



# PUBLIC MATTER

FILED

JUL 27 2017

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

## STATE BAR COURT OF CALIFORNIA HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: 16-O-11838; 16-O-12404;
	)	16-O-12610; 16-O-14800;
LAURO NICK PACHECO, JR.,	)	16-O-15616; 16-O-16489;
	)	16-O-16539; 16-O-16811;
A Member of the State Bar, No. 173391.	)	16-O-17069
	)	
	)	DECISION

### Introduction<sup>1</sup>

In this disciplinary proceeding, Lauro Nick Pacheco, Jr. (Respondent) is charged with 27 counts of misconduct in 9 client matters. The charged acts of misconduct include: (1) failing to refund unearned fees; (2) failing to render an accounting of client funds; (3) failing to perform with competence; (4) failing to respond to client inquiries; (5) failing to cooperate in a disciplinary investigation; and (6) improper withdrawal from employment.

The court finds, by clear and convincing evidence, that Respondent is culpable of 18 counts of misconduct. Based on the present misconduct and the factors in mitigation and aggravation, the court recommends, among other things, that Respondent be suspended from the practice of law for two years, that the execution of that period of suspension be stayed, and that he be placed on probation for two years subject to a six-month actual suspension.

### Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (OCTC) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 15, 2016. After a

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

second NDC was filed on March 8, 2017,<sup>2</sup> the two matters were consolidated. Respondent filed a response to the first NDC on March 2, 2017. He responded to the second NDC on April 5, 2017.

A three-day trial was held on April 18, April 27, and April 28, 2017. OCTC was represented by Senior Trial Counsel William Todd. Respondent represented himself. On April 28, 2017, the parties waived closing argument and the court took this matter under submission. OCTC filed its closing argument brief on May 11, 2017, and Respondent filed his brief on May 15, 2017.

### **Findings of Fact and Conclusions of Law**

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

#### **Case No. 16-O-11838 –The Alvarez Matter**

##### **Facts**

On August 19, 2014, Yesenia Alvarez hired Respondent to represent her in a wrongful foreclosure case. Alvarez paid Respondent about \$9,600 for his legal services. Respondent filed a lawsuit on Alvarez's behalf but failed to appear at the case management conference held February 13, 2015. Subsequently, Alvarez's case was dismissed without prejudice. Respondent gave Alvarez multiple excuses for failing to appear and failing to refile the action. Sometime in October 2014, Alvarez was evicted from her home.

Alvarez tried on multiple occasions to speak with Respondent but when he failed to communicate with her between December 2014 and April 2015, she terminated his services.

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<sup>2</sup> Before this matter was submitted, OCTC dismissed the following counts charged in the second NDC: Count Three (Appearing For Party Without Authority); Count Four (Failure to Release Client File); Count Five (Failure to Refund Unearned Fees); Count Six (Failure to Render Accounts of Client Funds); Count Eight (Failure to Perform With Competence); Count Nine (Failure to Refund Unearned Fees); and Count Eleven (Failure to Respond To Client Inquiries).

Respondent stipulated that he did not provide Alvarez with an accounting for the \$9,600 in advance fees that she paid for legal services to be performed.

### **Conclusions of Law**

#### ***Count One – (Rule 3-700(A)(2) [Improper Withdrawal From Employment])***

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws. By failing to appear on Alvarez's behalf or to inform Alvarez that he was withdrawing from her representation, Respondent improperly withdrew from employment in willful violation of rule 3-700(A)(2).

#### ***Count Two – (Rule 4-100(B)(3) [Failure to Account])***

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property. By failing to provide Alvarez with an accounting, Respondent failed to render an appropriate accounting to a client regarding all funds coming into his possession, in willful violation of rule 4-100(B)(3).

### **Case No. 16-O-12404 – The Efrain Gutierrez Matter**

#### **Facts**

On January 26, 2014, Efrain Gutierrez retained the Nick Pacheco Law Group (NPL) to investigate Gutierrez's criminal convictions and determine whether he had any options to clean up his criminal record. Gutierrez paid Respondent \$1,000 on January 28, 2014. On March 14, 2014, Gutierrez paid Respondent \$500, leaving a balance due of \$500. When Gutierrez failed to pay the balance, NPL forwarded a letter to Gutierrez, dated October 14, 2014, which stated that

Respondent was terminating Gutierrez's representation. The October 14, 2014 letter also stated that Respondent had not and would not perform any work on behalf of Gutierrez. Respondent did not return the \$1,500 in advance fees paid by Gutierrez.

