennifer Wazney-Walter (Wazney) contacted William Watkins(Watkins), then a partner in Respondent's firm, the Cannon Legal Group, about defending her in a trust lawsuit. This litigation was brought against Wazney by members of her own family and related to Wazney's actions as trustee of a family trust. After interviewing Watkins, Wazney hired the Cannon Legal Group to represent her in the litigation and paid the firm $1,500 in advanced fees. Watkins then began working on the case.

The major issue in the trust dispute was whether Wazney had mishandled trust funds. The other family members were demanding an accounting by her. Watkins had assumed the responsibility of seeking to put together such an accounting. Wazney had not maintained good records regarding her actions as trustee. In order to try to put together an accounting, Watkins was essentially given a cardboard box with various statements and other documents, with the intent that he would use them to seek to provide an accounting to the other family members and their attorney.

At some point prior to April 2014, after Watkins informed Wazney that her $1,500 retainer had been exhausted, Wazney paid an additional $2,500 to the Cannon Legal Group.

Watkins and Respondent had a falling out in November 2014, resulting in Respondent summarily terminating Watkins' status as a partner in Respondent's firm and locking him out of the office. Watkins by then had still not completed the accounting for the Walters but had been working on the accounting out of his home. As a result, although he did not have immediate access to files of many of his clients, he did have much, and possibly all, of the Wazney file, including all of their original financial documents.

On or about December 12 or 13, 2014, Wazney's husband, Garett Walter (Walter), called the Cannon Legal Group, looking for Watkins. He ended up speaking with Respondent, who informed him that Watkins had been fired from the firm in November 2014, and that none of the paperwork on the Wazney matter had been retained by the Cannon Legal Group. Instead, he indicated that the firm's file on the Wazney matter was with Watkins. Walter then informed Respondent that the Walters had paid the Cannon Legal Group $4,000 for completion of accounting services relating to the trust litigation, complained that the accounting services had not been rendered, and demanded a return of the entire $4,000.

On December 29, 2014, Watkins contacted Walter. During this contact Watkins stated that he had been terminated from the Cannon Legal Group; that he had not completed the accounting; that, as a sole practitioner, he did not feel able to continue to represent the Walters in the Wazney matter; and that he had their accounting records, which they were free to have. At the time of his testimony in this proceeding, Watkins, who was called as a witness by the State Bar and is clearly hostile to Respondent, testified that the Walters have still not picked up the original file materials he is holding. He also described those documents as being far more sparse than how they were described by Walter during the trial.

After talking with Watkins, the Walters retained new counsel to represent them in the trust dispute. In an effort to seek a refund of the $4,000 previously paid to Respondent's firm, they also filed a complaint against Respondent with the State Bar.

On April 30, 2015, State Bar investigator Rowsey wrote to Respondent regarding the Walters' complaint. In this letter, Rowsey relayed to Respondent that the Walters were complaining that "they had paid the Cannon Legal Group $4,000 for completion of accounting services and said services had not been rendered. You then informed Mr. Walter that Mr. Watkins had taken their money and the Cannon Legal Group was not liable and would not be

making a refund." (Ex. 72, p. 2.) The letter asked Respondent for a written response to the allegations, along with any supporting documentation.

Respondent received the letter. On June 4, 2015, Respondent wrote a letter to State Bar investigator Rowsey, responding to the Walters' complaint. In this letter, he repeatedly represented that he had refunded $2,500 to the Walters in January 2015:

> The following correspondence is in reference to the above-entitled Complaint. I cannot respond with great detail to Jennifer Wazney-Walter's ("Complainant") claims because I was never the attorney who represented her. I have only spoken to Garett Walker on one occasion; I have never spoken to Complainant. The only time I spoke to Mr. Walker was to inform him that I would allow him a $2,500 refund of the "refresher" of his initial retainer, which refund he received in January of 2015.
> ...
> Because the Walters were refunded their $2500, they are not entitled to any credit from my firm. In fact they actually have an outstanding balance of $250. A true and correct copy of their current invoice is attached hereto as Exhibit 3.[10]
> CONCLUSION
> In sum, Complainant has already received a $2,500 refund and she never challenged any of the work done accounting for the first $ 1,500 of her retainer.

(Ex. 73, pp. 2-3.)