### **Conclusions of Law**

#### ***Count Three – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. Respondent withdrew from representing Gutierrez on or about October 14, 2014. Respondent stipulated that he willfully violated rule 3-700(D)(2) when he failed to refund Gutierrez any of the \$1,500 in advance fees that Respondent received from Gutierrez. Therefore, Respondent is culpable of willfully violating rule 3-700(D)(2).

#### ***Count Four – (Rule 4-100(B)(3) [Failure to Account])***

Respondent never provided Gutierrez with an accounting of the \$1,500 advance fee that Gutierrez paid. Thus, Respondent is culpable of willfully violating rule 4-100(B)(3).

### **Case No. 16-O-12610 – The Rafael Bravo Matter**

#### **Stipulated Facts**

Rafael Bravo hired Respondent to collect a \$114,190 judgment rendered on Bravo's behalf in *Garvin v. Valdovinos*, United States District Court, Northern District of California, case No. C07-01571 HRL. Respondent was retained on or about September 12, 2012, but Respondent failed to perform any legal services on Bravo's behalf. Between September 2012 and March 2016, Bravo made numerous telephonic inquiries about the status of his matter. Respondent failed to promptly respond to Bravo's inquiries.

***Count Five – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. Respondent stipulated that although he was hired to do so, he failed to take any steps to collect the \$144,190 judgment Bravo was awarded in the *Garvin v. Valdovinos* case. As such, Respondent willfully violated rule 3-110(A). (*Guzzetta v. State Bar* (1987) 43 Cal.3d 962, 979 [attorney failed to perform competently by taking no action to accomplish the purpose for which the client retained him].)

***Count Six – (§ 6068, subd. (m) [Failure to Respond To Client Inquiries])***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond 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. Respondent stipulated that he agreed to provide legal services to Bravo but failed to respond promptly to his multiple reasonable telephonic status inquiries between September 2012 and March 2016. By failing to communicate with Bravo, Respondent willfully violated section 6068, subdivision (m).

**Case No. 16-O-14800 – The Gloria Mendoza and Juan Ortiz Matter**

**Stipulated Facts**

Gloria Mendoza and Juan Ortiz hired Respondent to prepare immigrant residency petitions. Between March 2014 and May 20, 2016, Mendoza and Ortiz paid Respondent \$7,600 in advance attorney fees to perform those immigration services. Mendoza and Ortiz terminated Respondent on or about June 9, 2016. Respondent failed to render an accounting to Mendoza and Ortiz. OCTC attempted to investigate the complaints made against Respondent by Mendoza and Ortiz by forwarding letters to Respondent on August 5, 2016 and September 6, 2016. Respondent received the letters from the OCTC but did not respond to the OCTC's inquiries.

## **Conclusions of Law**

### ***Count Seven – (Rule 4-100(B)(3) [Failure to Render Account of Client Funds])***

Respondent stipulated that he never provided Mendoza or Ortiz with an accounting of the \$7,600 in advance attorney fees they paid Respondent. By failing to do so, Respondent is culpable of willfully violating rule 4-100(B)(3).

### ***Count Eight – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

By failing to provide a substantive written response to the allegations of misconduct regarding Respondent's conduct in case No. 16-O-14800 (the Mendoza and Ortiz matter), Respondent failed to cooperate in disciplinary investigations pending against him, in willful violation of section 6068, subdivision (i).

## **Case No. 16-O-14800 – The Reginaldo Laurean Matter**

### **Facts**

Respondent received \$3,000 in advance attorney's fees from Reginaldo Laurean, who retained Respondent in April 2014. Laurean hired Respondent to "clean" his criminal record so he could obtain legal status in the United States. Respondent agreed to review Laurean's arrest records so he could research and advise Laurean about all options available to him.

On Laurean's behalf, Respondent submitted paperwork to the Department of Homeland Security sometime in August 2015. Between March 2016 and July 2016, Laurean's immigration requests were denied.

Laurean became dissatisfied because he made over 50 calls to Respondent's office but was never allowed to speak with Respondent. Respondent finally returned Laurean's calls in June or July 2016, over two years after his initial retention. In June 2016, Laurean asked Respondent for a refund of all unearned fees. Respondent neither refunded any unearned fees nor provided Laurean an accounting.

OCTC sent, and Respondent received, letters dated September 8, 2016, and September 22, 2016. The September 2016 letters sought information regarding Respondent's conduct in case No. 16-O-15616 (the Reginaldo Laurean matter). Respondent did not respond to the September 2016 letters.

**Conclusions of Law**

***Count Nine – (Rule 4-100(B)(3) [Failure to Render Account of Client Funds])***

Respondent stipulated that notwithstanding a June 2016 request from Reginaldo Laurean, he never provided his client with an accounting of the \$3,000 in advance attorney fees Laurean paid Respondent. By failing to do so, Respondent is culpable of willfully violating rule 4-100(B)(3).

***Count Ten – (§ 6068, subd. (m) [Failure to Respond To Client Inquiries])***

Respondent responded to Laurean only once during his two-year retention, and Respondent's staff also communicated with Laurean infrequently. Respondent offered no evidence that he or anyone from his office communicated with Laurean promptly or kept Laurean apprised of significant developments in his case. As such, Respondent is culpable of willfully violating section 6068, subdivision (m).

***Count Eleven – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

Respondent stipulated that he failed to give a substantive response to the allegations of misconduct in the September 2016 letters he received from OCTC. By failing to respond, Respondent failed to cooperate in disciplinary investigations pending against him, in willful violation of section 6068, subdivision (i).

**Second NDC, Filed March 8, 2017<sup>3</sup>**

**Case No. 16-O-16489 – State Bar Investigation**

**Facts**

Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the State Bar's letters of December 8, 2016 and December 22, 2016, which Respondent received. Both of the State Bar's December 2016 letters requested that Respondent respond to the allegations of misconduct being investigated in case no. 16-O-16489. Respondent did not respond to either letter.

**Conclusions of Law**

***Count One – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

Respondent plead nolo contendere to Count One, charging that that he failed to give a substantive response to the allegations of misconduct contained in the OCTC's letters dated December 8, 2016, and December 22, 2016. Respondent received both letters, which sought information regarding Respondent's conduct in case No. 16-O-16489. By failing to respond, Respondent is culpable of willfully violating section 6068, subdivision (i).

**Case No. 16-O-16539 – The Ramon Ruiz Matter**

**Facts**

Ramon Ruiz hired Respondent on July 24, 2015, to file a K-1 fiancé petition and an I-130 relative petition with the United States Citizen and Immigration Service on behalf of Sonia Hernandez . Pursuant to a payment plan Ruiz entered into with Respondent, Ruiz paid Respondent \$1,750 in advance fees by the end of March 2016. Ruiz married his wife in Mexico and provided the marriage certificate to PLG in March 2016. Ruiz was told NPL would perform

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<sup>3</sup> See footnote 2, *infra* regarding the counts of the Second NDC which were dismissed by OCTC.



the legal services for which it was hired within six months. After Respondent failed to respond to Ruiz's phone calls and status requests, Ruiz sent Respondent a termination letter on October 26, 2016. He requested that Respondent return his file and his money.

Shortly after Ruiz forwarded the termination letter, Miriam, an employee in Respondent's office, called and Ruiz asked for a second chance and assured him that the I-130 would be filed right away. On or about November 10, 2016, Ruiz received a form I-797C from the United States Citizenship and Immigration Services which confirmed that the I-130 petition had been filed on November 8, 2016.<sup>4</sup> Ruiz is continuing to work with Respondent regarding the outstanding petitions but remains distrustful of Respondent.

Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the OCTC's letters dated October 18, 2016 and November 2, 2016, which Respondent received, that requested Respondent's response to the allegations of misconduct being investigated in case no. 16-O-16539.

***Count Two – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Ruiz hired Respondent to perform legal services on his behalf within a six-month period. Respondent did not perform competently as he waited until after he was terminated by Ruiz and almost eight months after he was paid to perform the services for which Ruiz had contracted with Respondent. By failing to promptly perform the legal services for which Ruiz paid him, Respondent willfully violated rule 3-110(A). Respondent failed to file the I-130 petition for almost eight months after he had received the advance fees. Therefore, Respondent is culpable of willfully violating rule 3-110(A).

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<sup>4</sup> The petition, however, did not include the other two family members who Ruiz asked to be included on the petition.