In response to this assertion by Respondent, investigator Rowsey immediately requested Respondent to provide proof that a refund had been made to the Walters, asking him to provide a copy of the front and back of the cancelled refund check. (Ex. 74, p. 2.) Respondent then replied that there had not been a refund check but, rather, there had been a "credit card chargeback for $2,500. (Ex. 74, p. 1.) He also indicated in this reply that he was asking his "representative for merchant services" to provide the proof of this $2,500 chargeback. Slightly

[10] In fact, this was not a "current" invoice, but instead was an invoice dated April 6, 2015, showing only the work done from the time of the original retention to March 11, 2014. Respondent's claim that the Walters still owed him $250 was based on the fact the value of the work done up to March 11, 2014, exceeded the original $1,500 retention.

more than two hours later, the representative sent Respondent a message that there had been no such $2,500 chargeback. (*Ibid.*)

Respondent did not immediately notify the State Bar of that fact. Instead, on June 19, 2015, Respondent sent a follow-up email to investigator Rowsey in which Respondent now acknowledged that no refund had been provided to the Walters. This email was not actually received by the State Bar because it was sent to an incorrect email address. Nonetheless, in this email Respondent both acknowledged the inaccuracy of his refund claim and provided a new version of his December discussion with Walter:

> I did some investigating and realize now the chargebacks I received before were unrelated to the Walter's request. I spoke to Mr. Walter on or around December 12, 2014 and I told him I needed to run a final accounting for him, which might take a while because I had to try to recover any unbilled items that Mr. Watkins had not finalized in my billing software because of his abrupt departure from my firm. Mr. Walter said that wasn't good enough because "Will never did anything," and that he would just "tell AMEX to cancel because of fraud." I then informed Mr. Walter that my firm was still entitled to the portion of fees earned while Mr. Watkins was still part of the firm, and he hung up on me.

The above statements by Respondent regarding Respondent's conversation with Walter differ dramatically from Respondent's June 4, 2015 letter, quoted above, in which he had represented to the State Bar that he had informed Walters "that I would allow him a $2,500 refund of the 'refresher' of his initial retainer," that the refund had been received by the Walters in January of 2015, and that the Walters had "never challenged any of the work done accounting for the first $1,500 of [the] retainer."

In his June 19, 2015 email, Respondent also sought to provide an explanation regarding his prior statement that the Walters had received a $2,500 refund. He also acknowledged that both an accounting and a refund were owed and available to the Walters:

> Less than a week later, AMEX did send a Chargeback Request form to me in December (the same form, I enclosed to you) which Request I did not oppose. Approximately one month later, I had $2,000 debited from my

> operating account, which I (wrongly) assumed was the Walter's refund. I have since confirmed AMEX never processed a chargeback for the Walters because they made a claim nearly 8 months after the charge occurred. The chargebacks that were processed were for separate transactions, which is what Mitchell confirmed below.
>
> I have since been able to recover Mr. Watkins' time in bill4time and the Walter's are due a refund of approximately $75. However, Mr. Watkins did not store their contact information in my client database other than an ambiguous email address of "zonkdonkey@gmail.com". If you could simply provide their contact information, I would be more than happy to send them a final accounting, which is also attached for your convenience.[11] However, since a Bar investigation has already been opened, I am unsure if I should remit payment (or proof of payment) directly to Walter, or you. Please advise. Thank you in advance for your attention to this matter.

As previously noted, because this email was sent by Respondent to an incorrect address, it was never received nor responded to by investigator Rowsey prior to disciplinary charges being filed. Although Respondent became aware prior to the trial of this case that he had sent the June 19, 2015 email to the wrong address, he had not provided either an accounting or a refund to the Walters at the time of the trial.

Count 4 – Rule 3-700(D)(2) [Failure to Refund Unearned Fees]

After learning of the Walters' complaint to the State Bar and being confronted with the fact that he had never provided a $2,500 refund to the Walters, Respondent prepared in mid-2015 an internal accounting of the time spent by Watkins on the matter, and he acknowledged that "approximately $75" of the advanced fees remained unearned and needed to be refunded. (Ex. 1002., p. 1.) Despite this awareness that unearned fees were owed to the Walters, Respondent, up to and including the time that this matter went to trial, has failed to return any funds to them. This failure represents a willful violation by him of rule 3-700 (D)(2).