***Count Seven – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

Respondent stipulated that he failed to give a substantive response to the allegations of misconduct contained in OCTC's letters dated October 18, 2016, and November 2, 2016.

Respondent received both letters, which sought information regarding Respondent's conduct in case No. 16-O-16539. By failing to respond, Respondent was culpable of willfully violating section 6068, subdivision (i).

**Case No. 16-O-16811 – The Cristina Franco Matter**

**Stipulated Facts**

On or about October 13, 2015, Cristiana Franco paid Respondent \$3,000 in advance attorney's fees to perform legal services. Franco terminated Respondent's services and requested an accounting for the fees on or about September 7, 2016. Respondent did not provide Franco the accounting she requested.

Respondent failed to respond to letters he received from the OCTC which inquired about the allegations of misconduct being investigated in case no. 16-O-16811. The OCTC letters were dated October 1, 2016 and November 14, 2016.

**Conclusions of Law**

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

Respondent stipulated that notwithstanding her request for an accounting on or about September 7, 2016, Respondent never provided Franco with an accounting of the \$3,000 in advance attorney's fees she paid him. By failing to do so, Respondent is culpable of willfully violating rule 4-100(B)(3).

***Count Twelve – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

Respondent pled nolo contendere to the charge that he received but failed to give a substantive response to the allegations of misconduct contained in OCTC's letters dated October

1, 2016, and November 14, 2016. Both letters sought information regarding Respondent's alleged misconduct in case No. 16-O-16811. By failing to respond, Respondent was culpable of willfully violating section 6068, subdivision (i).

**Case No. 16-O-17069 – The Elia Marissa Diaz Matter**

**Facts**

In August 2014, Elia Marisa Diaz retained Respondent to represent her in an immigration matter and to assist her in obtaining an expungement of her felony conviction. Diaz made three attorney's fees payments to Respondent, totaling \$6,900. Diaz called Respondent's office on multiple occasions but he never spoke with her. Respondent scheduled a call with Diaz but did not actually contact Diaz until two to three weeks after the scheduled call. Diaz received a letter from Respondent's office advising her to appear in court on April 7, 2016, for a hearing on a motion to withdraw her guilty plea. Diaz appeared at the hearing but the matter did not go forward. The appearance attorney hired by Respondent advised Ms. Diaz that the hearing would have to be rescheduled but gave no explanation as to why the hearing did not proceed.

Subsequently, Diaz requested a refund on July 20, 2016. Respondent's staff informed Diaz that if she was entitled to a refund, she would receive it within 60 days. Diaz expressed her disappointment in the 60-day delay and sent multiple emails to Respondent's office demanding her refund. Subsequently, Respondent refunded Diaz \$250.

Respondent failed to cooperate and participate in a disciplinary investigation pending against Respondent by failing to provide a substantive response to the OCTC's letters dated December 15, 2016 and January 11, 2017, which Respondent received. Both of the OCTC's letters requested that Respondent respond to the allegations of misconduct being investigated in case no. 16-O-17069. Respondent did not respond to either letter.

## **Conclusions of Law**

### ***Count Thirteen – (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

OCTC has not established by clear and convincing evidence that Respondent failed to perform the services which Ms. Diaz hired him to perform. Specifically, the OCTC did not establish that Respondent failed to file an immigration petition on behalf of Diaz or that he failed to file a motion to reduce her 1994 felony conviction to a misdemeanor. Accordingly, the court dismisses count thirteen.

### ***Count Fourteen – (Rule 4-100(B)(3) [Failure to Account])***

At trial, Respondent stated that he did not provide any of his former clients with an accounting for the attorney's fees they paid. Thus, Respondent is culpable of willfully violating rule 4-100(B)(3).

### ***Count Fifteen – (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Respondent's employment was terminated by Diaz on or about July 20, 2016. Respondent performed certain legal services on Diaz's behalf and refunded \$250 of the advance fees to Diaz. OCTC did not establish by clear and convincing evidence that Diaz was entitled to a refund of more than the \$250 Respondent refunded to Diaz. Therefore, Respondent is not culpable of violating rule 3-700(D)(2) as alleged in Count 15. Count 15 is dismissed with prejudice.

### ***Count Sixteen – (§ 6068, subd. (i) [Failure to Cooperate In State Bar Investigation])***

Respondent pled nolo contendere to Count 16 which charges that he received but failed to give a substantive response to the allegations of misconduct contained in OCTC's letters dated December 15, 2016, and January 11, 2017. Both letters sought information regarding

Respondent's alleged misconduct in case No. 16-O-17069. By failing to respond, Respondent is culpable of willfully violating section 6068, subdivision (i).

**Aggravation<sup>5</sup>**

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

**Multiple Acts of Misconduct (Std. 1.5(b).)**

Respondent has been found culpable of 18 counts of misconduct in 9 matters.

Respondent's commission of multiple acts of misconduct is an aggravating factor. (Std. 1.5(b).)

**Significant Harm to Clients (Std. 1.5(j).)**

Respondent's failure to perform competently significantly harmed his clients. Most severely harmed were Yesenia Alvarez, whose lawsuit challenging the foreclosure on her home was never refiled; and Rafael Bravo, where Respondent failed to take any steps to collect the \$114,190 judgment on Bravo's behalf. Respondent's significant harm to his clients' interests is an aggravating factor.

**Failure to Make Restitution (Std. 1.5(m).)**

Respondent failed to perform any legal services on Gutierrez's behalf, yet he failed to return any of the \$1,500 of unearned attorney fees paid to him by Gutierrez. The aggravating weight of his failure to make restitution is significant.

**Mitigation**

Respondent bears the burden to prove mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds that one factor in mitigation has been established by clear and convincing evidence.

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<sup>5</sup> All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

### **No Prior Record of Discipline (Std. 1.6(a).)**

Respondent had practiced law in California for about 18 years prior to the commencement of the instant misconduct. During that period, he had no prior record of discipline, which normally would entitle him to significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].) However, Respondent has offered no evidence in mitigation that would cause one to conclude that his misconduct is not likely to recur. Thus, Respondent is assigned only moderate mitigation credit for his lack of a prior discipline record.

### **No Other Mitigation Credit**

At trial, Respondent acknowledged his misconduct and stipulated to culpability on multiple charges. Normally, Respondent would be entitled to significant mitigation credit for stipulating to facts and culpability. (See *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating factor].) However, since Respondent did not stipulate to these facts and culpability before the commencement of trial, he did not save the State Bar significant resources or time.<sup>6</sup> Moreover, the mitigation credit Respondent would have obtained for stipulating to facts and culpability at trial is eliminated by Respondent's failure to cooperate during the OCTC investigations. As such, Respondent is not afforded any mitigation credit for cooperation.

### **Discussion**

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings. Standard 1.1 sets forth the purposes of disciplinary proceedings as "(a) the protection of the public, the courts and the legal profession; (b) the

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<sup>6</sup> For example, Respondent did not stipulate to facts and culpability in the Ruiz matter, (case No. 16-O-16539) or the Mendoza/Ortiz matter (case No. 16-O-14800) until he learned that each complaining witness had traveled or had already boarded a flight to travel hundreds of miles to testify against him at trial.

maintenance of the highest professional standards; and (c) preservation of public confidence in the legal profession.”

In addition, standard 1.7 provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards provide for the imposition of a period of actual suspension for Respondent’s failure to perform with competence in multiple client matters. Standard 2.7(b) provides that actual suspension is the presumed sanction for performance, communication, or withdrawal violations in multiple client matters, not demonstrating habitual disregard of client interests.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Respondent does not argue that a specific level of discipline is appropriate. On the other hand, OCTC argues that the appropriate level of discipline for Respondent’s misconduct is, among other things, a one-year actual suspension. OCTC contends that *Amante v. State Bar* (1990) 50 Cal. 3d 247 supports this level of discipline. Yet, the *Amante* court imposed a six-month actual suspension on Amante for failing to refund advanced fees, failing to respond to client inquiries, abandoning clients, misappropriating client funds (\$60) and commingling in five matters. Amante’s misconduct commenced a short time after he was admitted to the bar. OCTC

argues that because Respondent engaged in misconduct in more matters and due to more significant aggravation, a one-year actual suspension is appropriate.

This court has looked to other case law for guidance and considers *Matthew v. State Bar* (1989) 49 Cal.3d 784, and *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, to be instructive.

In *Matthew*, the attorney was found culpable of failing to timely perform legal services in three client matters. In two matters, the attorney also failed to return unearned fees. In aggravation, the attorney caused harm to his clients and demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. In mitigation, the attorney had no prior record of discipline, however, this was not considered to be a “weighty mitigating factor,” due to the attorney’s brief legal career. (*Matthew v. State Bar, supra*, 49 Cal.3d at p. 792.) The California Supreme Court ordered that the attorney be suspended for three years, stayed, with three years’ probation subject to a 60-day actual suspension.