[11] While this email states that an accounting was attached to it, no such accounting has been provided by Respondent to this court, either independently or as part of Respondent's email.

Count 5 – Rule 4-100(B)(3) [Failure to Render Accounts of Client Funds]

Rule 4-100(B)(3) requires a member to "maintain complete records of all funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them[.]" In this count, the State Bar alleges that Respondent failed to provide any accounting to the Walters regarding the $4,000 of advance legal fees paid to his firm by the Walters.

Respondent did not prepare an accounting of the advance fees received from the Walters until more than five months after they had demanded a return of those fees and after he had agreed to prepare an accounting, and he did so only after the Walters had complained to the State Bar. Then, although he apparently prepared an accounting, he did not provide it to the Walters. This conduct falls well below the requirements of rule 4-100(B)(3) and represents a willful violation by him of that rule.

Count 6 – Rule 3-700(D)(1) [Failure to Release File]

Rule 3-700(D)(1) provides: "A member whose employment has ended shall: (1) Subject to any protective order or non-disclosure agreement, promptly release to the client, at the request of the client, all the client's papers and property. 'Client papers and property' includes correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to the client's representation, whether the client has paid for them or not [.]" In this count, the State Bar alleges that Respondent violated rule 3-700(D)(1) by failing to return the Wazney file to the Walters after their request for it.

The evidence fails to provide clear and convincing evidence of any violation by Respondent of this rule. When the Walters made a request for their file, Respondent informed them that he did not have it and that it was probably in the possession of his former partner, Watkins, who had handled their matter. In turn, on being contacted by Walters about the files,

Watkins informed Walters that he had possession of the Wazney accounting and financial records (which had been the object of Walter's complaints during his trial testimony in this case), and he offered to turn them over to Walters. The Walters then made no effort to seek those documents from Watkins, although Walter, during his trial testimony, complained about not getting these documents from Respondent.

While it is unclear precisely how much of the Wazney file Watkins has or does not have, there is no clear and convincing evidence that Respondent has any portion of the file that he has failed to turn over to the client. Accordingly, this count is dismissed with prejudice.

Count 7 - Section 6106 [Moral Turpitude – Misrepresentation to State Bar]

In this count, the State Bar alleges that Respondent's statements in his June 14, 2015, letter to the State Bar, in which he misrepresented that he had provided a $2,500 refund to the Walters in January 2015, constituted an act of moral turpitude, in willful violation of the prohibition of section 6106. This court agrees.

It is undisputed that Respondent's statements were inaccurate. Respondent had not agreed during his conversation with Walters to provide a $2,500 refund; he had never made any such refund personally; he had never been informed that a $2,500 refund had been made to the Walters; and, in fact, no $2,500 credit card chargeback had been made to anyone during the relevant period. Respondent made this representation without taking any steps to verify the accuracy of his representation before making it. The fact that there were other former clients seeking chargebacks against his fees and that chargebacks totaling $2,000 had been made did not justify Respondent in concluding that a chargeback of $2,500 had been made to the Walters. This is especially true given that Rowsey's letter made clear that the Walters were complaining that they had not received back any portion of the $4,000 previously paid to Respondent's office. Instead, Respondent was on notice of the need to verify with his "representative for merchant

services" that any refund had been made to the Walters before claiming that it had. When Respondent eventually was required by State Bar inquiries to seek such information from this mercantile representative, he received a response in just a few hours. Given Respondent's delay of more than a month in responding to the State Bar's inquiry letter, dated April 30, 2015, there was certainly sufficient time for him to make such an inquiry. That he proceeded under the circumstances to make false representations to the State Bar resulted, at a minimum, from gross negligence on his part and constituted an act of moral turpitude. (*In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330, 333-334 [false statement to State Bar resulting from grossly negligent failure to investigate constitutes act of moral turpitude].)

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, Stds. for Atty. Sanctions for Prof. Misconduct, [12] std. 1.5.) The court finds the following with respect to aggravating circumstances.

Multiple Acts of Misconduct

Respondent is culpable of multiple acts of misconduct. This is an aggravating factor. (Std. 1.5(b).

Lack of Candor

Respondent displayed a lack of candor with this court, both in his verified responses to the NDC in the Peachtree Funding matter and during his testimony in this matter. Such a lack of honesty with this court is a substantial aggravating factor. (Std. 1.5(h); *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 791-792); *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269, 282-283.)

[12] All further references to standard(s) or std. are to this source.

Harm

Standard 1.5(f) provides as an aggravating circumstance that the member's misconduct significantly harmed a client, the public or the administration of justice. At a minimum, Respondent's misconduct here caused significant harm to Peachtree Funding, which has yet to receive back from Respondent the $15,000 that he obtained by fraudulent means. This is a significant aggravating factor.

Intentional Misconduct

As noted above, Respondent's misconduct in the Peachtree Funding matter was intentional, rather than the result of mere gross negligence. Moreover, when Respondent was confronted by Moore and Peachtree Funding about the situation, he responded with additional and knowing misrepresentations. Such intentional misconduct and dishonesty is an aggravating factor. (Std. 1.5(d).)

Uncharged Violation

Evidence of uncharged misconduct may be considered in aggravation where it is elicited for a relevant purpose and is based on the respondent's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) Here, there is clear and convincing evidence of numerous additional instances of misconduct by Respondent, including, inter alia, multiple fraudulent applications by him for settlement advances in addition to his application to Peachtree Funding; numerous other misrepresentations to Peachtree Funding, Moore and Alliance; and Respondent's acknowledged use of the alias "Maurice Black" to avoid process servers. At a minimum, Alliance has been harmed as a result of this misconduct. All of these individual acts of dishonesty represent intentional acts of moral turpitude and are additional aggravating factors.

Failure to Make Restitution

Respondent has failed to return to Peachtree Funding any of the funds he fraudulently obtained from it. He has also failed to return to the Walters the $75 of unearned legal fees he has acknowledged owing to them. This is another aggravating factor. (Std. 1.5(m).)

Lack of Insight

Respondent's many misrepresentations to Peachtree Funding, Moore, the State Bar, and this court, were unquestionably intentional and knowing acts of dishonesty by him, many of which required considerable time, energy, and effort to perpetrate. Nonetheless, Respondent continued to express at trial his belief that these acts of dishonesty resulted only from gross negligence, rather than any intentional misconduct on his part. Such a lack of understanding by Respondent of his actual *mens rea* giving rise to those improper acts shows an overwhelming lack of insight by Respondent regarding the wrongfulness of his many acts of misconduct and of his motivations in perpetrating those acts; is a significant aggravating factor; and is a source of considerable concern to this court.

Mitigating Factors

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 factors.

No Prior Discipline

Respondent had been a member of the bar for slightly less than ten years as the time of his misconduct in the Peachtree Funding matter. During that time he had no prior discipline. While case law indicates that discipline-free practice for ten years may entitle a respondent to "full" mitigation credit (see, e.g., *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88; cf. *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 295; and *In the*

Matter of DeMassa (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 752 [8 years of discipline-free practice is a mitigating factor but not entitled to significant weight]), the court declines to give significant weight to that history as a mitigating factor here. Given the repetition of Respondent's acts of moral turpitude, extending from 2013 through the very trial of this matter, and the seriousness of his many acts of misconduct, this court cannot conclude that his misconduct was aberrational. (Accord: *In the Matter of Romano* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 391, 398-399.)

Cooperation

Respondent cooperated with the State Bar by entering into a stipulation related to the four cases at issue. While the stipulated facts were not difficult to prove, the cooperation was belated, and Respondent did not fully admit responsibility for his misconduct, the stipulation was nonetheless relevant and assisted the State Bar in its prosecution of the case. The court therefore assigns mitigation, albeit limited, for such cooperation. (Std. 1.6(e); *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 185.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, preserve public confidence in the profession, and maintain the highest possible professional standards for attorneys. (Std. 1.1; *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*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 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 Silverton* (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, the court is permitted to temper the letter of the law with considerations peculiar to the offense and the offender. (*In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994; *Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) In addition, the court considers 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 1.7(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 proceeding, the most severe sanction for Respondent's misconduct is found in standard 2.11, which provides:

> Disbarment or actual suspension is the presumed sanction for an act of moral turpitude, dishonesty, fraud, corruption, intentional or grossly negligent misrepresentation, or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law.