In *Greenwood*, the attorney was found culpable of misconduct in two matters. In the first matter, the attorney failed to perform, improperly withdrew from representation, and failed to cooperate with a State Bar investigation. In the second matter, the attorney failed to perform, failed to communicate, violated a court order, failed to return a client’s file, and failed to cooperate in a State Bar investigation. In aggravation, the attorney caused both of his clients’ lawsuits to be dismissed. No mitigating circumstances were found.<sup>7</sup> The Review Department recommended that the attorney be suspended for eighteen months, that execution of that suspension be stayed, and that he be placed on probation for two years, on the condition that he be actually suspended for ninety days.

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<sup>7</sup> The attorney had no prior record of discipline; however, his six years of practice prior to the beginning of his misconduct did not warrant mitigation.



The court finds Respondent to have engaged in much more misconduct in the present matter than the *Matthew* or *Greenwood* respondents. Respondent's misconduct is more in line with the misconduct in *Amante*.<sup>8</sup> Considering the case law and standard 2.7(b), the court finds that a six-month period of actual suspension to be appropriate under the present circumstances.

### Recommendations

Accordingly, it is recommended that Respondent Lauro Nick Pacheco, State Bar Number 173391, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of two years<sup>9</sup> subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first six months of probation, and he will remain suspended until the following conditions are satisfied:
  - i. He makes restitution to Efrain Gutierrez in the amount of \$1,500 plus 10 percent interest per year from October 14, 2014 (or reimburses the Client Security Fund, to the extent of any payment from the Fund to Efrain Gutierrez, in accordance with Business and Professions Code section 6140.5) and furnishes satisfactory proof to the State Bar's Office of Probation in Los Angeles; and
  - ii. If he remains suspended for two years or more as a result of not satisfying the preceding condition, he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

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<sup>8</sup> At first blush, it would appear that the attorney in *Amante* committed more serious misconduct because the case involved misappropriation. However, the amount was insignificant (\$60). Additionally, the court has considered that Respondent's misconduct involved four more matters than *Amante*, but Respondent has more many years of discipline-free practice.

<sup>9</sup> The probation period will commence on the effective date of the Supreme Court's order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

2. Respondent must also comply with the following additional conditions of probation:
  - i. During the period of probation, Respondent must comply with the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - ii. Respondent must submit written quarterly reports to the State Bar's Office of Probation (Office of Probation) on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. In addition to all the quarterly reports, a final report, containing the same information is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probationary period;
  - iii. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation, which are directed to him personally or in writing, relating to whether he is complying or has complied with the conditions contained herein;
  - iv. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation;
  - v. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with his assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request; and
  - vi. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
3. At the expiration of the period of this probation, if Respondent has complied with all the terms of probation, the order of the Supreme Court suspending Respondent from

the practice of law for two years will be satisfied and that suspension will be terminated.

**Multistate Professional Responsibility Examination**

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the discipline herein and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.


**California Rules of Court, Rule 9.20**

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

**Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: July 27, 2017

  
\_\_\_\_\_  
Yvette D. Roland  
Judge of the State Bar Court

**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 July 27, 2017, I deposited a true copy of the following document(s):

**DECISION**

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

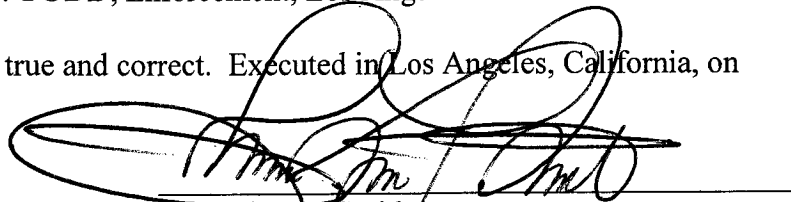
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**LAURO NICK PACHECO JR.  
NICK PACHECO LAW GROUP, APC  
15515 SAN FERNANDO MISSION BL  
STE A3  
MISSION HILLS, CA 91345**

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

**WILLIAM S. TODD**, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 27, 2017.



Johnnie Lee Smith  
Case Administrator  
State Bar Court