Application of this standard suggests that disbarment is the appropriate discipline to be recommended here. Respondent's misconduct in the Peachtree Funding matter represented a calculated and knowingly fraudulent scheme by him to obtain significant money to which

Respondent was not entitled. Respondent continues to retain that money, resulting in substantial harm to Peachtree Funding.

Further, Respondent's fraudulent efforts to obtain settlement advances were not limited to Peachtree Funding but instead were directed at other companies in the business of providing such funding to attorneys, including Alliance Legal Solutions and Lawyers Funding. Like Peachtree Funding, Alliance Funding was an actual victim of Respondent's fraudulent scheme, having advanced him $30,000 based on a fabricated settlement agreement, of which it has only recovered $1,000.

Despite the fact that Respondent is aware that his plan of deception has been discovered and notwithstanding his promises (and contractual obligation) to return the funds that he wrongfully obtained, he has failed to do so. The same is true with regard to his obligation to return unearned fees to the Walters, his former clients.

Making Respondent's misconduct even more egregious, his efforts to avoid responsibility for his actions have frequently been at the potential expense of innocent others. By way of example and as set out in detail above, when the State Bar filed formal charges that Respondent had fraudulently obtained money from Peachtree Funding and had then provided fabricated documents to the State Bar to conceal his misconduct, Respondent, despite his knowledge that he was responsible for those actions, reacted by filing a verified and public response to those charges in which he publicly accused Watkins, his former partner, of the misconduct – even though Respondent was well aware at the time that Watkins had no involvement in or responsibility whatsoever for that misconduct. This demonstrated willingness by Respondent to jeopardize and sacrifice the interests of innocent bystanders to avoid responsibility for his own misconduct is a source of considerable concern by this court regarding the ongoing safety of the public and the profession.

Finally, both the Supreme Court and the Review Department of this court have emphasized the importance of a member being honest in dealing with the State Bar's disciplinary process. Knowingly false statements by a member to the State Bar have been described by the Supreme Court as "particularly egregious" and "may perhaps constitute a greater offense than misappropriation." (*Borré v. State Bar* (1991) 52 Cal.3d 1047, 1053; *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Warner v. State Bar* (1983) 34 Cal.3d 36, 44; *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200; *Cain v. State Bar* (1979) 25 Cal.3d 956, 961; *In the Matter of Dahlz, supra*, 4 Cal. State Bar Ct. Rptr. at p. 282.) This is true even though no harm results from the wrongful act. (*Olguin v. State Bar, supra*; *Barreiro v. State Bar* (1970) 2 Cal.3d 912, 926.) Here, Respondent has repeatedly made false statements to both the State Bar and this court in seeking to avoid or reduce responsibility for his unethical actions. Such conduct warrants the most severe discipline, to protect the disciplinary process in addition to the public and the profession.

For all of the above reasons, this court concludes that disbarment is both appropriate and necessary as a result of Respondent's misconduct. Accordingly, it recommends discipline as set forth below.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that respondent **Jamaul Dmitri Cannon,** Member No. 229047, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

Restitution

The court further recommends that Respondent be ordered to make restitution to the following payees:

(1) Peachtree Funding, or its assignee, in the amount of $15,000 plus 10 percent interest per year from March 15, 2013; and

(2) Jennifer Wazney-Walter in the amount of $75 plus 10 percent interest per year from December 13, 2014.

California Rules of Court, Rule 9.20

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.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds, and such payment is enforceable as provided under Business and Professions Code section 6140.5.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that **Jamaul Dmitri Cannon,** Member No. 229047, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)[13]

Dated: August 22, 2016.

DONALD F. MILES
Judge of the State Bar Court

[13] An inactive member of the State Bar of California cannot lawfully practice law in this state. (Bus. & Prof. Code, § 6126, subd. (b); see also 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. (*Ibid.*)

CERTIFICATE OF SERVICE

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

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 22, 2016, I deposited a true copy of the following document(s):

DECISION INCLUDING DISBARMENT RECOMMENDATION AND INVOLUNTARY INACTIVE ENROLLMENT ORDER

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 Los Angeles, California, addressed as follows:

JAMAUL D. CANNON
CANNON LEGAL GROUP, APC
530 S LAKE AVE # 315
PASADENA, CA 91101

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

KIMBERLY ANDERSON, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 22, 2016.

Rose M. Luthi
Case Administrator
State Bar Court